

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 22-9.2021

Pronounced on 30-11-2021

CRMP No. 476 of 2016

- Deepan Chakarwari S/o Jagdish Chandra Chakarwari Aged About 72 Years R/o Babupara, Ambikapur, Tahsil And P.S. Ambikapur, District Surguja, Chhattisgarh.

---- Petitioner

Versus

1. Ajay Singh S/o Late Chandra Mohan R/o Agrasen Ward Behind Astabal, Ambikapur, District Surguja, Chhattisgarh
2. Smt. Shakuntala Singh W/o Late Sureshwar Singh R/o Agrasen Ward Behind Astabal, Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Somnath Singh S/o Late Chandra Mohan Singh R/o Agrasen Ward Behind Astabal, Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

For Petitioner : Shri Saket Pandey, Advocate appears
behalf of Shri Anup Majumdar, Advocate.

For respondents : Ms. Priyanka Mehta, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioner has filed present Cr.M.P assailing the order dated 1-2-2015 (Annexure A/1) passed by 4th Additional Sessions Judge, Ambikapur, District Surguja (CG) in Criminal Revision No. 52 of 2015 whereby learned 4th Additional Sessions Judge, Ambikapur while dismissing the revision petition filed by the petitioner affirmed the order dated 18-6-2015 passed by the Sub Divisional Magistrate, Ambikapur District Surguja in Misc. Criminal Case No. 103 of 2015. The learned Sub Divisional Magistrate, Ambikapur, District Surguja has rejected the application filed by the petitioner under Section 145 of Cr.P.C. for restoration of possession of disputed land.

2. The brief facts as projected by the petitioner are that the petitioner has filed an application under Section 145 of Cr.P.C., contending that he is the owner of plot bearing khasra No.2836/02 ad-measuring 0.06 acres situated at Sadar Road, Agrasen Chowk, Ambikapur wherein he has constructed old house and on the northern side of the land owned by the petitioner, the land of respondents is situated. It has been contended by the petitioner that when the petitioner was out of station, the said structure on his land was illegally demolished by the respondents on over about 1 decimal of land and the respondents started raising illegal construction.
3. Being aggrieved by the act of the respondents, petitioner filed an application on 20-3-2015 before the Sub Divisional Magistrate, Ambikapur, District Sarguja which was registered as Misc. Criminal Case No. 103 of 2015, mainly contending that the petitioner is having title and possession of the land bearing Khasra No. 2836/02 admeasuring 0.06 acres, situated at Sadar Road Agraasen Chowk, Ambikapur wherein he has also constructed the old house in the north direction of his land wherein the land of the respondents also exists. The respondents have started demolishing the construction of the petitioner while petitioner was busy in the last rites of his younger brother. The respondents started raising illegal construction and when the petitioner came after performing the last rites of his younger brother and made an attempt to prevent the respondents, then the respondents started threatening him and also abused him. Because of the illegal possession done by the respondents and threaten given by them, there was tension near the vicinity which may likely to cause public hindrance, therefore, he has submitted a complaint before the Police Station on 19-3-2015 and the Police had advised him to approach concerned court, thereafter, he has filed the present application. In support of his application he also filed an affidavit and also filed an application for staying the construction work carried out by the respondents.

4. This Court has called for the records of the case from Sub-Divisional Magistrate as well as Revisional Court of Ambikapur and following facts were revealed from record. The Sub Divisional Magistrate has passed preliminary order 20.03.2015 and call for report from Incharge Police Station as well as Patwari Ambikapur, fixed the case on 30-3-2015. The Police authority has submitted its report and thereafter the matter was fixed on 6-4-2015. The Sub Divisional Magistrate has directed to call for the spot inspection report from the Revenue Inspector and fixed the case on 13-4-2015 and thereafter the matter was fixed on 15-4-2015. On 15-4-2015, the Sub Divisional Magistrate heard on preliminary objection raised by the respondents, the counsel for the applicant made prayer that the Revenue Inspector may be called to record his witness and for cross-examination. Learned Sub Divisional Magistrate has directed for appearance of the Revenue Inspector Ashok Singh and fixed the case for his appearance on 20-4-2015. On 20-4-2015, the parties were present, but Revenue Inspector was not present, therefore, the Sub Divisional Magistrate fixed the case on 15-5-2015 for his appearance. On that day hearing was adjourned to 25-5-2015. On 25-5-2015 the applicant was absent and learned Sub Divisional Magistrate directed for appearance of the Revenue Inspector. On 3-6-2015 the Sub Divisional Magistrate was on official tour of Raigarh, therefore, the case was adjourned to 15-6-2015 and on that day applicant and respondent were absent and the Revenue Inspector Ashok Singh was present before the court. Since both the applicant and respondent were absent, therefore, right of the applicant to cross examine the Revenue Inspector was closed by the learned Sub Divisional Magistrate, fixed the case on 18-6-2015 for orders on objection with regard to maintainability raised by the respondents. Learned Sub Divisional Magistrate, after considering the facts, has passed the impugned order which is extracted herein below.

