

(1990) 10 MP CK 0024
In the Madhya Pradesh High Court
Case No : M.P. No. 2571 of 1990

Gopal Digambar Jain Siddhant Mahavidyalaya	APPELLANT
Vs	
Kasturba Shiksha Prasara Samiti and Others	RESPONDENT

Date of Decision : 31-10-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(4), 146, 146(1), 146(2)

Citation : (1991) 117 CrLJ 446 : (1992) 37 MPLJ 661 : (1992) MPLJ 661

Hon'ble Judges : T.N. Singh, J; Shacheendra Dwivedi, J

Bench : Division Bench

Advocate : N.K. Jain, for the Appellant; R.D. Jain, for the Respondent

Judgement

Heard counsel. The matter is hotly contested.

Indeed, in pre-lunch session, Shri M. C. Jain, counsel prayed that connected matter, namely, M.P. No. 2622 of 1990, be also listed for hearing and disposal analogously. On referring to order passed in this matter on 26-10-1990, we found his prayer reasonable and accordingly directed records of that matter also to be brought from Registry and that is before us.

This order shall govern disposal accordingly of M.P. Nos. 2571 and 2622, both of 1990. At this stage, we may make it clear that the intervener is a body of persons who claim to be member of Jain community. They submit that respondent No. 6, Shri Gopal Digambar Jain Siddhant Mahavidyalaya, Morena, namely, the petitioner in M.P. No. 2571 of 1980, is managing an institution of Jain Community and they were, therefore, necessary party to be heard in the matter. We found their prayer reasonable and accordingly, their intervention is allowed.

During the course of the arguments, we were also obliged to hear Shri Ramji Sharma, who filed LA. No III for intervention on behalf of as many as 27 persons, who claim to be parents of children and also teachers of an alleged school run by Kasturba Shiksha Prasara Samiti, Morena, in the disputed premises.

The admitted position on facts that has to be made clear is that petitioner Shri Gopal Digambar Jain Siddhant Mahavidyalaya, Morena, is the owner of the disputed premises and respondent Kasturba Shiksha Prasar Samiti (of M.P. No. 2571 of 1990) claim to be tenant of that premises.

From copies of orders filed today in this matter, it has appeared to us that one Babulal Jain, Secretary of Shri G. J. Jain Sanskrit Mahavidyalaya, Morena submitted an application to District Magistrate, S.D.M., Morena, sought a report thereon from police and on that, proceedings u/s 145, Criminal Procedure Code were drawn up because apprehension of breach of peace was reported as rival claims were laid for possession of the disputed premises. On 3-9-1990, an order u/s 146, Criminal Procedure Code was passed by learned S.D.M., directing that the disputed building be attached and entrusted to custody of a receiver. Police was required to submit compliance report. On 6-9-1990, respondent Society, namely, Kasturba Shiksha Prasar Samiti, Morena, filed a Civil Suit in the Court of learned Additional Civil Judge, Class I at Morena. In that suit, an application under Order 31, Rules 1 and 2, Civil Procedure Code, was also filed and on that, ex parte order was obtained. Annexure P/5 has come before us in M.P. No. 2571 of 1990. That is Panchanama and is a part of records of the proceedings u/s 145, Criminal Procedure Code. That Panchanama shows that the Supurdgidar had sealed the locks on two gates of the compound of the disputed premises. By the order passed in the Civil Suit, direction was made for the locks to be removed and possession to be given of the disputed premises to the plaintiff/respondent. That order was challenged by the defendant/(Petitioner in M.P. No. 2571 of 1990), but without success. Hence, the instant petition under Article 227 of the Constitution.

Shri Ramji Sharma has urged strenuously that as a result of the School premises being locked up, the students and teachers are suffering and public interest is also suffering. Shri R. D. Jain has submitted that inside the disputed building, there are some records and from those records, particulars are to be made available to the students for filling up their forms as the examinations are to commence soon. . .

On the other hand, Sarvashri M.C. Jain and N.K. Jain submit that in the disputed building, another institution is running and in that, religious education is being imparted. They have submitted that possession of the disputed building had never been parted and the plaintiff/society, namely, Kasturba Shiksha Prasar Samiti, have no right to possess the building or claim even that they had at any time been in possession of the building. They have submitted that claim of the plaintiff/respondent of tenancy right is a subterfuge.

