
(1974) 11 P&H CK 0020
In the Punjab And Haryana At Chandigarh

Kirpal Singh Jolly	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 25-11-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145
Criminal Procedure Code, 1973 (CrPC) — Section 146

Citation : (1975) CriLJ 1422

Hon'ble Judges : S.C. Mital, J

Bench : Single Bench

Judgement

S.C. Mital, J.—In exercise of his power u/s 145(1) of the old Code of Criminal Procedure, the Additional District Magistrate, Ludhiana on 15th February, 1974, passed an order against Joginder Singh Grewal and five others (mentioned as first party therein) and Jagjit Singh and seven others (mentioned as second party therein). The parties were called upon to put in written statements of their respective claims as to the actual possession of the Govind National College, Narangwal. In his order the Additional District Magistrate expressed the view that a dispute concerning building and running of the college likely to cause a breach of the peace existed between the parties. The order was followed by attachment of the subject of dispute and the appointment of the Sub-Divisional Magistrate, Ludhiana, as Receiver-cum-Administrator of the college. Kirpal Singh Jolly, formerly Principal of the college, has moved this Court for quashing the proceedings.

2. Learned Counsel for the State and the second party have challenged the locus standi of Kirpal Singh Jolly petitioner. On behalf of the petitioner, it was contended that the college abovesaid was founded in the year 1966 under the private trust, viz., "Patna Sahib Education Trust", having a Managing Committee. The persons constituting the first party are members of the Managing Committee. By virtue of Clause (4) of the Trust Deed, the Principal of the college is an ex officio member of the Managing Committee. Besides, the college is affiliated to the Punjab University. Regulation No. 8, Chapter 8-A of the Punjab

University Calendar, Volume I (1973) provides that the governing body of an institution shall include the Principal as an ex officio member. Above all, contended the learned Counsel that the petitioner was Principal of the college when it was taken over by the Sub-Divisional Magistrate, Ludhiana. Later, the Sub-Divisional Magistrate terminated his services. As such, he (the petitioner) is an aggrieved person. For the foregoing reasons, I overrule the objection as to the locus standi of the petitioner.

3. The vital question to be decided is : Whether the present case is covered by Section 145 of the old Criminal Procedure Code. In support of his contention that it is not, learned Counsel for the petitioner referred to the following provisions of Section 145. Sub-section (1) provides that whenever a District Magistrate is satisfied that a dispute likely to cause a breach of the peace exists concerning "any land or water or the boundaries thereof", he shall make an order in writing in accordance with the requirements of the section. Sub-section (2) enacts that the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property. Sub-section (4) lays down that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute. Sub-section (8) is in the following terms:

If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

4. The petitioner's version is that since 1966, the college, had been run by the Managing Committee, the members of which constitute the first party to these proceedings. Jugraj Singh and Lachhman Singh teachers were removed from service for certain reasons. The removed teachers created unrest among the students. The members of the second party, who are respondents 5 to 12 to this petition, took advantage of the situation and formed a Managing Committee of their own. When the conditions became chaotic, the first party closed the college for an indefinite period. The second party then moved the district authorities and succeeded in getting the impugned order passed u/s 145 of the Code.

5. In the case in hand, argued the learned Counsel for the petitioner, the subject of dispute was never the college building but its management. In para. 5 of the affidavit of the Additional District Magistrate, there is a clear reference to the existence of a dispute between two rival groups regarding the management of the college. He justified action u/s 145, Criminal Procedure Code, by deposing that there was likelihood of a breach of the peace. He further deposed in para. 6 of his affidavit that in view of the emergency of the matter, he ordered the attachment of the college, its management and funds. Thereafter, he appointed Sub-Divisional Magistrate, Ludhiana, as Receiver-cum-Administrator of the

college. This order, according to the Additional District Magistrate, was necessary for the proper administration of the college, which had remained closed for five months. In paragraph 8 of his affidavit, he further deposed that as the annual examination was approaching the interests of the students were to be safeguarded.

6. The affidavit of Gajjan Singh Sarpanch, respondent No. 7 in this Court and one of the members of the second party, too proves that the subject of dispute has never been the college building, The said respondent testified that the dispute is regarding "the ownership of the management". The members of the second party being the beneficiaries of the illaqa took over the affairs of the college in the interest of the education of the students. This respondent has further said in his affidavit that the two teachers, namely, Jugraj Singh and Lachhman Singh were illegally removed and suspended by the first party. The other aspect of the matter pressed in his affidavit is that the college had been closed indefinitely, the first party had practically abdicated its function and abandoned the possession and administration of the college, the students and the staff members. On 11th November, 1973, in a big public meeting attended by Panches. Sarpanches and the M. L. As of the illaqa a new Managing Committee consisting of the members of the second party was set up. Steps were then taken to reopen the college and manage it properly. After the passing of the impugned order u/s 145, "Criminal Procedure Code, the second party was in possession of the college.

7. Howsoever laudable may be the object behind the passing of the impugned order, it is obvious that the college building as such was never the subject of dispute. Besides, there is nothing to controvert the claim of the petitioner that the college was founded in the year 1966 by the Patna Sahib Education Trust and its Managing Committee was constituted in accordance with the terms of the deed of the Trust. The first party consisting of the members of the said Managing Committee was doubtless in lawful possession of the college building. There can be no two opinions that Section 145 contemplates protection of such possession. In the normal course of things any threat thereto was required to be averted by the Additional District Magistrate, It is pertinent to point out here that the second party has no title, much less better than that of the first party, to the college building. Even if the second party had, it could not have been allowed to use force to oust the first party. In view of the above; I fail to see how Section 145 has been applied to the facts of this case. It follows, therefore, that the attachment of the college, its management and funds by the impugned order cannot be sustained. *Dhirendra Nath Das Vs. Hrishikesh Mukherjee and Others*, , decided a dispute as to the right of worship in a temple. A dispute regarding the right to receive, offerings at a shrine was disposed of in *Hardeo Vs. Ram Lal and Others*, . In *Hardeo Vs. Ram Lal and Others*, it was held that Section 145 applies to a dispute which relates not only to the offerings but also to the possession of the temple. These decisions cited at the bar have no application to the facts of the present case.

8. As regards the appointment of Sub-Divisional Magistrate, Ludhiana, as Receiver-cum-Administrator by the Additional District Magistrate, the same is clearly outside the purview of Section 145 of the Code. Sub-section (2) of Section 146 of the Code doubtless envisages! the appointment of a receiver by the Magistrate but that power is exercisable in an entirely different scheme. If the Magistrate is of opinion that none of the parties was in possession or is unable to decide as to which of them was in possession of the subject of dispute, he may attach it and draw up a statement of facts of the case and forward the record of the proceedings to a civil Court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained in Sub-section (4) of Section 145. Section 146 further lays down the manner in which the reference has to be disposed of by the civil Court. Then comes Sub-section (2) of Section 146 in the following terms:

When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure:

Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

9. It is nobody's case that the Additional District Magistrate ever made any reference to the civil Court of competent jurisdiction in Ludhiana u/s 146 of the Code. That being so, the appointment of receiver made by him, is wholly without jurisdiction.

10. In the result, I allow the petition and quash the impugned order of the Additional District Magistrate, Ludhiana, and the subsequent order of attachment and appointment of the Sub-Divisional Magistrate, Ludhiana, as Receiver-cum-Administrator of the college. It is directed that the possession and management of the college be made over to the Managing Committee (first party).