चूंकि प्रकरण में समग्र विवेचना उपरांत आए तथ्यों से यह तथ्य स्पष्ट है कि अनावेदकगण क्रमशः— अजय सिंह आ० सुरेश्वर सिंह, श्रीमती शकुन्तला सिंह पत्नी स्व. सुरेश्वर सिंह एवं सोमनाथ सिंह के द्वारा आवेदक दीपन कुमार चक्रवर्ती की आवेदित भूमि 2836/2 रकबा 0.06 वादभूमि पर कोई जबरन निर्माण कार्य नहीं किया गया है, और न ही कब्जा किया गया है। अनावेदकगण के द्वारा मौके पर जो निर्माण कार्य किया गया है वह नजूल भूमि प्लॉट नं.—2837 रकबा 0.29 एकड़ के अंश रकबा 3.30 गुणित 4.10 वर्गमीटर पर है, जो अनावेदकगण श्रीमती शकुन्तला सिंह पत्नी सुरेश्वर सिंह अजय सिंह आ० सुरेश्वर सिंह निवासी सदर रोड अम्बिकापुर के स्थाई पट्टे एवं कब्जे की भूमि है। इसके अतिरिक्त प्रकरण में आए तथ्यों से यह तथ्य भी स्पष्ट है कि वादविषय को लेकर विवाद उभय पक्षों के मध्य है। विवाद का स्वरूप सामूहिक नहीं है। वादविषय को लेकर लोक परिशांति भंग होने की संभावना नहीं है। ऐसी स्थिति में प्रकरण में अग्रेत्तर कार्यवाही जारी रखना उचित प्रतीत नहीं होता है।

— अतः उपर्युक्त तथ्यों के आधार पर आवेदक द्वारा प्रस्तुत आवेदन अन्तर्गत धारा 145 दण्ड प्रक्रिया संहिता के तहत प्रचलन योग्य नहीं होने के कारण एतद् द्वारा खारिज जिया जाता है। प्रकरण नस्तीबद्ध कर दाखिल दफ्तर करें।

5. Learned counsel for the petitioner would submit that the petitioner has not been given opportunity to prove his case and the Sub Divisional Magistrate has passed the impugned order which is against principle of natural justice. He would further submit that the Station House Officer has clearly mentioned that there was a dispute over the land, there was a finding with regard to breach of peace between the parties still Sub Divisional Magistrate has committed illegality and irregularity in dismissing the case. Thereafter, the Revisional Court has further committed illegality in dismissing the criminal revision. He would further submit that the Revenue Inspector failed to appear on the date of his cross examination and without intimating the next date of hearing to the applicant, the case was fixed on 15-5-2015 therefore, the applicant could not appear before the said date as no opportunity to cross-examine the Revenue Inspector was given to him, it is violation of principle of natural justice, as such, learned Revisional Court should have quashed the order and should have remitted back the matter to Sub Divisional Officer for fresh adjudication. He would further submit that the order passed by the Sub Divisional Magistrate as well as the order passed by the

revisional court should have been set aside and the matter should have been remitted back for fresh adjudication to the concerned court, in accordance with law.

