



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Pronounced on: 2nd June, 2022

+ CRL.M.C. 2611/2021, CRL.M.A. 16867/2021

MURARI MIRCHANDANI

..... Petitioner

Through: Mr. Vishal Gosain, Ms. Adya R. Luthra and Mr. Pravir Singh, Advocates

versus

STATE & ORS.

..... Respondents

Through: Ms. Manjeet Arya, APP for the State
Mr. Ajay Bahl and Mr. Prithish Sabharwal, Advocates for R-2
Mr. Praveen Chauhan, Mr. S. Rao and Mr. Aakash Dubey, Advocates for R-3

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") for quashing the Notice dated 8th September, 2021, issued by the SDM, Hauz Khas, South District, New Delhi in case titled ***Raj Narayan Singh v. Jitendra Kumar Sardana & Anr.***, and for setting aside of the proceedings emanating from the said Notice.

2. The petitioner states that he is engaged in the business of real estate. The facts as pleaded by the petitioner are that property bearing bearing No.



S-94, Panchsheel Park, New Delhi, measuring 499 square yards was leased by the Delhi Development Authority (for short, “DDA”) to late Sh. Surender Kumar Sardana, vide Lease Deed dated 08th December, 1967, who died on 5th April, 2011, leaving behind his siblings, namely, Jitender Sardana (since deceased) respondent no. 3 herein, Sushma Diwan, Sushila Arora (since deceased) and Pushpa Mendiratta, as his legal heirs.

3. While the respondent no.3 approached the DDA on 2nd August, 2011 for mutation of the property in favour of the surviving legal heirs of Sh. Surender Kumar Sardana, a complaint was filed by the respondent No.2 claiming to have purchased the property from Sh. Surender Kumar Sardana and being in possession of all original documents. The DDA vide letter dated 18th November, 2011 intimated the respondent No.3 that no action could be taken because of the said complaint. The respondent no.3 filed a police complaint alleging that the original documents had been stolen by a servant.

4. Further, in January, 2012, the respondent no.3 entered into a Memorandum of Understanding (MOU) on behalf of himself and his siblings with the petitioner for sale of the property for a total sale consideration of Rs.19 crores. A sum of Rs.5 lakhs was also paid to these persons in cash. An Agreement to Sell was also executed on 11th April, 2012 by the respondent no.3, on behalf of himself and Sushma Diwan and Sushila Arora for the 3/4th share in the property. In May, 2012, it was informed to the petitioner by the respondent no.3 that the sale could not be processed further as Ms.Sangeeta Bhambani, one of the daughters of his pre-deceased sister, had filed a suit for partition, being CS(OS) 350/2012,



before this court and on 20th April, 2012, the respondent No.3 had been restrained from disposing of, selling, mortgaging, or parting with possession or in any way transferring the said property.

5. Since that suit was dismissed on 27th March, 2014, the respondent No.3 once again informed the petitioner that he would be moving forward to put into effect the Agreement to Sell. In the meantime, the respondent No.2 had filed an I.A. No.538/2014 for impleadment in the said suit as the rightful owner of the property, which came as a complete surprise to the petitioner. Therefore, he filed a suit for specific performance, declaration and permanent injunction against the respondent No.3 being CS(OS) 1081/2014 in this court.

6. The respondent No.2 had also made a complaint on 17th September, 2014, upon which a *Kalandara* was prepared under Section 145 Cr.P.C. and the property in question was sealed. On 19th September, 2014, the SDM passed an order of *status quo*, after which the respondent No.2 approached this court by filing a petition, being CrI.MC No. 203/2016, for quashing of these proceedings. In the said petition, this court directed the SDM to dispose of the proceedings within a period of six months from the date of the order i.e., 18th January, 2016. The SDM disposed of the *Kalandara* on 19th September, 2016, closing the proceedings under Section 145 Cr.P.C. by making the following observations:-

“ xxx xxx

*Further as per the Hon'ble High Court order No .CS(OS)
1081/2014 dated 21.04.2014 in the case titled as Murari*



Mirchandani V/s Jatinder Singh & Ors. (para 19 & 20) defendants are refrained from encumbering, alienating, dealing in any manner whatsoever and parting with possession of property no. S-94 Panchsheel Park. There is also a civil suit in Distt. Court Saket filed by Sh. Jitender Sardana which is in argument stage.

In view of this, it would serve no purpose to continue proceeding under section 145 Cr.P.C., when there is no emergent ground of disruption of public peace. Title/Possession of suit property is to be decided by competent court.

Therefore, the proceedings under section 145 Cr.P.C. are disposed off and the sealing of the property shall remain as such. Any order passed by the Hon'ble High Court or Distt. Court may be produced in this court if further action is desired from this court."

