



IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-45210 of 2024

Reserved on: January 20, 2026

Date of Decision: April 17, 2026

Vikash Singh & another

..... PETITIONER(S)

VERSUS

State of Haryana & others

..... RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SUBHAS MEHLA

PRESENT: - Mr. Deepam Raghav, Advocate, with Mr. Dhruv Kaushik, Advocate, for the petitioners.

Mr. Ramender Singh Chauhan, Assistant Advocate General, Haryana.

Mr. R.N. Lohan, Advocate, for respondent Nos.3 to 5.

SUBHAS MEHLA, J

1. This present petition has been filed impugning order dated 08.08.2024 (Annexure P-3) whereby eviction orders were passed against the petitioners, and respondent nos. 3 and 4 were directed to be put in possession of the property in dispute, by respondent No.2-Sub Divisional Magistrate cum Collector, Badshapur, Gurugram, in case No.19/SDO/B, titled 'Devinder Budhwar & another vs. Sanjay Chauhan and another', alongwith consequential proceedings.

2. Brief facts of the case are that respondent Nos.3 and 4 offered a lucrative proposition to the petitioners, to acquire M/s Luxury Infrastructure Private Limited (for short, 'Company'). Accordingly, a deal was struck between the petitioners, private respondents and the previous Directors of the Company, in the form of an contract/Memorandum of Understanding dated 09.06.2021 (for short, 'MOU dated 09.06.2021'), whereby the Company was to be acquired by both petitioners alongwith respondent Nos.3 and 4, and all



the proprietary rights and interests in the business as well as in the land/ property owned by the business, were to be transferred in favour of the petitioners and respondent nos. 3 & 4 for a consideration of ₹ 9 crore, to be paid to the erstwhile Directors of the Company. Accordingly, petitioners alongwith respondent Nos.3 and 4 became the Directors of Company, and started managing its affairs. Petitioners, in terms of MOU dated 09.06.2021, were required to develop the acquired land into a residential complex and bear all the expenses for its development and construction, apart from complying with its statutory formalities. The constructed flats were intended to be sold to prospective buyers, and revenue generation was estimated at ₹29 crores, and tentative profit was estimated at ₹11 crores.

3. Although petitioner no.1 was willing to fulfill his part of the obligation as per the MOU, however, he was approached by Respondent Nos. 4 & 5 to relinquish his share in lieu of ₹5.5 crores, as well as six flats. The motive for seeking resignation of the petitioner was that the respondent no.3 wanted to introduce his brother, respondent no.4, as Director of the Company. Unsuspecting of any malafide intent, the petitioner agreed to resign from the position of Director of the Company. In lieu of the promised consideration, a cheque bearing number 000245 dated 25.04.2022 amounting to ₹5,50,00,000/- drawn on ICICI Bank, Rattan Garden Branch, was issued in favour of the petitioner, to be which was to be encashed within a span of one year. In addition, six flats bearing Nos.202, 306, 307, 401, 406 and 410 in the said project were allotted. As per the MOU, in the eventuality of dishonour of the cheque so issued, the whole settlement shall be rendered null and void, ensuing which petitioner would be entitled to claim all the relinquished rights



and interests in the Company, thereby implying that petitioner shall not only be the Director of the Company again but would also automatically assume co-ownership in the entire project.

The said cheque, when presented in bank, was dishonored due to 'insufficient funds' in the account. Consequently, a legal notice of demand dated 07.05.2022 was served upon the concerned respondents but they did not pay any heed. Respondent Nos.3 and 4, in order to jeopardize the financial interests of petitioners were in process of selling or creating third-party interest in the said residential project, apart from withdrawing substantial amount from the account of Company.