6. On the other hand, learned counsel for the respondents have filed return and would submit that the allegation levelled against the respondents by the petitioner is totally false and frivolous. The petitioner concealed the material facts and has not come with clean hands. The respondents denied all the allegations levelled in the petition. It is specifically denied that the respondents have demolished the structure standing on the land of the petitioner and started new construction. It was further submitted that the respondents have raised construction on their own land bearing Khasra No. 2837/2 and at present, construction is completed. It is also submitted that the said construction is completed without any objection or breach of peace, which establishes that the allegations levelled by the petitioner that there is likely to cause breach of peace is incorrect one. It is further submitted the alleged construction is completed, therefore, the application filed by the petitioner under Section 145 of Cr.P.C before the Sub Divisional Magistrate has become infructuous and same is liable to be dismissed.
7. Learned counsel for respondents would further submit that there were certain allegations against the employee of the Sub Divisional Magistrate alleging that there is collusion with respondents and they have deliberately not informed the date of hearing to the petitioner is totally incorrect factual matrix of the case as the date was already mentioned in the order sheet dated 03-6-2015 regarding fixing the date as 15-6-2015, therefore, there was no necessity to inform the petitioner in respect of the next date of hearing, therefore the application is rightly rejected by the Sub divisional Magistrate and has rightly been affirmed by the Revisional Court. It is also submitted by learned counsel for the respondents that it is duty of party or his counsel to get knowledge of proceeding of his case and hearing dates

and law does not provide that court should inform the parties regarding status of his case or next date of hearing of the case. She would further submit that before filing an application under Section 145 of Cr.P.C., petitioner has filed an application for demarcation of his land bearing plot No. 2834 admeasuring 0.07 acres before Revenue Officer, Ambikapur and the Revenue Inspector has submitted his report on 30-6-2014 wherein it has been mentioned that applicant Deepan Chakravarti possessed 5 x 13 meter of plot No. 2837 which is land of respondent and also annexed copy of demarcation report along with Panchnama and spot map. She would further submit that the order passed by the Sub Divisional Magistrate as well as the order affirmed by the Revisional Court are legal and justified and same are not liable to be interfered with by this court.

8. I have heard learned counsel for the parties and perused the records of both the courts below.
9. The point required to be determined by this court is whether the petitioner has been given proper opportunity of hearing to defence his case, in accordance with principle of natural justice or not ? (2) whether the application filed by the petitioner under Section 145 of Cr.P.C., is maintainable or not before the Sub Divisional Magistrate ? (3) whether the Sub Divisional Magistrate has followed the procedure prescribed under Section 145 of the Cr.P.C. before passing of the final order.

Findings on point No. 1

10. Whether the date of hearing was 15-6-2015 was notified by the petitioner in the ordersheet or not. This aspect of the matter cannot be examined by this court, but from the record it is very much clear that on 3-6-2016 the Presiding Officer was on official tour of Raigarh and this proceeding was written by Reader of the court. The order-sheet of the case would reflect that on 15-6-2015 the Revenue Inspector was present for the first time for his cross examination and on the same day the right of the petitioner to cross examine was closed, is nothing but glaring example of violation of

principle of natural justice, therefore, on this count alone, order dated 18.06.2015, passed by Sub Divisional Magistrate, is liable to be rejected. Hon'ble Supreme Court in New India Assurance Company Ltd. vs. Nusli Neville Wadia and another, reported in 2008 (3) SCC 279 has held in para 45 to 48 and 55 to 58 which are extracted herein-below for ready reference.

“45. If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross-examine. The witness who intends to prove the said fact has the right to cross-examine the witness. This may not be provided by under the statute, but it being a part of the principle of natural justice should be held to be indefeasible right. [See 1984 (1) SCC 43 : K.L. Tripathi vs. State Bank of India and others and 2005 (10) 634 : Lakshman Exports Limited Vs.: Collector of Central Excise]

46. We may also take note of the fact that this Court in Bareilly Electricity Supply Co. Ltd. vs. The Workme (1971) 2 SCC 617 held as under: :-

”14 The application of the principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no material can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used.

47. It is axiomatic that when in support of its case the landlord intends to rely upon a document which is to be taken on record, it would be obligatory on the part of the Estate Officer to allow inspection thereof to the noticee. Denial of such inspection of documents shall be violative of the principle of natural justice. It would run counter to the doctrine of fairness in the matter of determination of a lis between the parties.

