



Judgment

346 apl357.24

**IN THE HIGH COURT OF JUDICATURE AT**  
**BOMBAY, NAGPUR BENCH, NAGPUR**  
**CRIMINAL APPLICATION (APL) NO.357 OF 2024**

1. Mr.Sayyad Ayaz Ali s/o Magdum Ali,  
aged about 45 years, occupation : business,  
r/o Alfiya House, plot No.24-A,  
Rathod Layout, Nagpur, district Nagpur.
2. Alfiya Ali Sayyad w/o Sayyad Ayaz Ali,  
aged about 38 years, occupation : household,  
r/o Alfiya House, plot No.24-A,  
Rathod Layout, Nagpur, district Nagpur. .... **Applicants.**

**:: VERSUS ::**

1. Sub Divisional Magistrate,  
Nagpur City, Nagpur.
2. Police Station Officer,  
Police Station Gittikhadan, Nagpur City,  
district Nagpur.
3. Shyam Kumar Daulat Barve,  
aged about 43 years, occupation agriculturist,  
r/o Kanhan, taluka Parshivani,  
district Nagpur. .... **Non-applicants.**

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Shri R.R.Vyas, Counsel for Applicants.  
Shri C.A.Lokhande, Additional Public Prosecutor for Non-  
applicant Nos.1 & 2 State.  
Shri P.P.Kothari, Counsel for Non-applicant No.3.  
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**CORAM : URMILA JOSHI-PHALKE, J.**

**CLOSED ON : 07/01/2025**

**PRONOUNCED ON : 24/01/2025**

**JUDGMENT**

1. The present application is filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 29.12.2023 passed by learned Sub Divisional Magistrate at Nagpur in Criminal Case No.5/2022 under Section 145 of the Code.

2. Facts giving rise to the application are as under:

The Assistant Police Inspector of Gittikhadan Police Station, Nagpur had submitted a report to the Special Executive Magistrate/Sub Division Officer, Nagpur City on 5.9.2023 contending that plot Nos.23A , 24, 25 to 29, and 34 and 35A situated at Shashikant Cooperative Society were purchased by one Prakash Goyal, Om Mittal, and present applicants in the year

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2012 from Shri Shashikant Bodad, the President of the said Housing Society. The plot No.23A and 24 were owned by Prakash Goyal and Om Mittal and the applicants had no concern with those plots as partition already took place between them as to the distribution of the properties. After partition, plot Nos.23A and 24 are already sold by Om Mittal and Prakash Goyal to one Shyamkumar Daulat Barve. At present, both plots are disputed properties and the dispute is pending in the civil court at Nagpur. As per the partition deed, plot Nos.25, 26, and 27 were allotted to the share of Prakash Goyal admeasuring 4739 feet. Whereas, plot Nos.28, 29, and 34 admeasuring 4739 feet were allotted to Om Mittal. Applicant Ayaz Ali got plot No.35 admeasuring 4556 square feet. The said partition was effected on 18.10.2012. In the year 2014, Prakash Goyal and Om Mittal entered into an

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agreement to sale the said plots. The dispute as to the ownership of the disputed plots was pending in the civil court. The vendor of the non-applicant No.3 filed an application for rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code which went up to the Supreme Court and in the year 2021 the Supreme court dismissed the proceeding filed by the applicants and the plaint of the applicants was rejected. Despite the plaint was rejected, the applicants constructed illegal construction on the disputed plots which was subsequently demolished by the Nagpur Improvement Trust in October 2024. After rejection of the plaint by the Supreme Court, the property became encroachment free. Both co-owners Prakash Goyal and Om Mittal visited the site of the plots for taking possession which was resisted by the wife of the applicant and, therefore, Shyam Kumar Daulat Barve filed an application

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contending that she is causing nuisance and restraining him from taking possession. The non-applicant No.2 Gittikhadan Police Station, Nagpur took cognizance and recorded the statements of the relevant witnesses and submitted report. The statement of the applicant No.2 was recorded. On satisfaction, the Police Inspector of the said police station submitted report to the Sub Divisional Officer. The Sub Divisional Officer has issued notices to the applicants as well as non-applicant No.3 and after due enquiry, initiated the proceedings under Section 145 of the Code of Criminal Procedure. By the impugned order, under Section 145 of the Code, both the parties were directed to maintain *status quo*. Being aggrieved and dissatisfied by the said order, the present application is filed for quashing of the proceeding under Section 482 of the Code.

