

2024:PHHC:132041



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-34979-2024 (O&M)

Reserved on : 10.09.2024

Pronounced on: 04.10.2024

Gurjit Dass @ Gurjit Singh

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON’BLE MS. JUSTICE KIRTI SINGH

Present: Mr. M.L. Saggar, Senior Advocate with
Mr. Gurcharan Dass, Advocate
Mr. Sunny Saggar, Advocate and
Ms. Armaan Saggar, Advocate, for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

Mr. Mrigank Sharma, Advocate, for respondent No.4.

KIRTI SINGH, J.

1. The jurisdiction of this Court has been invoked under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing of Kalandra No.10 dated 27.06.2024 (Annexure P1), under Section 145 Cr.P.C., registered at Police Station Doraha, Police District Khanna, District Ludhiana.

Factual Matrix

2. Succinct factual narrative relevant for the disposal of the instant petition is that a civil suit No.138 dated 16.05.2011 titled as Gurudwara Guru Granth Sahib Ji Birajman Dharamshala Vs. Kewai Dass

2024:PHHC:132041



and others was filed by respondent No.4 for grant of permanent injunction restraining the petitioner and others from interfering in peaceful cultivating possession of land measuring 171 kanals & 08 marlas as per jamabandi for the year 2004-2005 situated at village Bilaspur, Tehsil & District Ludhiana. The respondent No.4 is a Gurudwara and is a juristic person which is managed by the Shiromani Gurdwara Parbandhak Committee (for short SGPC) which is a statutory body.

2.1 The SGPC had filed a suit under Section 25 of the Sikh Gurudwara Act, 1925 and the same was decreed by the Hon'ble Tribunal vide order dated 04.12.1979. In the execution, the possession was delivered to respondent No.4 on 21.12.2010 and since then, respondent No.4 has been nursing the wheat crop and irrigating the same.

2.2 The respondent had filed a suit for permanent injunction before the Civil Court which was vide judgment and decree dated 31.03.2017, the learned Civil Court was pleased to decree the civil suit and restrain the petitioner from interfering and encroaching upon the possession.

2.3 The petitioner filed civil appeal against the judgment and decree dated 31.03.2017 and vide judgment and decree dated 06.12.2023, Civil Appeal No.1380 of 2017 filed by the petitioner and others was dismissed by the learned Addl. District Judge, Ludhiana.

2.4 Now, the petitioner along with others, namely, Kewal Dass and Kulwant Dass (since deceased) through his LRs, have filed RSA-576-2024 which is pending in this Court.

2024:PHHC:132041



2.5 The grievance of the petitioner is that though as alleged the petitioner party is in possession of the property mentioned above, however, the SHO-respondent No.3 in order to please the opposite party and with an ulterior motive submitted a Kalandra No.10 under Section 145 Cr.P.C. on 27.06.2024 before the learned Sub Divisional Magistrate-respondent No.2 in which, the petitioner has also been included as party No.2.

The quashing of the Kalandra No.10 dated 27.06.2024 is the subject matter of challenge in this petition.

Submissions made by learned senior counsel for the petitioner

3. Learned senior counsel appearing on behalf of the petitioner has laid challenge to the Kalandra dated 27.06.2024 and has made the following submissions:-

(i) It has been alleged by respondent No.4 that the possession of the land was delivered to them on 21.12.2010. However, at the spot, no possession was ever delivered to the first party rather, the petitioner party is in actual physical cultivating possession of the land in question and are residing therein. There is a Samadh of Baba Kesar Dass in the property and the petitioner party is having their houses in property in question. The possession of the petitioner party over the property in the present case is continuous since their predecessor-in-interest.

2024:PHHC:132041



(ii) There is an electric motor tube-well connection of 5 HP bearing account No.K-14/AP-021/0909 installed in the Dera Udasia Samadh Baba Kesar Dass and Dharamshala in the present case for irrigation purposes. An application was moved on behalf of respondent No.4 for disconnection of the said electric motor and the department had issued letter dated 04.11.2011 in this respect. Then, the petitioner had filed a Civil Suit No.348 of 2011 against the Punjab Power Corporation Limited and others for grant of permanent injunction restraining them from disconnecting the electric motor tube-well connection. The said suit was decreed in favour of the petitioner party vide judgment and decree dated 03.12.2004 passed by the Addl. Civil Judge (Senior Division), Payal.

