

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 12th of October, 2022
Pronounced on 14th December, 2022**

CRM-M No.4273 of 2018 (O&M)

Sukhbir Singh and othersPetitioners

Versus

State of Haryana and othersRespondents

COCP No.239 of 2021 (O&M)

Krishan and othersPetitioners

Versus

Dharmender Singh and othersRespondents

COCP No.2891 of 2020 (O&M)

Pala and others ...Petitioners

Versus

Dharmender Singh and othersRespondents

COCP No.2602 of 2021 (O&M)

Ashok KumarPetitioner

Versus

Sushil Sarwan and othersRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sanjiv Gupta, Advocate
for the petitioners (in CRM-M-4273-2018 and COCP-239-2021).

Mr. Ajit K. Sharma, Advocate
for the petitioners (in COCP-2891-2020)

Mr. Pradeep Chhokar, Advocate
for the petitioner (COCP-2602-2021).

Mr. Sumit Jain, Addl. Advocate General, Haryana.

Mr. Vikram Singh, Advocate
for respondents No.6, 7, 9, 11 to 14 (in CRM-M-4273-2018).

Mr. Sukhvir S. Sahu, Advocate
for respondents No.8 & 10 (in CRM-M-4273-2018).

PANKAJ JAIN, J.

Petitioners have invoked jurisdiction of this Court under Section 482 Cr.P.C. seeking quashing of *Kalandra* under Section 145 Cr.P.C. dated 24th of October, 2017 and order dated 22nd of December, 2017 passed under Section 146(1) Cr.P.C. whereby Receiver has been appointed *qua* the land measuring 487 acres.

2. Necessary facts that need to be culled out for proper adjudication of the controversy in hand are that the land in dispute is situated within the Revenue Estate of village Nanhera, Sub Tehsil Bapoli, District Panipat situated at the banks of Yamuna River. The boundaries of the river was subject to alluvion and dilluvian owing to river action every year and the same was fixed by an Act of Parliament enacted as the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979 as per Dikshit Award. Consolidation in the village was initiated under Section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act of 1948) by issuance of notification. Scheme was prepared *qua* the land holding of the Revenue Estate of the village under Section 14(2) however land described

as *shamlat deh* comprising in Khewat No.249 could not be partitioned for want of proper revenue record *qua* titled of co-sharers. Rather the proprietors were left to seek partition under Section 111 of the Punjab Land Revenue Act, 1887. In 1989 notification was again issued under the 1948 Act for consolidation of *shamlat deh* land however, the same was withdrawn to be issued again on 5th of May, 1990. *Qua* Notification dated 5th of May, 1990 issued under Section 14(1) of the 1948 Act, 836 acres of *shamlat* Khewat bearing 249 situated in village Nanhera was sought to be consolidated. Scheme of consolidation pursuant thereto was sanctioned by Settlement Officer vide order dated 16th of March, 2002. Such order of sanction was assailed by some of the proprietors by filing petition under Section 42 of 1948 Act, which was dismissed vide order dated 16th of December, 2003. The aforesaid orders dated 16th of March 2002 and 16th of December, 2003 were further challenged by way of Writ Petition No.5578 of 2004 before this Court. This Court stayed the consolidation proceedings and issued Rule. The writ petition was finally dismissed vide order dated 23rd of August, 2010 (Annexure P-1). During the period the writ petition was pending before this Court on the representation made by interested parties including the petitioners, Deputy Commissioner, Panipat vide communication dated 26th of November, 2007 highlighted certain irregularities committed by Consolidation Authorities while preparing revenue record during the process of consolidation *qua shamlat* land. However, vide report dated 25th of May, 2017 consolidation proceedings

were reported to be completed in proceedings dated 7th of April, 2017 when all the shareholders appended their signatures/thumb-impressions on Consolidation Proceedings Register. Possession could not be handed-over due to stay order w.r.t. possession, passed by District Revenue Officer-cum-Consolidation Officer, Panipat. Report *qua* the aforesaid facts dated 25th of May 2017 is on record as Annexure P-7. Some of the shareholders again approached this Court by way of CWP No.7878 of 2017 which was decided vide order dated 15th of May, 2017 which reads as under :

“The only grievance of the petitioners is that the revenue record of village Nanhera, Tehsil Bapoli, District Panipat, be corrected and completed first, before consolidation takes place in pursuance to the notification dated 26.3.2001.

The grievance of the petitioners is also that the objections filed by them to the revenue record have not been decided.