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3. Heard learned counsel appearing for respective parties.

4. Learned counsel Shri R.R.Vyas for the applicants submitted that this application is mainly on the ground that without hearing the applicant No.1, the said order was passed. Thus, the order passed by the Sub Divisional Magistrate is contravening the principles of natural justice and, therefore, the order passed by the Sub Divisional Magistrate deserves to be quashed and set aside. It is further submitted that learned Magistrate had not considered that it was the applicant who was in possession and mere filing of the suit is not sufficient to initiate the action under Section 145 of the Code and, therefore, the order passed by learned Magistrate deserves to be quashed and set aside.

5. The application is opposed by learned Additional Public Prosecutor for non-applicant Nos.1 and 2 on the

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ground that at the relevant time, applicant No.1 was behind the bar and the application was filed against the applicant No.2. She was duly served with notice and after filing the reply, to the notice, the application was decided and on satisfaction by learned Magistrate, the said order was passed. Considering the nature of the order, no prejudice would be caused to the applicants. In view of that, the application deserves to be rejected.

6. The non-applicant No.3 also opposed the application on the ground that the present application is filed by applicants jointly who are husband and wife. The non-applicant No.3 is power of attorney holder of legal heirs of late Prakash Goyal and Om Mittal. As far as the contention raised is concerned, that order passed by learned Magistrate is without hearing the applicants, the same is not correct. He also challenged filing of the application under Section 482 of the Code as remedy is

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available to the applicants under the provisions of the Constitution of India. It is further contended that the applicant no.2 against whom the application was filed by non-applicant No.3 was duly served. She filed her reply, her statement was also recorded, and after hearing both the parties and considering the various documents, learned Magistrate passed an order. The record shows that two suits were filed i.e. RCS No.4990/2012 and RCS No.5044/2012. RCS No.4990/2012 was by the applicant No.1 for declaration and perpetual injunction. The vendor of the non-applicant No.3 filed an application under Order VII Rule 11 of the CPC which was rejected by the trial court. The order of the trial court was challenged before this court by filing a writ petition which was allowed and the applicant No.1 challenged the order before the Supreme Court wherein the Supreme Court

upheld the order of this court rejecting the plaint in RCS No.4990/2012 in SLP No.29975-29976/2018 dated 20.7.2021.

7. The another suit filed by Om Mittal and Prakash Goyal bearing RCS No.5044/2012 was on the basis of sale deed and partition deed executed between the parties. The non-applicant No.3 contended that the order of the Supreme Court and filing of the suit by the co-owners are suppressed by the applicants in the present application. It is further contended that in view of sale deed and partition deed executed between the parties, their ownership on the respective share can be ascertained. As far as the possession of the applicants over plot Nos.23A and 24 was not established. The order of maintaining the *status quo* was passed in RCS No.5044/2012. The said order was not challenged. The names of the applicants and co-owners are already

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entered in the city civil record and mutation has been taken place. The said mutation entries are also not challenged though the applicant No.2 claims to be in possession of the disputed plots. The non-applicant No.3, who is power of attorney holder for Om Mittal and Prakash Goyal, filed an application and on due enquiry the order was passed by invoking Section 145 of the Code and no grounds are made out to quash the proceedings and, therefore, the application deserves to be rejected.

8. Learned counsel for the applicants reiterated the said contentions that at the relevant time the applicant No.1 was behind the bar as offences are registered against him and no notice was served upon him and he was not heard. Thus, there is contravention of principles of natural justice and, therefore, the proceedings deserve to be quashed. He further

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submitted that nothing is recorded by the non-applicant No.2 as to the breach of public peace due to the alleged act of applicant No.2 and on that ground also the application deserves to be allowed.