(iii) The execution filed by respondent No.4 at Ludhiana was dismissed in default on 24.09.2012.

(iv) As per jamabandi for the years 2014-2015, 2019-2020 and the *khasra girdawaris* from Kharif 2010 to Rabi 2016 and the *khasra girdawaris* of Kharif 2022 to Rabi 2023, it revealed that continuous cultivating possession of the petitioner party over the land in the present case.

(v) An FIR No.151 dated 24.05.2011, under Sections 447, 511, 427, 506 & 34 IPC registered at Police Station Payal and another FIR No.351 dated 26.10.2011, under Sections 307,

2024:PHHC:132041



452, 436, 506, 427, 148, 149 & 201 IPC registered at Police Station Payal was registered against the petitioner and others in which, they were subsequently acquitted.

(vi) The Regular Second Appeal challenging judgment and decrees passed by the learned Civil Court and the learned Addl. District Judge, Ludhiana is pending before this Hon'ble Court and thus, the judgment and decrees passed by the learned Civil Court as well as the learned Lower Appellate Court have not attained finality in the Civil Suit for permanent injunction filed by respondent No.4.

(vii) That proceedings under Section 145 Cr.P.C. cannot be invoked for recovery of possession of land and houses from the petitioner and others as there is a specific provision for execution of judgment passed in an injunction suit under Order 21 Rule 32 CPC and the learned Sub Divisional Magistrate has no jurisdiction to initiated proceedings under Section 145 Cr.P.C. when the judgment passed by the learned Civil Court dated 31.03.2017 is under challenge and has not attained finality as RSA-576-2024 is pending in this Hon'ble Court.

Reliance has been placed upon the judgment passed by the Hon'ble Supreme Court in **Mahar Jahan and others Vs. State of Delhi and others 2006 (1) SCC (Crl.)**, **Ashok Kumar Vs. State of Uttarakhand and others 2013 (3) SCC**

2024:PHHC:132041



(Crl.) 177 and Mohd. Abid and others Vs. Ravi Naresh and others SLP (Crl.)-5444-2022, in which, it was held that when the civil Court is seized of the matter, the proceedings under Sections 145/146 Cr.P.C. cannot proceed and must come to an end. The *inter se* rights of the parties regarding title or possession are eventually to be determined by the Civil Court.

Submissions made by learned counsel for respondent No.4

4. *Per contra*, learned counsel appearing on behalf of respondent No.4 has vehemently opposed the petition and has made the following submissions:-

- (i) The petitioner has not approached this Court with clean hands and has not brought on record the correct factual as well as legal matrix of the case and as such, has presented a wrong picture of facts and law.
- (ii) The *lis* between the parties to the dispute i.e. the petitioner and the answering respondent-Gurudwara Management has already been settled before the Civil Court as well as the First Appellate Court and even the possession of the said land was handed over to the answering respondent-Gurudwara Management on 21.12.2010 in pursuance to orders passed in the Executing Court seeking the execution of the decree passed by the Sikh Gurudwara

2024:PHHC:132041



Tribunal dated 04.12.1979 under Section 25-A of the Sikh Gurudwara Act, 1925.

(iii) The petitioner approached this Court against the said orders with regard to handing over the possession by way of CR-8000-2010 and this Court was pleased to dismissed the same vide order dated 08.12.2010 with a cost of Rs.25,000/- and subsequent to the decision dated 08.12.2010 by this Court, the respondent petitioner came in possession as per the revenue record on 21.12.2010 vide a rapat dated 21.12.2010.

(iv) The ownership of the property in question is not in dispute in any manner and respondent No.4 is the absolute owner in possession of the property and abutting land. However, since the land abutting the Gurudwara Sahib is considerable around 20-22 acres, the petitioner is trying to usurp some portion of the land. The answering respondents have always resisted the said illegal actions and in the process FIRs in the years 2011 and 2013 were earlier registered.