48. We may also notice that in (2007) 1 SCC 174 : Sarbananda Sonowal (II) vs. Union of India this Court having regard to the fact that burden of proof was on the noticee held :

56. Status of a person, however, is determined according to statute. The Evidence Act of our country has made provisions as regards burden of proof. Different statutes also lay down as to how and in what manner burden is to be discharged. Even some penal statutes contain provisions that burden of proof shall be on the accused. Only because burden of proof under certain situations is placed on the accused, the same would not mean that he is deprived of the procedural safeguard. It was observed :

60. Having regard to the fact that the Tribunal in the notice to be sent to the proceedee is required to set out the main grounds; evidently the primary onus in relation thereto would be on the State. However, once the Tribunal satisfied itself about the existence of grounds, the burden of proof would be upon the proceedee.

55. Although the provisions of the Evidence Act are not applicable, the underlying principles of Section 101 thereof would apply. In Sarkar on Law of Evidence 16th Edition Volume 2 at pg. 1584 it is stated as under:-

Principle and Scope .- This section is based on the rule, ie incumbit probation qui dicit, non qui negat the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. It is an ancient rule founded on consideration of good sense and should not be departed from without strong reasons. [per LORD MAUGHAM in *Constantine Line vs. I S Corpn.* (1941) 2 All ER 165, 179]. This rule is derived from the Roman law, and is supportable not only upon the ground of fairness, but also upon that of the greater practical difficulty which is involved improving a negative than in proving an affirmative [Hals 3rd Ed Vol 15 para 488].

(Emphasis supplied)

56. The said principle has been approved by this Court in (1983) 4 SCC 491: *Shambhu Nath Goyal vs. Bank of Baroda and others* ; (1999) 8 SCC 744 :*Garden Silk Mills Ltd. and another vs. Union of India and others* and (2007) 2 SCC 433 (para 18) : *J.K. Synthetics Ltd. vs. K.P. Agrawal and another*.

57. We, however, must not shut our eyes to the objects for which the Act was enacted. It provided for a speedy remedy. The Estate Officer is expected to arrive at a decision as expeditiously as possible. The provisions of the Code of Civil Procedure and Evidence Act being not applicable, what is necessary to be complied with is the principles of natural justice.

58. Even if we assume that in terms of the statutory provisions the respondents must lead evidence first the same can be waived, Appellant not only had filed affidavits in one of the cases but time and again sought adjournments when the deponent of the affidavit was to be cross-examined. Although the appellant had pleaded requirements of the premises on an urgent basis, it kept on taking adjournments for more than 2 years. Why the witnesses were not produced before the Estate Officer for cross-examination for such a long time is not known. Only after a long period, an application was filed asking the respondents to show cause. Cause had already been

shown by the respondents. They pleaded that no case has been made out for their eviction. We, therefore, fail to understand on what basis the Estate Officer passed the order impugned before the High Court.

Findings on point No. 2 & 3

11. Since the point No. 2 & 3 are interconnected they are decided simultaneously by this Court. The Sub Divisional Magistrate after considering the report has recorded a finding that the dispute is not of a general nature and there is no possibility of disturbance of peace and tranquillity, as such, there is no justifiable for proceeding further in the matter and accordingly he has rejected the application filed by the petitioner under Section 145 of Cr.P.C. Sub Divisional Magistrate without examining the provisions of Section 145 of Cr.P.C., has passed the impugned order, therefore, for better understanding, it is expedient for this court to extract Section 145 of Cr.P.C which reads as under:

145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1)Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2)For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3)A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute,

(4)The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute: Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).

(5)Nothing in this section' shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under subsection (1) shall be final.

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub- section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub- section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub- section shall be served and published in the manner laid down in sub- section (3).

(7)When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8)If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of. such property, and, upon the completion of the inquiry, shall make such order

for the disposal of such property, or the sale- proceeds thereof, as he thinks fit.

(9)The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10)Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

12. From the bare perusal of the Section 145 of the Cr.P.C. and record of the case, the Sub Divisional Magistrate has not complied with the procedure prescribed under Section 145(2) of Cr.P.C as the Section provides that the Magistrate shall peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, then only he can pass the final order. Learned Sub Divisional Magistrate has relied upon the ex-parte evidence of Revenue Inspector, therefore, it is also in violation of Section 145(2) of Cr.P.C as he has not given any opportunity to lead evidence to the petitioner and respondent to substantiate their respective stands, therefore, the order passed by learned Sub Divisional Magistrate on 18-6-2015 is liable to be set aside on this count also as there was total violation of Section 145(2) of Cr.P.C and on this count also the order of Sub Divisional Magistrate is liable to be set aside.