Learned counsel for the State, on instructions from Mr. Navneet, Consolidation Officer, Tehsil Bapoli, District Panipat, who is present in Court, submitted that the revenue record has been updated. The objections filed by the petitioners will also be considered and decided before carrying out the process of consolidation in the revenue estate concerned, after affording opportunity of hearing to the petitioners.

Keeping in view the aforesaid stand taken by learned counsel for the respondents, the prayer made in the present writ petition has been rendered infructuous. The same is disposed of as such.”

3. In compliance of the order dated 15th of May, 2017 passed by this Court (*supra*) Consolidation Officer-cum-District Officer, Panipat i.e.

the Competent Authority passed following order dated 31st of May, 2017
(Annexure P-10) :

“File presented. Parties were called. Counsels for both the parties and Consolidation Officer, Bapoli came present. Both the parties after submitting the copy of order dated 15.5.2017 passed by the Hon'ble Punjab and Haryana High court in CWP No.7878 of 2017 asserted that as per the orders of the Hon'ble Punjab and Haryana High court, the case may be decided after obtaining the objections from all the parties. Consolidation Officer, Bapoli while recorded his statement, asserted that Munadi has been got conducted for hearing the objections of both the parties and during the stay process, it is not possible to take any action, therefore, the stay order may be vacated. Learned counsel Roshan Lal etc., during the course of arguments asserted that objections of all the parties can only be heard only when the stay order in the present case be vacated. In case all eligible persons shall be deprived of their right of getting land, therefore, stay order may be vacated.

After hearing both the learned counsels of both the parties and Consolidation Officer, Bapoli, I have come to the conclusion that orders passed by the Hon'ble Punjab and Haryana High Court in CWP No. 7878 of 2017 shall not be complied with until and unless stay granted vide order dated 2.5.2017 is not vacated. Both the parties are directed that they may submit their objections before the Consolidation Officer, Bapoli. File be consigned to record room.”

4. Consequently, an application was moved before the Consolidation Officer which was decided vide order dated 8th of June, 2017. Operative part thereof reads as under :

“Appellants have filed an appeal under Section 42 of the

Consolidation Act, 1948 before the Director, Consolidation, Haryana and the Director Consolidation, Haryana vide his order dated 16.12.2003, by considering the consolidation as correct, dismissed the appeal of the appellant against which the residents of village Nanhera have filed CWP No. 5578 of 2004 titled as Janeshwar etc. versus State of Haryana. In this writ also, by considering the decision of the Consolidation Officer, Haryana as correct, the writ petition was dismissed vide order dated 23.8.2010. After this, the residents of village Nanhera filed an writ petition before the Hon'ble Punjab and Haryana High court vide CWO No. 23358 of 2010. In this writ petition, Hon'ble High court ordered to decided Annexure P-2, P-6 to P-8 within a period of 90 days. Against the order passed in this writ petition, residents of village Nanhera passed COCP No. 1122 of 2012 before the Hon'ble Punjab and Haryana High Court. On not being giving the reply of this COCP within a period of 90 days, Hon'ble Punjab and Haryana High Court marked the case to the CBI for conducting enquiry. C.B.I. after conducting the enquiry of Annexures and FIR RC-21202008 / CBI / ACU 7-11-2012 submitted its reports in the court of Shri Kapil Rathi, Special Judicial Magistrate, CBI, Haryana, Panchkula. The aforementioned courts vide its order dated 15.7.2016 while disposing of the Annexures and FIR, dismissed the appeal. All the objections filed by the applicants filed in different courts have been decided. Keeping in view the above decisions, partition proceedings were carried completing in village Nanhera. the partition After process, proceedings under the provisions of Section 21 (1) was carried out on 7.4.2017 in the presence of residents of village Nanhera. It was also directed that in case any of the shareholder has been objection with the partition of land, he can file his objection before within the Consolidation Officer, Bapoli 15 days Consolidation proceedings under Section 21(2) Act, this 1948. village of Consolidation are being of carried out as per the Consolidation

scheme and consolidation Act, 1948 and strictly in compliance of the earlier orders so passed. Under such justification proceedings. circumstances, to stop the there is no consolidation proceedings.

The objections with respect to choice and Shart-Waji-ul-Arj so raised by the applicants, these objections have been decided by the Director Consolidation, Haryana in a case No. 116/2002 on 16.12.2003, by the Hon'ble Punjab and Haryana High court vide order dated 23.8.2010 in CWP No. 5578 of 2004 and by the court of Shri Kapil Rathi, Special Judicial Magistrate, CBI, Haryana, Panchkula in file No. 4345/2014 decided on 15.7.2016. Objections raised by the applicant baseless and far away from the facts.