9. *Per contra*, learned counsel Shri P.P.Kothari for the non-applicant No.3 submitted that the application under Section 482 of the Code is not maintainable as alternative remedy is available. He submitted that the application was filed by non-applicant No.3 against the applicant 2. He submitted that as there was illegal construction over the disputed portion as well as on layout road, non-applicant No.3 filed an application with the NIT. The NIT demolished the illegal construction. After demolishing the illegal construction, debris was scattered at the spot. By taking disadvantage of the same, applicant No.2 attempted to take forceful possession and, therefore, the application

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was filed against her. On receipt of the application, notice was issued to the applicant No.2 who contested the application by filing a detailed reply and the documents which were considered and, therefore, the order was passed and as such no illegal act is committed by the non-applicant Nos.2 and 3 and reasoned order is passed by the authorities. Therefore, no illegality is committed and a reasoned order is passed by the authorities. Therefore, no interference is called for.

10. After hearing both the sides and on perusal of the documents, it revealed that as far as factual aspect is concerned, it is not disputed that applicant No.1 was also purchaser along with Om Mittal and Prakash Goyal. They have purchased plot Nos.23A , 24, 25 to 29, and 34 and 35A. After purchasing the said properties, they have distributed the said properties by

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entering into one agreement on 18.10.2012 which was under the nomenclature of partition deed. The recital of the partition deed show that party Nos.1 to 3 jointly purchased the plots admeasuring 14922.91 square feet situated at Shashikant Cooperative Housing Society at Gorewada in City Survey No.232, khasara No.82/3. The said deed was executed on 26.6.2012 before the Sub Registrar Office No.8 at Nagpur. Party Nos.1, 2 and 3 by their mutual understanding had decided to divide the aforementioned property in three parts. As per the said partition deed, plot Nos.25 to 27 were allotted to Prakash Goyal, plot Nos.28, 29 and 34 were allotted to Om Mittal and plot No.35A admeasuring 4556 was allotted to the applicant No.1. In view of the said partition, the names were mutated in the city survey records. The said mutations are not challenged. It is further apparent that the applicant No.1 has illegally

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constructed over disputed portion and therefore non-applicant No. 3 filed an application with the NIT. After issuing of the notice, the NIT demolished the said construction. In the meantime, the applicant No.1 preferred RCS No.4990/2012 in which the co-owner Om Mittal and Prakash Goyal filed an application under Order VII Rule 11 of the CPC for rejection of the plaint. The order of the trial court rejecting the said application was challenged before this court and this court set aside the order and rejected the plaint which was subject matter before the Supreme Court in SLP No.29975-29976/2018 and the Supreme Court rejected the plaint. The another suit bearing RCS No.5044/2012 was filed by Om Mittal and Prakash Goyal wherein both parties agreed to maintain *status quo* before the court. Therefore, the trial court passed order directing both parties to maintain *status quo*.

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However, the applicant No.1 had illegally constructed on plot No.23 A and also on layout road and, therefore, the construction was demolished.

11. The record further shows that as the Hon'ble Apex Court rejected the plaint of the applicant No.1, applicant No.1 was possessing the disputed plots illegally and unauthorizedly. The non-applicant No.3 filed an application to the Gittikhadan Police Station. After receipt of the application, notice was issued to the applicant No.2 and her statement was recorded. The statements of various witnesses are also recorded and after recording the relevant statements, report under Section 145(1) was submitted to learned Magistrate by the Police Inspector of Gittikhadan Police Station. On receipt of the said report, show cause notice was issued to the applicant No.2. In respect of the said notice, she filed a detailed reply contending her possession over

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the disputed portion. While contesting the said application, applicant No.2 stated that she is acquainted with the facts and documents on record and contested the application. At any point of time, she has not raised any objections as to the hearing to the applicant No.1. The applicant No.1 has also not communicated that hearing is to be granted to him. Admittedly, due to the dispute between the applicants and other co-owners, the offence was registered against the applicant No.1 and he was behind the bar.

12. Learned Magistrate has considered the application of the non-applicant No.3 and reply filed by the applicant No.2. He has referred various documents which are produced by both the parties and concluded that the Hon'ble Apex Court has rejected the plaint of the applicant No.1. The ownership of co-owners appears on a rest of the plots excluding plot No.35A.

