



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.864 OF 2024

Pentanna Shivanna Gontimukulwar .Vs. The State of Maharashtra and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.S. Dhore, Advocate for applicant.

Mr. U.R. Phasate, A.P.P. for non-applicant/State.

Mr. V.M. Kulsunge, Advocate for non-applicant Nos.3.

CORAM : ANIL S. KILOR, J.

DATED : 21/03/2025

1. Heard.

2. In the present matter, the order dated 05.04.2014, passed by the Revisional Court in Criminal Revision Application No.20 of 2022, rejecting the revision raising a challenge to the order dated 18.08.2022, passed by the Sub-Divisional Officer, Kelapur, under Section 145 of the Code of Criminal Procedure, 1973, (for short "Cr.P.C.") holding the physical possession of the Zilla Parishad School Committee, Patan, over the agricultural field in question i.e. field No.25, area 5.67 H.R. of Mouza Raipur, Tq. Zari-Jamni, Dist. Yavatmal, is under challenge.

The brief facts of the present case are as under :-

3. The applicant is claiming to be in possession of the land in question from the year 2005, as an encroacher. It is submitted that, the said encroachment was made by him to earn his livelihood and to maintain himself and his family. The respondent No.3-School Committee of Zilla Parishad School, raised a dispute regarding possession stating that the School Committee is in possession of the land in question. It is stated that the School Committee gives the land on auction for cultivation to the various persons every year.

4. It is to be noted that, this is the second round of proceedings. In the first round, the Sub-Divisional Officer, vide order dated 28.01.2013, directed the parties to file civil proceedings in a court of law to establish ownership over the land in dispute. This order was passed as the Sub-Divisional Officer did not find evidence in favour any of the parties i.e. the non-applicant No.3 and the applicant, as regards the possession.

5. The said order was the subject matter of challenge before the Additional Sessions Judge-2, Kelapur, in Criminal Revision Application No.3 of 2013. The Revisional Court vide order dated 17.01.2022, referred the matter back to the Sub-Divisional Magistrate for re-hearing.

6. Thereafter, the Sub-Divisional Officer passed the order on 18.08.2022 and thereby, the applicant was directed not to disturb the possession of the School Committee. This order was the subject matter of challenge in Criminal Revision Application No.20 of 2022. The learned Additional Sessions Judge-2, Kelapur vide order dated 05.04.2024, dismissed the appeal preferred by the applicant. Hence, this application.

7. I have heard the learned counsel for the respective parties.

8. Shri Dhore, learned counsel for the applicant submits that, the report of the Tahsildar, was called in pursuance of the proceeding filed under Section 145 of the Cr.P.C., which shows that the applicant is in possession of the land in question. He submits that, under Section 145 of the Cr.P.C., authority has to see who is in possession on date to the filing of the proceedings. He therefore submits that, as there is report of the Tahsildar, which categorically admits the possession of the applicant of the land in question, passing an order against the applicant and directing the applicant not to disturb the possession of the non-applicant No.3-School Committee is contrary to law. He therefore submits that both the orders passed by the Sub-Divisional Officer and the learned Sessions Court, may be quashed and set aside.

9. In support of his submissions, he has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of *Ashok Kumar ..vs.. State of Uttarakhand and others*, reported in **2013 (2) Mh.L.J. (Cri) 528** and in the case of *Gajendra Singh and another ..vs.. State of Rajasthan and others*, reported in **1995 CRI.L.J. 2133**.

10. On the other hand, Shri Phasate, learned A.P.P. submits that, the applicant filed a Regular Civil Suit No.30 of 2012, stating the similar facts that, he has been continuously in possession since 2005 over the land in dispute and there is an order imposing penalty for encroaching the government land, which shows his possession over the land in question.

11. It is pointed out that, in the said suit, after considering the numerous documents which have been exhibited and after considering the oral evidence led by the parties, the Civil Court recorded a categorical findings that the applicant is not in possession and thereby, refused to grant permanent injunction in favour of the applicant. It is submitted that, since the judgment and decree dated 19.03.2019, has attained finality, as no appeal was filed against the same, the applicant cannot once again ask for protection of possession under Section 145 of the Cr.P.C.

12. In light of the above referred backdrop, I have perused the record and the impugned orders.

13. Admittedly, even now it is the case of the applicant that he has been in possession since 2005 continuously. To establish his possession, earlier he relied upon an order imposing penalty, by the Tahsildar. Now, he is relying upon the report of the Tahsildar, to show that, he is in possession.