The compliance of sanctioned consolidation scheme has been done vide letter No. 566 dated 17.12.1999 of Consolidation Officer and the area of Burdi Brandi has not been given wrong to any of the shareholder whereas the area has been given to the shareholders as per scheme of consolidation and as per the decision of various learned courts and strictly in accordance with Shart-Waji-Ul-Arj and as per choice. The consolidation department has not left out the area of Bill Allot of the value of 16 Aane. The owners of Ladi No. 168 to 185, 187, 188 have been allotted the area keeping in view the consolidation scheme and record. Area has not been allotted to any wrong person.

Shart-Waji-Ul-Arj which is placed in the file of the year 1975-76, in that, year 1842 is clear written and in file of the year 1904-09, no cutting has been made by the consolidation department. Area of Shamlat Deh has not been let out Billa Allot to any of the shareholder. Photocopy of Shart-Waji- Ul-Arj of consolidation of the year 1904-09 is enclosed.

Sanctioned Mutation No. 1583 and 1592 been entered in the jamabandi. has Therefore, in compliance of the sanctioned scheme of consolidation, the area of shamlat has been divided. Keeping in view the orders passed by different courts, it has

been found that no amendment can be made in the sanctioned scheme of consolidation.

Consolidation proceedings have been carried out from the settlement year 1842. After tracing out the record from the record room, Panipat of the year 1842 to 1975, Khatoni Istemal Burdi Bramdi and Naksha Hakdawar has been prepared, record of which is available with department the and Director Consolidation Consolidation, Panchkula has found this record as correct vide his order dated 16.12.2003. Copy of the record so prepared by Consolidation department can be obtained from the Halka Patwari after deposited the Govt. fee as per rule for the office on any working day.

Consolidation work has been completed by the Consolidation Department in the presence of present Gram Panchayat of village Nanhera and in the presence of shareholders and the work of consolidation has been done as per consolidation scheme fairly without collusion of any one. any The allegation of collusion is baseless and without any basis. There is no provision of Gau Charan in the consolidation scheme, therefore, as per consolidation, area of Gau Charand has not been left out.

The work on Mutation No. 1902 and 1903 been rightly sanctioned by Asstt. Officer on 25.3.2010 in have Consolidation compliance of the order dated 10.10.2000 passed by Asstt. Collector, Ist Class-cum- Consolidation Officer, exercising the powers of Asstt. Collector, IInd Class and not by any retired Kanungo.

In the orders dated 16.12.2003 passed by Director, Consolidation, Haryana, there is already mentioning of Notification under Section 14(1) concerning to 856 acres of land of village Nanhera. Hon'ble Punjab and Haryana High court vide its order dated 23.8.2010 has considered the order dated 16.12.2003 with respect to sanctioned scheme under Section 42 of Consolidation Act as correct. CWP No. 8979 of 2009 does not implement upon village Nanhera, therefore, Section 32 of Land

Revenue Act, 1887 can not be implemented.

Keeping facts, in view the aforementioned I have come to the conclusion that the work of consolidation in village Nanhera has been done keeping in view the sanctioned scheme of consolidation and also keeping in view the orders passed by different court. Objections raised by the applicant totally wrong and against law. are Therefore, under such circumstances, this application is rejected. Copy of the order be placed on file of both the cases.”

5. The matter was again brought before this Court in CWP No.13876 of 2017 decided vide order dated 3rd of July, 2017 whereby this Court ordered as under :-

“The impugned order dated 08.06.2017 has been passed by Consolidation Officer and is surely appealable/revisable by the Director Consolidation, Haryana. Learned counsel for the petitioners, thus, seeks withdrawal of this writ petition with liberty to approach the said superior Authority.

Ordered accordingly.

Since the petitioners are seeking ad interim relief, the Director Consolidation is directed to decide the interim stay matter within one week of filing of the petition.”

6. Two of the owners namely Pahal Singh and Om Singh assailed the order dated 31st of May, 2017 passed by Consolidation Officer-cum-District Revenue Officer, Panipat in appeal before Deputy Commissioner-cum-Asstt. Director Consolidation, Panipat. The same was disposed off vide order dated 12th of October, 2017. The operative part thereof reads as under :-