13) If we see the Section 145 of Cr.P.C., which provides that whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. It means, when the dispute with regard to land arises, it will definitely cause the breach of peace, as such the learned Sub Divisional Magistrate should have proceeded further in the

matter, therefore, the finding recorded by learned Sub Divisional Magistrate that no public peace and tranquillity is likely to cause disturbance, is perverse and contrary to the provisions of the Act.

14) From the perusal of Section 145 of the Cr.P.C., it is clear that the power conferred under Section 145 of Cr.P.C., on Executive Magistrate is one of preventive but not decisive in respect of the title concerning to any land or water or the boundaries of a property which is the bone of contention between two rival groups. The objective of Section 145 Cr.P.C., is to create and confer preventive jurisdiction on the executive Magistrate in respect of disputes regarding possession or right of use of land or water or its boundaries, which result in breach of peace. When such dual between two conflicting interests came to the knowledge of an executive magistrate either through the report of the police officer or upon other information, he has to initiate the preventive action as laid down under Section 145 Cr.P.C. He shall make an order in writing stating the grounds of, his being so satisfied and require the parties concerned in such dispute to attend his court on a specified date and submit the written statements of their respective clients on the factum of actual possession of the subject of dispute. Then the Magistrate, without reference to the merits or claims of any of the parties to a right to possession the subject of dispute, peruse the statements put up before him and receive all such evidence as may be produced by them and decide whether any and which of the parties was, at the date of the order, was in possession of the subject of dispute. He shall also take note of the fact whether if any of the parties has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by him. In such an event he may treat such dispossessed party as had been in possession on the date of his first information. Upon such determination, the Magistrate shall issue an order declaring such party to be entitled to possession until evicted there from in due course of law and forbidding all disturbance of such possession until such eviction. In that course, he can also restore top the possession of the party who was forcibly and wrongly

dispossessed. This is the procedure to be followed by the Executive Magistrate under Section 145 of Cr.P.C. which is not available from the present case as evident from the record of the Sub Divisional Magistrate.

15) Hon'ble High Court of Allahabad in **Ram Shankar Tewari and another vs. The State and others, reported in 1970 Cri.L.J. 770** has examined the aims and objects of Section 145 of Cr.P.C., which are extracted as under:

“But the wording of Section 145(1) is” 'that a dispute likely to cause a breach of the peace exists concerning any land". The section does not define the land is being land in the possession of one party or another but merely, that it is land and that there is a dispute and that dispute is likely to cause a breach of the peace. All these elements exist in the present case where there is land and there is a dispute and the dispute is likely to cause a breach of the peace.

In Bhinka vs Charan Singh, reported in 1959 AIR 960 also their Lordships of the Supreme Court emphasised the fact in paragraph 16 of the report that the foundation of a Magistrate's jurisdiction under Section 145, Code of Criminal Procedure, is apprehension of the breach of the peace and with that object he makes a temporary order irrespective of the rights of the parties which will have to be agitated and disposed of in the manner provided by law. Therefore, in proceedings under Section 145, Code of Criminal Procedure, the core question always is whether a dispute exists between the parties which is likely to lead to breach of the peace. If such a dispute exists with regard to joint land in actual possession of one of the co-owners, then in that case also the Magistrate has no option but to prevent breach of the peace by resorting to the summary provision laid down in Section 145, Code of Criminal Procedure. In the case of Mst. Hosnaki v. State , it was observed:

The object behind the provisions of Section 145 is merely to prevent a breach of the peace by maintaining one party to the dispute in possession and forbidding the other on pain of a penalty, to interfere with it. When there is a dispute concerning land, neither party is prepared to have it decided by a Court of competent jurisdiction and they cannot exercise the right claimed by them without causing a breach of the peace, it becomes necessary for a Magistrate to prevent a breach of the peace by taking some action. A breach of the peace must be prevented and the Legislature has thought that the best way of

doing it is by maintaining one party in possession and forcing the other party to go to a Court of competent jurisdiction for a decision of title.