In our view, however, the legal issue has to be decided by us and the question cannot be decided on streets or by resorting to violence. It may be a question of competing interests of two educational institutions, but law and Constitution must prevail and justice according to law has to be rendered to parties. This country is governed by Rule of Law and courts are bound to enforce Law and

Constitution. We told Sarvashri R. D. Jain and Ramji Sharma that it is their burden to justify orders passed by the Civil Courts in the suit and in the appeal. We told them that they have also to justify the stand of the plaintiff/respondent in taking recourse to a misconceived remedy. We told them that a Division Bench of this Court has made the law clear on the purport and extent of the provisions of Section 146, Criminal Procedure Code in Keshavprasad Bhatt Vs. Rameschandra, We found ourselves at a loss, we told counsel, to comprehend recourse to Civil proceedings for the remedy sought.

On its terms and language, Section 146(2) admits of no doubt or ambiguity in so far as Civil Court's jurisdiction is concerned in respect of any order passed thereunder by a Criminal Court. Rights of parties are certainly not taken away to move a Civil Court; but only order that can be passed in a civil proceeding is that which is indicated in Section 146(2), Criminal Procedure Code and in the circumstances enumerated therein. As the disputed building had already been attached and a Receiver had been appointed by the Criminal Court, in the Civil Suit, an order could be sought from the Civil Court for appointment of another Receiver and if that order was passed, the Magistrate was bound to direct the Receiver appointed u/s 146 to hand over possession of the disputed property to the Receiver, appointed by the Civil Court. In the instant case, neither that remedy was sought from the Civil Court nor has been granted.

In Keshavprasad Bhatt's case (supra), this Court has authoritatively held that the proceedings u/s 146 are independent proceedings and substantive and substantial rights of parties are involved in those proceedings. It has also been held therein that any order passed u/s 146, though that is an order of a "temporary" nature, would still be a revisable order. Revision against that order lies to the immediately superior Court, that is the Court of Session and, albeit, a second revision to this Court. In instant case, an ex parte order passed u/s 146(2) was by learned S.D.M. Parties could move for modifying or vacating that order, but they chose not to do that. They even did not file any revision against that order. We do not know the reason why they moved the Civil Court, knowing fully well that the relief which would satisfy them could not have been given by the Civil Court. Evidently, none of the parties before us would have been satisfied by order of appointment of a Receiver by the Civil Court. Very recently, in R.B. Shukla v. Union of India, M.P. No. 1274 of 1990, decided on 25-10-1990 : 1991 MPLJ 284. We have taken the view that this Court is constitutionally obligated to ensure proper exercise of jurisdiction by Courts and tribunals within this Court's territorial jurisdiction and for that, this Court is required to take care that usurpation of statutory jurisdiction of any Court or Authority is not encouraged; and that parties are compelled to seek appropriate remedy at appropriate forum prohibiting thereby "forum-shopping". Relevance in this context of Section 146, Criminal Procedure Code has to be duly stressed with added emphasis on two provision of sub-section (1) and sub-section (2) respectively. We extract, however, the entire provision in its entirety : o

"146. Power to attach subject of dispute and to appoint receiver.

(1) If the Magistrate at any time after making the order under sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until, a competent Court has determined the rights of the parties thereto with regard to the person entitled to possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate -

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just".

Power to attach subject-matter of dispute contemplated u/s 146(1) has to be exercised judicially. Despite the power being discretionary, power thereunder is not vested in the Magistrate to make a short-shift of the proceedings by refusing to reach at a tentative finding regarding the factual position concerning possession of the subject of dispute by any of the parties before him. Because, any of the parties in actual possession or a party forcibly dispossessed within two months of the proceedings, may claim the substantive right of possession which may be enforced under Sections 145 and 146, Criminal Procedure Code. It is only when despite his best efforts, on materials placed before him, the learned Magistrate fails to reach a positive and affirmative finding that resort to attachment is competent. Section 146(1) Proviso, makes this position clear by vesting in the Magistrate power to withdraw the attachment at any time. If an ex parte order is passed, the Magistrate is bound to hear the aggrieved party on fresh materials adduced in terms of Section 145(4), Criminal Procedure Code. In that regard, rights of parties are envisaged u/s 145(4) and those rights can be still enforced in the separate and independent proceedings contemplated u/s 146(1), Criminal Procedure Code.