“After hearing both the parties and on careful perusal of the documents available on the file, I have come to the conclusion that the consolidation proceedings which has been carried out by the respondents that has not been done in a proper way as a result of which appellants have filed appeal before the District Revenue Officer-cum-Settlement Officer, Panipat. District Revenue Officer-cum-Consolidation Officer by finding the proceedings as wrong, stayed the proceedings so carried out by the Consolidation Office, Bapoli vide his order dated 2.5.2017 but vide order dated 31.5.2017, vide his own order dated 2.5.2017, set aside the order dated 2.5.2017 without any cogent reason. Appeal of the appellants is still subjudiced before the District Revenue Officer-cum-Consolidation Officer, Panipat, therefore, keeping in view the aforementioned facts order dated 31.5.2017 passed by District Revenue Officer-cum-Consolidation Officer, Panipat is set aside. Learned lower court below is ordered that keeping in view the enquiry conducted by the Sub Divisional Magistrate, Samalkha, appeal may be disposed off at the earliest after hearing both the parties. Apart from this, the applications for impleading the additional shareholders of village Nanhera and others as party in this case is dismissed being found baseless. File be consigned to record room.”

7. The said order dated 12th of October, 2017 was further assailed in appeal preferred by some of the *biswedars* who were put in possession by the Consolidation Officer pursuant to Consolidation Scheme dated 8th of June, 2017. Commissioner vide order dated 31st of October, 2017 ordered the parties to maintain *status quo* prior thereto respondents in the present petitions who claimed themselves to be shareholders and *biswedars* in the shamlat land approached Sub-Divisional Magistrate, Samalkha under

Sections 145/146 Cr.P.C. for ejectment of the land and seeking appointment of receiver. On the said application, present proceedings under Section 145 Cr.P.C. have been initiated vide impugned *Kalandra* dated 24th of October, 2017 in which impugned order dated 22nd of December, 2017 has been passed under Section 146(1) Cr.P.C. whereby the property has been attached and the Tehsildar Bapauli has been appointed as Receiver.

8. Ld. Counsel for the petitioners submits that it is evident from the record that the shareholders were put in possession pursuant to scheme dated 8th of June, 2017. Rightful owners were delivered possession by 12th of June, 2017. The order passed by Commissioner dated 12th of October, 2017 quashing order dated 12th of June, 2017, was stayed by the Commissioner vide order dated 27th of October, 2017. Thus, once from the record it is clearly borne out that the possession of the land stands delivered on 12th of June, 2017, the private respondents cannot be allowed to dispossess the petitioners under the garb of present proceedings under Section 145 Cr.P.C. He asserts that keeping in view the fact that the petitioners are in possession of land, the Authorities ought not have passed an order of attachment and appointment of Receiver. He submits that such action on part of the officials is in violation of settled proposition of law as the proceedings under Section 145 Cr.P.C. can only be resorted to when possession over the property can't be ascertained. He submits that since the question, whether the petitioners are rightful claimants to retain possession is pending before the Consolidation Authorities there was no reason for the

Executive Authorities to initiate proceedings under Section 145 Cr.P.C. He, thus, prays that all proceedings initiated against the petitioners with an intent to dispossess them under the garb of present proceedings under Section 145 Cr.P.C deserve to be quashed being an abuse of process of law.

9. Per contra, Ld. State Counsel has submitted that the parties were at loggerheads w.r.t. possession over the *shamlat* land pursuant to consolidation proceedings and Authorities in order to prevent breach of peace rightfully invoked Section 145 Cr.P.C. It has been forcefully asserted that initiation of these proceedings was required to maintain peace in the village.

10. Ld. Counsel representing the private respondents No.6 to 14 submits that it is wrong on behalf of the petitioners to assert that the consolidation proceedings have attained finality. The consolidation scheme was sanctioned in an illegal manner and the same has been challenged in appeal. Till such appeal filed by the shareholders is pending, the consolidation scheme cannot be said to have attained finality. The petitioners instead of leading evidence before the authorities have rushed to this Court and the present petition being peremptory deserves to be dismissed.

11. I have heard counsel for the parties and have gone through the records of the case.

12. It will be apposite to peruse the bare provisions as contained in Section 145 and Section 146 Cr.P.C. before appreciating the facts of the

present case :

“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 sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection (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 powers of the Magistrate to proceed under section 107.

146. Power to attach subject of dispute and to appoint receiver.—(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate—

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.”