4. In the backdrop of the above-stated facts, petitioner No.1 filed a civil suit for mandatory and permanent injunction, seeking relief for restraining the defendants/respondent Nos.3 and 4 from selling/transferring/alienating or creating third party interest in the suit property and further restraining them from operating bank account No.106905001722 of ICICI Bank, wherein petitioner filed an application under Order 39 Rule 1 & 2 read with Section 151 CPC, which was allowed vide order dated 18.11.2022 passed by the Civil Judge (Junior Division), Gurugram. Thereafter, Company through respondent Nos.3 & 4 filed an application for de-freezing of Bank Account, which was disposed of vide order dated 14.12.2022 with direction to respondent Nos.3 and 4 that amount at present available in account bearing No.106905001722 of ICICI Bank will remain attached and they will also transfer back ₹1,80,50,000/- into the company account bearing No.106905001722 of ICICI Bank of respondent No.3 and after that if the amount would remain less than ₹5.5 crore then



security of remaining amount will be provided by the respondents in Court. Aggrieved by orders dated 18.11.2022 and 14.12.2022, Company through its Director respondent No.3 filed an appeal before the Additional District Judge, Gurugram, which was allowed vide order dated 11.08.2023, setting aside the impugned orders. Thereafter, petitioner No.1 challenged order dated 11.08.2023 before this Court by filing Civil Revision No.5632 of 2023 dated 11.09.2023, which is pending adjudication for February 13, 2026.

5. In the interregnum, parallel proceedings under Section 145 Cr.P.C. were initiated before the Sub Divisional Magistrate cum Collector, Badshahpur, Gurugram, at the instance of respondent Nos.3 and 4. An FIR was also lodged against the petitioners, wherein they were declared innocent. In the proceedings under Section 145 CrPC, order dated 08.08.2024 was passed by the SDM cum Collector, whereby the petitioners were directed to be evicted from Flat No.401 and it was further ordered that its possession be given to respondent Nos.3 and 4. Now, petitioners have approached this Court through the instant petition.

6. Learned counsel for the petitioners has contended that during pendency of the civil revision before this Court, respondent Nos.3 and 4 moved a police complaint which was converted into a Kalandara and the same was referred to SDM Badshapur, Gurugram. Respondents concealed the true and material facts while giving complaint before the authorities that civil cases are already pending between them. Learned SDM, without considering the pendency of lis before this Court, proceeded with Kalandara which is not permissible in law. In support of his contentions, he relied upon the ruling of the Hon'ble Apex Court in ***Amresh Tiwari vs. Lalta Prasad Dubey and***



another, AIR Supreme Court 1504.; and further relied on two judgments of this Court, in ***Radha Charan v. State of Haryana, 2024(3) RCR(Criminal)337,*** and ***Puran Singh v. Sri Krishan, 2025(2)RCR(Criminal)587.***

7. Learned counsel for the respondents contended that petitioners have not approached this Court with clean hands as they have suppressed the true facts. The petitioners have shown themselves to be residents of Flat No.401, Luxury Villa, Silokhara Road, Sector 30, Vijay Vihar, Gururgram, however petitioner No.1 has shown different address in the plaint filed before the trial Court as well as in the civil revision before this Court. Similarly, the address of petitioner No.2 is also different in the final report dated 30.12.2023, Annexure P-10. Further, Flat No.401 was alleged to be allotted to petitioner No.1 as per the MOU dated 09.06.2021, but he neither claimed its possession nor has he shown his possession on the Flat in civil suit for mandatory & permanent injunction before the trial Court. There was not even a single word regarding their possession of Flat No.401 in the entire plaint. The civil suit is neither for possession nor for declaration of title of said flat. However, the petitioners took forcible possession of flat on 10.10.2023. The issue and dispute in the impugned order as well as in civil suit filed by petitioner No.1 are distinct and therefore, judgment relied upon by the petitioners is not applicable in the peculiar facts of the case.

8. Heard and perused the material available on record.

9. The moot question before this court to adjudicate is whether the Sub Divisional Magistrate cum Collector has exercised his jurisdiction legally



while adjudicating Kalandra under Section 145 CrPC. To decide the same, the relevant portion of Section 145 CrPC, is reproduced as under:

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.

.....

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 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).

From the aforesaid reading of subsection (1) of Section 145 Cr.P.C., it is clear that the relief contemplated under Section 145 CrPC is preventive in nature, and is limited to maintaining peace if there is apprehension of its breach in case of dispute over land or water or boundaries thereof. Further, subsection (4) of Section 145 clarifies, that question of merits or claims of any parties to



the right to possess the property in dispute are not to be interfered with during such adjudication.