We are, therefore, of the view that the order of the learned S.D.M., passed u/s

146(2) is not a proper order and it is necessary for a direction to be made to him to pass a proper order as would match the facts and circumstances of the case of which notice was taken by him in the order itself. There ought to have been a prima facie determination by him as to whether factually, as claimed, any school was being run by Kasturba Shiksha Prasar Samiti, Morena. Indeed, the first party having claimed that some religious instructions were being imparted in that building, that position on facts had to be ascertained on enquiry and if that was found established, then there was no necessity for an order to appoint any Receiver which resulted in the premises being locked up. As it has now been brought to our notice that there are rival claims of running of different institutions in the same building, it shall, therefore, be open to them to agitate the right claimed by them respectively before the learned Magistrate. We would like to be candid in regard to this position that the interveners, represented by Shri Ramji Sharma as also by Shri M.C. Jain would have been well-advised to go to the learned S.D.M. for being impleaded in the pending 145 proceedings so that they could also be heard. Then, not only it would have been within the competence of the learned S.D.M., but would have been his duty to reach a tentative finding as to the entitlement of the rival institutions and if necessary, to "make such arrangement as he considered proper," while acting u/s 146(2), for the building (subject of the dispute) being properly managed and looked after. Care cannot be taken of all properties generally in all cases, by locking up. Facts and circumstances are to be taken into consideration to decide as to what arrangements are to be made for any particular property to be looked after properly in case it is necessary to attach any property u/s 146(2). When claim made is on behalf of an educational institution, whether it is by first party or second party, it could not have been the proper course for the learned S.D.M. to direct that property, to be locked up. That is against public interest. Indeed, in such cases, he should have been cautious and circumspect in exercising his powers u/s 146, Criminal Procedure Code.

In these circumstances, we are duty-bound to quash both orders, passed by learned Additional Civil Judge, Class I, Morena, in the pending suit and in appeal by the learned A.D.J., Morena on 25-9-1990 and 11-10-1990 respectively. Those orders are evidently without jurisdiction as they fall foul of Section 146(2) Proviso. However, we also direct learned S.D.M. that he shall hear the parties who have appeared before. To wit- Shri Gopal Digambar Jain Siddhant Mahavidyalaya, Morena, Kasturba Shiksha Prasar Samiti, Morena, as also teachers and guardians of children of the said schools besides the other individual interveners represented by Shri M.C. Jain in MP. No. 2622 of 1990.

We direct learned S.D.M. to give all the parties reasonable opportunity to present their cases and to place materials in support of their respective claims. There need not be a detail and prolonged enquiry. A summary proceeding will do, but materials have to come from parties concerned before the learned S.D.M. to enable him to reach the requisite finding either u/s 145(4) or Section 146(1) as hereinabove contemplated. We make it clear once again that learned Magistrate

should adopt a positive approach and make his best endeavour to reach a positive finding u/s 145(4), Criminal Procedure Code in order that it may be possible for him to withdraw the attachment. In any case, if that is not possible, the impugned order has certainly to be varied and modified to match the circumstances brought on record by materials placed before him by parties in course of enquiry herein ordered. We direct parties to appear before the learned S.D.M. on 6-11-1990. A certified copy of this order shall be produced before him when he shall take steps for passing a fresh order u/s 146(2), Criminal Procedure Code. The order passed by learned S.D.M. on 3-9-1990 is quashed, but status quo, obtaining today, is maintained. Until further order of the learned S.D.M in the pending proceedings, the parties who are before us, shall not take law into their hands and disturb the peace. The disputed building shall remain under attachment in the meantime. As earlier noted, it may be necessary for the plaintiff/respondent, namely, Kasturba Shiksha Prasar Samiti, Morena, to move the learned Magistrate for any records to be made available to them. If that be the case, care of that shall be taken in appropriate manner for necessary orders to be passed in that regard by learned S.D.M.