13. As per settled proposition of law Section 145 and Section 146 have to be read conjointly as the same together constitute the legislative scheme to deal with the situations involving likelihood of a breach of the peace. Ingredients of Section 145 Cr.P.C. itself cannot be a ground to invoke the provision to attach the property. A Magistrate has to satisfy himself w.r.t. ingredients of Section 146 Cr.P.C. as well. As to remind of the import of the aforesaid provisions, it needs to be reiterated that Apex Court in **Shanti Kumar Panda vs. Shakuntala Devi (2004) 1 SCC 443**, while dealing with the aforesaid provisions held as under :-

“23. For the purpose of legal proceedings initiated before a competent court subsequent to the order of an Executive Magistrate under Sections 145/146 of the Code of Criminal Procedure, the law as to the effect of the order of the Magistrate may be summarized as under:-

(1) The words 'competent court' as used in sub-section (1) of Section 146 of the code do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession over the property forming subject matter of proceedings before the Executive Magistrate;

(2) A party unsuccessful in an order under Section 145(1) would initiate proceedings in a competent court to establish its entitlement to possession over the disputed property against the successful party. Ordinarily, a relief of recovery of possession would be appropriate to be sought for. In legal proceedings

initiated before a competent court consequent upon attachment under Section 146(1) of the Code it is not necessary to seek relief of recovery of possession. As the property is held custodia legis by the Magistrate for and on behalf of the party who would ultimately succeed from the court it would suffice if only determination of the rights with regard to the entitlement to the possession is sought for. Such a suit shall not be bad for not asking for the relief of possession.

(3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and weight before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence.

(4) The Court will be loath to issue an order of interim injunction or to order an interim arrangement inconsistent with the one made by the Executive Magistrate. However, to say so is merely stating a rule of caution or restraint, on exercise of discretion by Court, dictated by prudence and regard for the urgent/emergent executive orders made within jurisdiction by their makers; and certainly not a tab on power of Court. The Court does have jurisdiction to make an interim order including an order of ad- interim injunction inconsistent with the order of the Executive Magistrate. The jurisdiction is there but the same shall be exercised not as a rule but as an exception. Even at the stage of passing an ad-interim order the party unsuccessful before the Executive Magistrate may on material placed before the Court succeed in making out a strong prima facie case demonstrating the findings of the Executive Magistrate to be without jurisdiction, palpably wrong or self-inconsistent in

which or the like cases the Court may, after recording its reasons and satisfaction, make an order inconsistent with, or in departure from, the one made by the Executive Magistrate. The order of the court - final or interlocutory, would have the effect of declaring one of the parties entitled to possession and evicting therefrom the party successful before the Executive Magistrate within the meaning of sub-section (6) of Section 145.”

14. Likewise, in the case of **Ashok Kumar vs. State of Uttarakhand (2013) 2 SCC 366**, Apex Court held as under :-

“9. 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.

10. 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.

11. We find from this case there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant – Ashok Kumar, whether it is legal or not, is not for the SDM to decide.”

(emphasis supplied)

15. The aforesaid proposition of law when applied to the facts of the present case, it is evident that on the day proceedings under Section 145 Cr.P.C. were initiated, parties admittedly were put in possession in terms of the settlement scheme. Even the *Kalandra* initiating the proceedings records the same as under :

“This Kalendra has been presented by the Station House Officer in this court in which it is written that in village

consolidation of some land has been done in which on 7.4.2017 after conducting the proceedings under Section 21(1), possession proceedings have been completed by the Consolidation Department on 12.6.2017. All the farmers have taken their possession at the spot.”

16. Though as a matter of fact the Authorities are correct in recording that the said order was further challenged and the same was stayed. However, it is also matter of record that the order passed by Commissioner, dated 12th of October, 2017 quashing the order dated 12th of June, 2017 has been further stayed by the Appellate Authority. In view of the fact that the question w.r.t. possession is not in dispute and parties have been put in possession in terms of the order dated 12th of June, 2017 as recorded in the *Kalandra*. Instant proceedings cannot be allowed to continue to dispossess the parties who came in possession on the strength of proceedings dated 12th of June, 2017. The correctness of the same is pending consideration before the Authorities and obviously the right to continue the possession shall follow the final order in such proceedings. In view of the proceedings w.r.t. the rights of the parties pending before the Authorities of Competent Jurisdiction and the possession of the land having been delivered on 12th of June, 2017, the *Kalandra* initiated under Section 145 Cr.P.C. cannot be sustained merely for the reason of apprehension of breach of peace.

17. Consequently, the present petition (**CRM-M No.4273 of 2018**)

is allowed. *Kalandra* under Section 145 Cr.P.C. initiated vide order dated 24th of October, 2017 and all proceedings subsequent thereto including order dated 22nd of December, 2017 are hereby ordered to be quashed.

18. None of the parties addressed any argument in COCP No239 of 2021, COCP No.2891 of 2020 and COCP No.2602 of 2021, the same are disposed off as not pressed.

19. Pending application(s), if any also stands disposed off.

December 14, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No