(v) Respondent No.4 is a Gurudwara Sahib and is only a juristic person and as such is not in a position to physically prevent the interference on the part of the petitioner at odd hours of the day or week, due to which, a suit for permanent injunction was filed by respondent No.4 before the Civil Judge.

2024:PHHC:132041



(vi) The suit is only a suit for permanent injunction and seeking restraining orders against the petitioner from interfering into peaceful possession only and there is no dispute regarding the ownership raised by respondent No.4. The said suit was decreed in favour of respondent No.4 vide a decree dated 31.03.2017.

(vii) The petitioner had filed an civil appeal before the First Appellate Court against the decree and the said appeal was also dismissed by the learned Addl. District Judge, Ludhiana vide order dated 06.12.2023. The petitioners have not challenged the ownership on the suit land in the litigation before this Court and till date, the decree dated 04.12.1979 passed by the Sikh Gurudwara Tribunal has not been interfered and as such, there is no dispute regarding the ownership of the land.

(viii) The argument that Section 145 Cr.P.C. is not maintainable as RSA-576-2024 is pending and the rights of the parties have not been crystallized is not sustainable in the eyes of the law as the petitioner is trying to interfere in the peaceful possession of the suit property and there are various orders as well as decrees wherein the rights of the parties qua the land in question has been decided.

Submissions made by the learned State counsel

2024:PHHC:132041



5. Learned State counsel on the basis of the status report dated 20.08.2024 filed by way of an affidavit of Sh. Deepak Rai, PPS, Deputy Superintendent of Police, Sub-Division Payal, Police District Khanna, District Ludhiana on behalf of respondents No.1 to 3 has stated that:-

(i) An FIR No.78 dated 25.06.2024, under Sections 323, 324, 506, 148 & 149 IPC was registered at Police Station Doraha against unknown persons on the basis of the statement of the complainant-Karamjit and on the other hand, cross-case vide DDR No.23 dated 25.06.2024 was registered under Sections 323, 324, 506, 148 & 149 IPC (Section 118(2) of BNS added later on) at Police Station Doraha against the petitioner-Gurjit Dass @ Gurjit Singh, Kamaljit Dass son of Gurjit Dass and Sandeep Kaur wife of Gurjit Dass on the basis of the statement of Bijay Singh.

(ii) That despite the registration of the above mentioned FIR and cross-case, the situation between the parties remained tense regarding the possession of the disputed land. It was in order to prevent any further disturbance to public peace & order, necessary legal actions were taken, including the registration of Kalandra vide DDR No.10 dated 27.06.2024, under Section 145 Cr.P.C. against the concerned parties and it was also requested to Sub Divisional Magistrate, Payal to appoint the receiver regarding the disputed land. The registration of Kalandra was a preventive

2024:PHHC:132041



measure aimed at mitigating any further escalation of conflict between the disputing parties.

Analysis & Conclusion

6. Heard the rival submissions made by the learned counsel for the respective parties.

7. I have examined the record and given a thoughtful consideration to the submissions made before this Court.

8. The legal proposition before this Court is whether during the pendency of civil proceedings qua the same suit land, initiation of action under Section 145 Cr.P.C. would be maintainable or not.

9. Admittedly, a civil suit for permanent injunction qua the land in question was filed prior in time on 31.03.2017 which was decreed in favour of the respondent. Thereafter, vide order dated 06.12.2023, the appeal filed by the petitioner and others was dismissed by the learned Addl. District Judge, Ludhiana. Against the order dated 06.12.2023, RSA-576-2024 is pending before this Court.

10. Be that as it may, there cannot be a dispute to the proposition that a decree passed by the Civil Court will be binding upon the Court of Sub-Divisional Magistrate in proceedings under Section 145 Cr.P.C. as well as on account of the legal aspect that Civil Court is the only competent authority to decide the question of title as well as possession between the parties.