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On inspecting the various documents and the photographs, it also observed that the applicant No.2 could not produce any document to show that she was in possession of the disputed land and directed both the parties to maintain *status quo* order as per the order of CJSD wherein the suit was lying.

13. As far as procedure given under Section 145 of the Code is concerned, sub clause (1) of the said Section states 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 in

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written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Sub-section (3) of the said Section states that 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.

In view of sub-section (4) of the said Section, 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.

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The proviso to the said sub-section states 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 this order under sub-section (1).

14. In view of the above legal provisions, if the record of the present case is considered, it reveals that initially the notice was issued to the applicant No.2 as well as non-applicant No.3. Various statements were recorded which considered by the non-applicant No.2. It further reveals from the statements of the witnesses that the non-applicant No.3 and some of proposed purchasers entered into an agreement with Prakash

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Goyal and Om Mittal. In the meantime, the Hon'ble Apex Court rejected the plaint of the applicant No.1 and, therefore, they affixed the board of their names as to the ownership of plot Nos.23A, 24(2), 29, and 34. On the second day, they witnessed that the board of their names was removed and they were restrained from coming to the plots and also threatened them by the applicant No.2. On the basis of the said statement, learned Magistrate recorded his satisfaction that there is likelihood of breach of peace and directed both the parties to maintain *status quo*. After careful examination of the complaint and the documents, the dispute was raised regarding the possession and title of the said disputed properties. An attempt was made to dispossess the original owners. Admittedly, mere apprehension of danger to the peace is not sufficient but considering various litigations, the applicant No.1

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was prosecuted and learned Magistrate came to the conclusion that both parties to maintain the *status quo* which would be helpful to avoid breach of peace and, therefore, invoked jurisdiction under Section 145 of the Code.

15. The ground raised by the applicants is that no hearing was given and thus there is contravention of principles of natural justice. It is fundamental to fair procedure that both sides should be heard and it is often considered that it is broad enough to include the rule against bias. One of the essential ingredients of fair hearing is that a person should be served with a proper notice, i.e., a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Generally, a notice to be adequate must contain (a) time, place and nature of

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hearing; (b) legal authority under which hearing is to be held; (c) statement of specific charges which a person has to meet.

16. In the present case, material on record shows that non-applicant No.2 has furnished with details and opportunity was granted to file her written submissions also. Thus, as far as fair hearing is concerned, the same is not available to the present applicants.

17. The applicant No.2 at any point of time has not raised the objection that as her husband is the owner of the disputed property, he is to be heard. On the contrary, her reply shows that she is acquainted with the facts of the matter and she be permitted to file her reply which was permitted.

18. By this application, the applicants are invoking inherent jurisdiction under Section 482 of the Code.

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19. Section 482 of the Code does not confer any new power on the High Court. It only saves inherent powers which the court possess. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. Therefore, it is not desirable to lay down any rule which would govern the exercise of inherent jurisdiction. Therefore, inherent powers which are necessary for properly discharge of functions and duties imposed upon them by law to be exercised by the courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle that when the

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law gives a person anything it gives him that without which it cannot exist.

20. Thus, while exercising powers under the said Section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified. It is to be exercised to do real and substantial justice for the administration of which alone the courts exist. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice.

21. Thus, when no offence is disclosed, the court may examine question of fact, but when offence is revealed, the court should be slow in invoking the powers under Section 482 of the Code.

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22. By applying the above principle to the present case, learned Magistrate rightly considered the aspect of likelihood of breach of public peace and rightly directed both the parties to maintain *status quo*. Considering the the Hon'ble Apex Court has rejected the prayer of the applicants for setting aside the order passed by this court rejecting the plaint, an attempt was made to take forceful possession of the disputed lands and the statements of the witnesses disclose the manner in which the said attempt was made. Moreover, both the parties committed before the trial court to maintain *status quo*, but the applicants have contravened the said commitment made before the court and attempted to take forceful possession of the disputed lands which is sufficient to infer the intention of the applicants and likelihood of committing breach of peace.

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23. In this view of the matter, as I do not find any merits in the application, the application deserves to be rejected and the same is **rejected**.

The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

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