5. In the case of *Baijnath Marwarl v. W. S. Street* AIR 1917 Cal 404, there was a dispute regarding joint land giving rise to proceedings under Section 145, Code of Criminal Procedure. The Magistrate found that the two contending parties had joint title to the property but it was in actual possession of the first party. An argument was raised that proceedings could not be taken under Section 145, Code of Criminal Procedure, where there may be joint title to the land. Repelling this argument their Lordships observed as follows:

He calls it throughout actual possession; and his judgment can only be read in the sense that he means it was both actual and exclusive of the other side. The mere fact that there may be a joint title to the land would not prevent the application of Section 145, Criminal Procedure Code, as is shown by the case of *Basanta Kumari Dasi v. Mohesh Chandra Laha* (1913) ILR 40 Cal 982 = (14 Cri LJ 269).

The object behind the provisions of Section 145 is merely to prevent a breach of the peace by maintaining one party to the dispute in possession and forbidding the other on pain of a penalty, to interfere with it. When there is a dispute concerning land, neither party is prepared to have it decided by a Court of competent jurisdiction and they cannot exercise the right claimed by them without causing a breach of the peace, it becomes necessary for a Magistrate to prevent a breach of the peace by taking some action. A breach of the peace must be prevented and the Legislature has thought that the best way of doing it is by maintaining one party in possession and forcing the other party to go to a court of competent jurisdiction for a decision of title”.

16) Learned counsel for the respondents has referred to the judgment rendered by Hon'ble Supreme Court in **Ashok Kumar vs. State of Uttarakhand and others, reported in 2013(3) SCC 366**, wherein it has been held in para 12 and 13 which are extracted, herein-below:-

“12. The above order would indicate that the SDM has, in our view, wrongly invoked the powers under Section 146(1), Cr.P.C. Under Section 146(1), a Magistrate can pass an order of attachment of the subject of dispute if it be a case of emergency, or if he decides that none of the

parties was in such possession, or he cannot decide as to which of them was in possession. Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145, Cr.P.C. It can only be read in the context of Section 145, Cr.P.C. If after the enquiry under Section 145 of the Code, the Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof.

13. The ingredients necessary for passing an order under Section 145 (1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced”.

17) In **Ashok Kumar** (Supra), the Sub Divisional Magistrate has passed the order under Section 146(i) of Cr.P.C., for attaching the property in question while the civil suit was pending and when there was no emergency as contemplated under Section 146 of Cr.P.C. still the order with regard to attachment of property was passed. Here in the present case, there is no such circumstance of emergency, therefore, the judgment cited by learned counsel for the respondents is not applicable to the facts of the present case. The Sub Divisional Magistrate has rejected the application filed by the petitioner which has been affirmed by the revisional Court on material irregularity by recording a finding that there is no breach of public peace whereas if there is dispute with regard to the land, then peace and tranquillity of area will be ...jeopardize, as such, provisions of Section 145 of the Code is attracted.

18) From the above discussion, I am of the view that the Revisional Court has committed further irregularity in dismissing the revision by recording a finding that the petitioner should be vigilante and should have appeared on the date of hearing, is perverse and illegal finding as the Revisional Court has not examined whether provisions of Section 145 of the Cr.P.C. is applicable to the present facts of the case or not. Thus, the order dated 1-12-2015 passed by the Revisional Court in Criminal Revision No. 52 of 2015 as well as the order dated 18-6-2015 passed by Sub Divisional Magistrate in Misc. Criminal Case No. 103 of 2015 are liable to be and are hereby set aside. Accordingly, Misc. Criminal Case No. 103 of 2015 be restored to its original number and thereafter, the the Sub Divisional Magistrate shall decide the case on its own merits.

19) Accordingly, the matter is remitted back to the Sub Divisional Magistrate, Ambikapur, District- Sarguja for deciding the case afresh bearing Case No. 103/2015. It is directed that the Sub Divisional Magistrate after giving proper opportunity of hearing to both parties and after considering the material on record, shall decide the case on its own merits. It is made clear that this Court has not expressed any opinion on the merits of the case. The petitioner and respondents are directed to appear before the Sub Divisional Magistrate, Ambikapur, District Sarguja on 06-01-2022. The records of both the courts below be sent immediately to the concerned court and to the Sub Divisional Magistrate, Ambikapur, District- Sarguja (C.G.).

20) In view of aforesaid observation and direction, present CRMP is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge