



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

CRM-M-56024-2023(O&M)

Date of Decision:10.05.2024

Radha Charan and others

...Petitioners

vs.

State of Haryana and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Sarfraj Hussain, Advocate
for the petitioners.

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

Mr. Ran Vijay Singh, Advocate for
Mr. Krishan Sharma, Advocate
for respondent No.2.

N.S.Shekhawat J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 22.08.2023 (Annexure P-1) passed by the Court of Sub-Divisional Magistrate, Hodal and the order dated 17.10.2023 (Annexure P-2) passed by the Court of Additional Sessions Judge, Palwal, whereby, the proceedings under Section 145 Cr.P.C. were ordered to be initiated against the petitioners and by invoking the provision of Section 146 Cr.P.C., the Block Development and Panchayat Officer, (for short 'BDPO'), Hassanpur was appointed as a Receiver of the attached land. The BDPO was further directed to lease out the land in question and to deposit the amount in the bank account of the Panchayat.



2. Learned counsel for the petitioner contends that in the present case, on the basis of the complaint moved by Chanderbhan son of Ram Chander and Dev Dutt son of Sh. Surajmal, the Sub-Divisional Magistrate, Hodal (SDM, Hodal) ordered the initiation of the proceedings under Section 145 Cr.P.C. against all the Biswedars and cultivators of village Fatesko Nagar @ Faat Nagar, Sub-Tehsil Hassanpur, Tehsil Hodal, District Palwal. As per the Kalendra, presented by the police, during the course of inquiry, the record pertaining to ownership rights relating to the land in question was received from the Revenue Department and the land in question was *Shamlat Deh*. Many cultivators of the village had sold the above-mentioned land and the mutations pertaining to such sales had already been cancelled and the land had again been transferred to the Gram Panchayat as *Shamlat Deh*. On account of this, tension had gripped the entire village as *Shamlat Deh* was being cultivated by certain persons illegally in the village. Even a fight had taken place on 07.05.2023 and on 08.05.2023 also. Due to this, the residents of the village had submitted complaints against each other and one FIR No.129 dated 08.05.2023 under Sections 148, 149, 323, 427, 447, 307, 120-B of IPC and 25-54-59 of Arms Act was registered on the basis of the complaint moved by Chanderbhan son of Ramchand, whereas FIR No.130 dated 08.05.2023 under Sections 148, 149, 323, 452, 506, 120-B of IPC and Sections 3-33-89 of SC and ST Act was registered on the complaint moved by Satbir son of Sh. Sugni. Consequently, there was tension in the village and to avoid any untoward incident, a Kalendra under Section 145 Cr.P.C. was presented before the Court of SDM, Hodal and he was requested to appoint a Receiver to attach the land. Vide the impugned



order, the land in question was ordered to be attached and the BDPO, Hassanpur was appointed as a Receiver on the attached land and was further directed to lease out the land in question and was also directed to deposit the amount of lease in a bank account, in the present case.

3. The petitioners moved a revision petition before the Court of Sessions Judge and vide the impugned order dated 17.10.2023, the Court of Mr.Rajesh Garg, Additional Sessions Judge, Palwal had dismissed the said revision petition in the present case.

4. Learned counsel for the petitioners contends that the SDM, Hodal had illegally initiated the proceedings under Section 145 Cr.P.C. and there was no apprehension of breach of peace in the area. As per him, Goswara of the Revenue State of village Fataska Nagar was prepared in the year 2006 and the petitioners were shown to be owners of the land in view of the Mutation No.729 and 730, which were sanctioned in their favour by Assistant Collector, 2nd Grade on 16.12.2006. He further contends that now a revision petition, arising out of the said order, was pending before the Court of Commissioner, Gurugram. Learned counsel for the petitioners further contends that the proprietors of the village had also filed a suit before the District Collector under Section 13-A of the Punjab Village Common Lands (Regulation) Act and the Gram Panchayat had also filed an ejectment petition against the proprietors in the Court of Assistant Collector, 1st Grade, Hodal. Apart from that, the revision petition is pending before the Court of Commissioner and an interim order of status-quo had already been issued against the Gram Panchayat regarding the suit property on 30.08.2019. Learned counsel further contends that Radha



Charan son of Sh. Ram had also filed a civil suit for permanent injunction and mandatory injunction against the Gram Panchayat and others in the Court of Deepak Yadav, Civil Judge (Jr. Division), Hodal, which is still pending and an interim injunction order dated 30.05.2023 has already been granted in favour of Radha Charan by the said Court. Even an application was filed for providing the police help and it was allowed by the Court of Civil Judge, (Jr. Division), Hodal on 01.07.2023. Learned counsel further contends that another suit has also been filed by Radha Charan against Gram Panchayat and others with respect to the land comprised in Khewat/Khatoni No.224/238, Khasra No.55(241-3), total measuring 241 Kanal 03 Marlas, to the extent of 67/468th share which comes to 34 Kanal 10 Marlas, situated in the revenue Estate of village Farteshku Nagar @ Faat Nagar, Sub-Tehsil Hassanpur, Tehsil Hodal, District Palwal vide Mutation No.730 and the said civil suit is still pending before the Court of Deepak Yadav, Civil Judge (Jr. Division), Hodal. Even an injunction order has been passed by the Civil Court in the said case on 08.05.2023, which is still continuing. Learned counsel further contends that since the matter was already *sub judice* before the Civil Court, it was inappropriate on the part of SDM to attach the land in question and to appoint a Receiver in the said case.

5. On the other hand, learned State counsel, assisted by learned counsel for the respondent No.2 submit that the petitioners had already filed a revision petition before the Court of Sessions Judge, Palwal and vide the impugned order dated 17.10.2023 (Annexure P-2), the Court of Additional Sessions Judge, Palwal has dismissed the revision petition filed by the



petitioners. Consequently, the petitioners has filed a second petition in the garb of a petition under Section 482 Cr.P.C. and the petition is liable to be dismissed by this Court. Learned counsel further submit that the land is measuring about 422 acres, which had been distributed in the various Khatta/Khatauni numbers and the litigation was only pending before the Civil Court with regard to a portion of the said land. Learned counsel further contends that the brother of Radha Charan is an Ex. Sarpanch of the village and while he was acting as a Sarpanch, he was having the possession of the land in question and were misusing the land for their own benefits. Still further, the total land was about 422 acres and the civil suit has been filed only for a smaller area and the *Shamlat Deh* land was to be used for the public purpose and since the ownership of the same vested with the Gram Panchayat, the Biswedars/cultivators of the village had no right to interfere with the said land. Thus, the petition is liable to be dismissed by this Court.

6. I have heard learned counsel for the parties at length and perused the case file carefully.

7. The only question which needs adjudication before this Court is with regard to the initiation and maintainability of the proceedings under Section 145 Cr.P.C. before the Court of SDM, Hodal, when the civil court was already seized of the matter and certain interim orders had already been passed by the civil Court. The powers have been conferred on the Executive Magistrates to adjudicate upon the question as to which party was in possession or if any party had been dispossessed immediately before the date of initiation of the proceedings, then restore the possession of the party so dispossessed by



the use of force. It has been held by the Hon'ble Supreme Court in a number of judgments that the proceedings under Section 145 Cr.P.C. are subservient to the adjudication by the civil court and in case a civil suit is pending, the Executive Magistrate should normally not initiate the proceedings under Section 145/146 Cr.P.C. and the inter se rights of the parties regarding title or possession should eventually be left to be determined by the civil court. It has been held by the Hon'ble Supreme Court in the matter of ***Amresh Tiwari versus Lalta Parsad Dubey and another 2000(4) SCC 440*** as follows:-

*“The question then is whether there is any infirmity in the Order of the S.D.M. discontinuing the proceedings under Section 145 of the Criminal Procedure Code. The law on this subject-matter has been settled by the decision of this Court in the case of **Ram Sumer Puri Mahant Vs State of U.P.** In this case it has been held as follows:*

"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 proceeding 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 matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a 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 as injunction or appointment of receiver for adequate protection 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.”

8. Still further, this Court has no hesitation to hold that in the facts and circumstances of the present case, the SDM had not properly appreciated the scope of the proceedings under Section 145 & 146 Cr.P.C. The object of initiation of the proceedings under Section 145 Cr.P.C. is merely to maintain law and order and to prevent the breach of peace by maintaining one or the other of the parties in possession, and not for evicting any person from possession. The scope of enquiry under Section 145 Cr.P.C. is in respect of actual possession without reference to the merits of the claim of any of the parties to a right to possess the subject of dispute. The controversy in the present case is squarely covered by the ratio of law laid down by the Hon'ble Supreme Court in the matter of ***Ashok Kumar versus State of Uttarakhand*** **2013(3) SCC Criminal 177**, wherein it has been held as under:-

“12. The above order would indicate that the SDM has, in our view, wrongly invoked the powers under Section 146(1), Criminal Procedure Code 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, Criminal Procedure Code. It can only be read in the context of Section 145, Criminal Procedure Code. 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.

14. 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.

15. We also notice that the respondent herein has filed a civil suit for injunction before Civil Judge (J.D.) Haridwar on 02.09.2009 and an application for interim injunction is also pending, on which the civil court has issued only a notice. An Amin report was called



for and Amin submitted its report on 21.11.2009. Civil suit was filed prior in point of time, it is for the civil court to decide as to who was in possession on the date of the filing of the suit. In any view, there is nothing to show that there was an emergency so as to invoke the powers under Section 146(1) to attach the property, specially, when the civil court is seized of the matter. Under such circumstances, we are inclined to set aside the order passed by the SDM dated 25.11.2009 and the order of the High court dated 27.03.2012.”

9. Apart from that, it is apparent that in the present case, there was a dispute between two parties and consequently, on the basis of the complaint moved by Chanderbhan, FIR No.129 dated 08.05.2023 under Sections 148, 149, 323, 427, 447, 307, 120-B of IPC and 25-54-59 of Arms Act was ordered to be registered against certain persons and as a cross-version of the said FIR, another FIR No.130 dated 08.05.2023 under Sections 148, 149, 323, 452, 506, 120-B of IPC and Sections 3-33-89 of SC and ST Act was registered on the basis of the complaint moved by Satbir son of Sh. Sugni. Thus, when a cognizable offence has been committed by certain villagers and the police had registered the FIR for the substantive offences against certain villagers, it was inappropriate on the part of the police to initiate the proceedings under Section 145 Cr.P.C. on the ground that there was apprehension of breach of peace in the village. In fact, the parties were already availing their remedies before the Civil Court and had lodged FIRs against each other with regard to cognizable offences, it was inappropriate on the part of the police to initiate the proceedings under Section 145 Cr.P.C. against all the Biswedars/Cultivators of the village. In fact, from a perusal of the impugned order, it is apparent that the

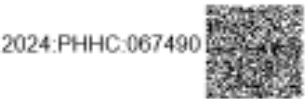


SDM had initiated the proceedings against all the Biswedars/Cultivators of the village on the strength of vague averments made in the Kalendra against unknown persons.

10. Still further in the present case, the Revisional Court has wrongly placed reliance on the judgment passed by the Hon'ble Supreme Court of India in the matter of "*State of Haryana Vs. Jai Singh 2022(2) RCR (Civil) 803*". In fact there is no dispute with regard to the law laid down by the Hon'ble Supreme Court in the said judgment, however, the same is not applicable to the facts of the present case. Whether the land would vest in Gram Panchayat or not, is a subject matter of challenge before the competent Court of law i.e. Commissioner, Gurugram and the said question is yet to be decided by the competent Court of law. Thus, the said judgement was not applicable to the facts of the present case.

11. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, it would be more appropriate for this Court to relegate the parties before the Civil Court, where the civil suit filed by various parties are pending. It is clarified that this Court had made the above observations with regard to the legality of the initiation of the proceedings under Section 145/146 Cr.P.C and the parties in the present petition will be at liberty to move an appropriate applications before the competent Courts, where the matter is already sub judice for adjudication of their rights with regard to the property in question.

12. The present petition stands allowed in the above terms and the impugned order dated 22.08.2023 (Annexure P-1) passed by the Court of Sub-



Divisional Magistrate, Hodal as well as the order dated 17.10.2023 (Annexure P-2) passed by the Court of Additional Sessions Judge, Palwal and all subsequent proceedings arising therefore, are ordered to be quashed.

13. All the pending application(s), if any, shall also stand disposed of, accordingly.

10.05.2024.
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No