9.1 The object of Section 145, Criminal Procedure Code is merely to maintain law and order and to prevent breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession. The scope of enquiry under Section 145 is in respect of actual possession without reference to the merits or claim of any of the parties to a right to possess property forming subject matter of dispute. [**Ashok Kumar v. State of Uttarakhand and others (2013(1) RCR (Criminal) 961)**]. Hon'ble Supreme Court in a catena of cases has held that proceedings under section 145 Cr.P.C. are subservient to the adjudication by the civil court and in case a civil suit is pending, normally the Executive Magistrate should not invoke proceedings under section 145/146 Cr.P.C. The remedy under Section 145 CrPC does not envisage adjudication of *inter se* rights of the parties, and the same should be left to be determined by the civil court.

9.2 Hon'ble Supreme Court in the matter of **Amresh Tiwari v. Lalta Parsad Dubey and another, [2000(4) SCC 440]** has held as under:-

“... On this principle it has been held that when possession is being examined by the Civil Court and parties are in a position to approach the Civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.

...

It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil Court that proceedings under Section 145 should not be allowed to continue. This is because the civil Court is competent to decide the question of title as well



as possession between the parties and the orders of the civil Court would be binding on the Magistrate.”

Further, in the judgements of this Court, relied upon by the learned Counsel for the petitioner, ***Radha Charan (supra)***, and ***Puran Singh (supra)***, it has been held that proceedings under Section 145 ought not be initiated, nor continued, during pendency of a civil suit adjudicating the issue of possession between the parties, hence emphasizing that civil courts have primary jurisdiction in disputed relating to possession, and accordingly, the orders passed during proceedings under Section 145 CrPC, were set aside.

10. The petitioner instituted a civil suit seeking a decree of mandatory injunction in respect of his civil rights against the respondents, on the ground that the Memorandum of Understanding executed between the parties had not been complied with, and consequently, he continues to assert rights over the property of the firm. The respondent entered appearance in the said suit upon service of notice, and thereafter, the impugned order came to be passed; thus, at the relevant time, civil litigation between the parties was admittedly pending.

In such circumstances, the private respondent had the appropriate remedy to file a counterclaim or otherwise assert his rights, including any claim for repossession of the flat in question, which he alleges to have been forcibly taken from him. The property in question i.e. Flat No. 401, cannot be segregated from the overall dispute between the parties, as has been contended by the learned counsel for the petitioner. It is well settled law that when a civil litigation qua the property is pending, initiation of parallel criminal proceedings under section 145 CrPC would not be justified. Moreover, private respondents have appropriate and efficacious civil remedy available to them



under Section 6 of Specific Relief Act,1963 which provides for recovery of possession through a summary civil suit, irrespective of title, in case of forcible dispossession. Since the legislature has provided a specific civil remedy for such grievance, recourse to parallel criminal proceedings under Section 145 CrPC is not warranted. Multiplicity of litigation is not in the interest of justice, and should be avoided lest public time would be wasted over meaningless litigation.

11. Hence, in view of the aforesaid discussion, Learned SDM cum Collector has exceeded his jurisdiction by ordering eviction of the petitioners, and that respondent no. 4 & 5 be put in possession of the disputed property. Further, Ld. SDM cum Collector has also failed to consider that civil litigation as to title over the property in dispute was already sub-judice, and given the same, he ought not to have dealt with the dispute. Proceedings under Section 145 CrPC are subservient to those pending before the civil court, as pendency of proceedings as to ownership or possession before civil court, render criminal proceedings under section 145, CrPC redundant and unsustainable. Hence proceedings under Section 145 CrPC should have come to a halt, and the SDM/ Executive Magistrate ought to have deferred to the civil court's jurisdiction, as has been held by the Hon'ble Supreme Court as well as this Court in a catena of judgements. Consequently, the impugned order dated 08.08.2024 is not in consonance with settled law as discussed above. Ergo, SDM has committed a gross error in passing impugned order, which is unsustainable in the eyes of law, and the same is liable to be set aside.

11. Thus, present petition is allowed and impugned order dated 08.08.2024 (Annexure P-3) passed by respondent No.2-Sub Divisional



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[10]

Magistrate cum Collector, Badshapur, Gurugram, is set aside alongwith all consequential proceedings.

12. Pending (misc.) application(s), if any, also stand disposed of.

(SUBHAS MEHLA)
JUDGE

April 17, 2026
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No