11. It has been held by the Hon'ble Supreme Court in **SLP (Crl.)**

No.5444 of 2022 decided on **01.11.2022** titled as **Mohd. Abid and others**

2024:PHHC:132041



Vs. Ravi Naresh and others that once, the Civil Court is seized of the matter, the proceedings under Section 145/146 Cr.P.C. cannot proceed and must come to an end. The operative part of the judgment reads as under:-

“It is, however, an admitted fact that the petitioners have already filed a suit for injunction in which ex-parte adinterim injunction has been granted by the Civil Court, Faziabad, Uttar Pradesh on 05.12.2020. Once, the Civil Court is seized of the matter, it goes without saying that the proceedings under Section 145/146 Cr.P.C. cannot proceed and must come to an end. The interse rights of the parties regarding title or possession are eventually to be determined by the Civil Court.”

12. In another judgment by the Supreme Court reported as **Ram Sumer Puri Mahant Vs. State of U.P. and others, 1985(1) SCC 427**, it has been held as under:-

“Challenge in this application is to the order of the Allahabad High Court refusing to interfere in its revisional jurisdiction against an order directing initiation of proceedings under Section 145, Code of Criminal Procedure (‘Code’ for short) and attachment of the property at the instance of respondents No.2-5. Indisputably, in respect of the very property there was a suit for possession and injunction being Title Suit No.87/75 filed in the Court of the Civil Judge at

2024:PHHC:132041



Ballia wherein the question of title was gone into and by judgment dated February 28, 1981, the said suit was dismissed. The appellant was the defendant in that suit. According to the appellant close relations of respondents No.2-5 were the plaintiffs and we gather from the counter-affidavit filed in this Court that an appeal has been carried from the decree of the Civil Judge and the same is still pending disposal before the appellate Court. The assertion made in the petition for Special Leave to the effect that respondents No.2 to 5 are close relations has not been seriously challenged in the counter-affidavit. When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated we see hardly any justification for initiating a parallel criminal proceedings under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal Court in a manner like the one before us. Counsel for respondents No.2-5 was not a position to challenge the proposition that parallel proceedings should be permitted to continue and in the event of decree of the Civil Court, the criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the Civil Court and parties are in a position to approach the civil Court for interim orders such an injunction or appointment of receiver for adequate protection

2024:PHHC:132041



of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceedings under Section 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate Judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession.”

13. Apart from this, it is also apparent that there was a dispute between both parties and consequently, on the basis of the complaint moved by the complainant-Karamjit FIR No.78 dated 25.06.2024, under Sections 323, 324, 506, 148 & 149 IPC was registered at Police Station Doraha and a cross-case vide DDR No.23 dated 25.06.2024 under Sections 323, 324, 506, 148 & 149 IPC (Section 118(2) of BNS added later on) was registered on the basis of the statement of Bijay Singh. Thus, when a cognizable offence has been committed by certain villagers and the police had registered the FIR for the substantive offence against the certain villagers, it was inappropriate on the part of the police to initiate proceedings under Section 145 Cr.P.C. on the ground that there was apprehension of breach of peace in the village. In fact, both the parties were already availing there remedies before the Civil

2024:PHHC:132041



Court and had lodged FIR/complaint against each other with regard to the cognizable offences and it was inappropriate on the part of the police to initiate the proceedings under Section 145 Cr.P.C.

14. In the light of the aforesaid case laws and considering the admitted factual sequence, it leaves no doubt in the mind of this Court that there is no propriety behind allowing the proceedings under Section 145 Cr.P.C., to continue, in view of the fact that the parties have already approached the Civil Court and the order of the Criminal Code will always be subject to the decision of the Civil Court. The Civil Court would be the most appropriate forum to take care of the grievance raised in the proceedings under Section 145 Cr.P.C.

15. It is also observed that it would be inappropriate and unjustified to enter into the merits of the plea on facts raised before this Court, which is domain of the Civil Court to adjudicate. Therefore, the proceedings initiated under Section 145 Cr.P.C. are ordered to be quashed and the parties to the *lis* are at liberty to avail whatsoever remedy before the Civil Court in the suit which is already pending for the purpose of protecting their interests.

16. Accordingly, Kalandra No.10 dated 27.06.2024 (Annexure P1), under Section 145 Cr.P.C., registered at Police Station Doraha, Police District Khanna, District Ludhiana is quashed.

17. In view of the aforesaid terms, the petition is allowed.
Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

04.10.2024
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	Yes