7. The grievance of the petitioner is that after the dismissal of the revision petition against the said order of the SDM by the learned District and Sessions Judge on 10th November, 2017, the respondent No.2 filed a fresh application on 10th August, 2021 praying that the property be de-sealed, also praying that the possession be handed over to him. The SDM passed the impugned Notice dated 8th September, 2021, issuing Notice to the respondent no.3 and Sh. Praveen Chauhan (Advocate), to appear before her, also intimating the petitioner of the filing of the application for de-sealing and handing over of the possession, by the respondent No.2.

8. This, according to Mr. Vishal Gosain, learned counsel for the petitioner, was completely erroneous inasmuch as the SDM had vide previous order dated 19th September, 2016, closed the proceedings in view



of the orders in the Civil Suit. When civil proceedings were pending, the SDM could not have revived the question of de-sealing.

9. Learned counsel for the petitioner has relied on the judgments in ***Ram Sumer Puri Mahant v. State of U.P.***, (1985) 1 SCC 427, ***Indubhai Patel v. State***, 1987 SCC OnLine Del 73, ***Dalbir Singh v. State (NCT of Delhi)***, 2001 SCC OnLine Del 669, ***Roop Lal Bhalla v. State***, 2003 SCC OnLine Del 577 in support of his contention that once the civil proceedings were pending, the proceedings under Section 145 Cr.P.C. could not be initiated. Relying on the judgement of the Supreme Court in ***Xxx v. State of Kerala***, 2021 SCC OnLine SC 1323, the learned counsel for the petitioner has further contended that even under Section 362 Cr.P.C., the courts are not empowered to recall its own judgement.

10. In response, Mr. Ajay Bahl, learned counsel for the respondent No.2 contended that no doubt the civil suit was pending, being CS(OS) 1081/2014, but not even summons had been issued to the respondent No.2 in that case. Moreover, the Coordinate Bench of this Court had issued no injunction against the respondent No.2, who was the defendant No.5 in that suit. As such, the respondent No.2 was well within his rights to have moved the SDM for de-sealing and handing over of the possession to him, being lawfully entitled to it.

11. I have heard the submissions and perused the record and the cited case laws.



12. There can be no question that the proceedings under Section 145 Cr.P.C. would be subordinate to civil proceedings. Section 145 Cr.P.C. 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 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.”

13. When a report is received by the Magistrate that there is an apprehension of breach of peace and property is involved, the Magistrate only makes an inquiry for the limited purpose of the determination of possession of the property in dispute, in no way entering into the question of determination of the title of the property.

14. If there is any question of title, then it is only a civil court that can decide it. The SDM must abide by the determination of the *inter se* rights of parties, whether interim or final, by the civil court. In case where despite the civil case pending and orders being passed by the civil court therein, there was a threat to breach of peace, then proceeding would be initiated under Section 107 and not under Section 145 Cr.P.C. [*see Dalbir Singh (supra)*]

15. The Notice dated 8th September, 2021 is thus *ex facie* perverse for two reasons. Firstly, the SDM had on 19th August, 2016 closed the



proceedings under Section 145 Cr.P.C., as there was no emergent ground for disruption of public peace, and the question regarding the title and the right of possession to the suit property was under consideration of the competent courts i.e., the High Court and the District Court. The Revision Petition preferred by the respondent No.2 was also dismissed on 10th November, 2017. No doubt, a petition under Section 482 Cr.P.C. was preferred by the respondent No.2, being Crl.M.C.1486/2018 (which has also been disposed of by this Court vide separate orders today).

16. There is a finality to the orders of the SDM dated 19th August, 2016, despite which the respondent No.2 moved an application for de-sealing and handing over possession of the property in question. The SDM has not observed the existence of an emergent ground of disruption of public peace, which may have justified the re-opening of the issue, though, once again, the provision to be invoked in that event was under Section 107 Cr.P.C..

17. The SDM noted the previous order in para No.2 of the impugned Notice, despite which, notice was issued on the application of the respondent No.2. Further, vide the first order dated 19th August, 2016, the parties were permitted to produce the civil courts' orders (High Court or District Court), when further action was required, but in this instance, the SDM proceeded with the application even without an order of the court. Thus, the SDM committed the second error by issuing the impugned notice even without the production of any order of the civil court determining the rights either by an interim order or the final order.



18. The action taken by the SDM being completely in violation of the law and being a perverse exercise of powers, this Court, in order to prevent the abuse of the process of court, considers it appropriate to quash the impugned Notice dated 8th September, 2021. The Notice is accordingly quashed.

19. It will be open to the parties to seek appropriate reliefs from the civil courts *in seisin* of the civil suits and produce such orders before the SDM, if the civil court finds one of them entitled to seek the de-sealing/possession.

20. The petition stands disposed of, along with the pending application.

21. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JUNE 02, 2022

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