14. In the suit filed by the applicant for permanent injunction, he tried to establish his possession relying upon an order imposing penalty for encroachment on the government land. Moreover, he produced numerous documents.

15. The civil Court after considering the documents produced and also considering the oral evidence, has categorically recorded a finding in paragraph-25 of the said judgment that only on the basis of penalty imposed by the Tahsildar, it cannot be said that the applicant is in possession particularly, considering the other documentary evidence produced on record.

16. Admittedly, the judgment and decree dated 19.03.2019, passed in Regular Civil Suit No.30 of 2012, has attained finality in absence of any challenge to the same.

17. In the Criminal Revision Application No.30 of 2013 arising out of the order dated 28.01.2023, passed by the Sub-Divisional Magistrate under Section 145 of the Cr.P.C. directing both the parties to file a civil suit establishing the ownership, the learned Sessions Judge vide judgment and order dated 17.01.2022 remanded the matter to the Sub-Divisional Magistrate on the ground that, the penalty imposed by the Tahsildar on the applicant was not considered by the Sub-Divisional Magistrate.

18. From the said observations, it is apparent that, the judgment and decree passed by the Civil Court was not brought to the notice to the Sessions Court and therefore, the Sessions Court despite the fact that, the said document was rejected and not relied upon by the Civil Court while passing the judgment and decree dated 19.03.2019, has remanded the matter back to the Sub-Divisional Magistrate relying upon the said document.

19. Even before this Court, the copy of the judgment and decree was not produced on record.

20. Thus, it is apparent that, despite the dismissal of the suit and despite the positive findings that the applicant was not found in possession and the document namely the order of imposing penalty by the Tahsildar, is not the sufficient document to establish the possession of the applicant, on the same ground as involved in the civil suit, without disclosing the finding of the civil Court, he agitated the matter before the Sub-Divisional Magistrate and also the Additional Sessions Judge.

21. The Hon'ble Supreme Court of India in the case of *Kunjbihari Vs. Balram and another*, reported in 2006 11 SCC 66, has held thus :-

"2. It is not disputed that the property forming the subject-matter of proceedings under Section 145 of the Code of Criminal Procedure (CrPC) was the subject-matter of civil suit between the parties. The rights of the parties have been adjudicated upon by the civil court. An execution petition filed by the respondents herein was also dismissed in view of the adjudication of rights by the civil court based on a compromise. Inasmuch as the rights of the parties stand settled by a compromise decree taken on record of the court during the pendency of civil proceedings inter partes, none of the parties is justified in reagitating the same issue. The parties must respect the decree of the court. In spite of the civil proceedings having achieved finality, it appears that proceedings under Section 145 CrPC were initiated. The appellant sought the proceedings under Section 145 CrPC were initiated. The appellant sought the proceedings being dropped in view of the civil court's decree. As that prayer was not acceded to, the appellant approached the High Court under Section 482 CrPC seeking quashing of the proceedings under Section 145 CrPC. The petition has been rejected by the High Court forming an opinion that in spite of the civil court's

decree, proceedings under Section 145 CrPC may continue.

3. Having heard the learned counsel for the parties, we are satisfied that the proceedings under Section 145 CrPC are an abuse of the process of the court in the facts of the present case. The rights of the parties have already been adjudicated upon. If any party claims to be in possession of the property and seeks its protection, it is for that party to approach the civil court and get an appropriate order. The proceedings under Section 145 CrPC cannot be allowed to be continued in the facts and circumstances of the case.”

22. Thus, in light of the fact that already decree of the civil court is against the applicant and still on the same facts, he is pressing for order in his favour under Section 145 of the Cr.P.C., I am of the opinion that, the same mode shall be adopted as adopted by the Hon’ble Supreme Court of India in the case of *Kunjbihari* (Supra), i.e. permitting the applicant to approach the Civil Court and seek appropriate relief as regards protection of his possession.

23. As far as the judgment cited by the applicant, there is no dispute about the law laid down by the Hon’ble Supreme Court of India in the case of *Ashok kumar* (Supra) However, in the facts and circumstances of the present case which are similar with the case of *Kunjbihari* (Supra), I am of the opinion that application needs to be dismissed with liberty to the applicant to approach the Civil Court.

Accordingly, the application is **dismissed** with liberty to the applicant to approach the civil Court by filing appropriate proceedings.

JUDGE

C.L.Dhakate