
(1977) 07 BOM CK 0031

In the Bombay High Court

Case No : Criminal Application No. 822 of 1977

Ramchandra Manjunath Prabhu

APPELLANT

Vs

Atmaram Gopal Gaikwad

RESPONDENT

Date of Decision : 14-07-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 482

Citation : (1977) 79 BOMLR 447 : (1978) MhLj 141

Hon'ble Judges : Sawant, J;Hajarnavis, J

Bench : Division Bench

Judgement

Hajarnavis, J.—This is an application for revision u/s 482 of the Code of Criminal Procedure against an order passed by the Executive Magistrate, Greater Bombay, dismissing the application filed by the petitioner u/s 145 of the Code of Criminal Procedure on the ground that he had no jurisdiction to entertain the application.

2. Dispute arose between the petitioner and the first five respondents regarding the possession of Shop No. 1, situate at Sitaram Upadhyaya Chawl, Hariyali Village, Vikhroli, Bombay. Suits were filed by either sides and even a report was made to the police by the petitioner regarding breaking open a lock of the suit premises and a case of house breaking was registered by the police against the respondents Nos. 1 and 2. The trial was going on before a Magistrate. The petitioner also approached Executive Magistrate on November 8, 1976 u/s 145 of the Code of Criminal Procedure. The Executive Magistrate drew up a preliminary order u/s 145(1) of the Code of Criminal Procedure and directed the parties to adduce evidence in support of their contentions. The first five respondents appeared and filed their written statement.

3. In the written statement, they raised an objection stating that the land on which the premises stood had been declared as vacant land under the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975, (hereinafter called as the "The Maharashtra Vacant Lands Act"). They further stated that a certificate had been issued to them by the

Assistant Estate Manager (Huts) (59) and in hut occupier's Card No. 120051, they have been declared as the occupiers of the hut. They further stated that in view of Section 8 of the Maharashtra Vacant Lands Act, 1975, the Executive Magistrate has no jurisdiction to order eviction.

4. The learned Executive Magistrate, after hearing the parties, held:

The land on which these premises stand has been declared as a vacant land under the Act and the respondent vide certificate issued by the Assistant Estate Manager (huts) (59) and the hut occupier's Card No. 120051 (page 57) has been declared as an occupant of the hut. These documents testify to that effect. The result is that this Court will have no jurisdiction to order eviction according to the merits or demerits of the case. Of course, there are no High Court decisions which confirm either of the view points, but we will have to go according to the wording of the Section 8 of the said Act. According to it I hold that this Court will have no jurisdiction so far as evictions are concerned. The result is that the application fails on this count only.

He, therefore, dismissed the application. It is against this order that the present petition has been filed.

5. After hearing the counsel for the petitioner and the respondents, we think that the order cannot be sustained. Section 8 of the Maharashtra Vacant Lands Act, 1975 reads:

No Courts shall have jurisdiction to entertain any suit, prosecution or other proceedings in respect of the eviction of any person from any vacant land under this Act or in respect of any order made or to be made or any action taken or to be taken by the Competent Authority in exercise of the powers conferred by or under this Act or to grant any stay or injunction in respect of such order or action. If any such suit or other proceedings in respect of eviction of any person from any vacant land is pending on the appointed date in any Court, it shall abate; and it shall be lawful for the Competent Authority to evict such person from unauthorised occupation of the vacant land under the provisions of this Act and to remove and forfeit any property from such land as provided in this Act.

A mere reading of this section will show that the jurisdiction of other Courts has been barred in respect of eviction of any person from any vacant land under the Act or in respect of an order made or to be made or any action taken or to be taken by the Competent Authority in exercise of the powers conferred by or under the Act.

6. What is barred is any suit, prosecution or any proceedings in respect of the eviction under the Act. There is no question of any eviction under the Act in proceedings u/s 145 of the Code of Criminal Procedure. They are not in respect of eviction of any person from any vacant land under the Act, nor are they in respect of any order made or to be made under the Act. In this particular case, there is no order passed in respect of eviction of any person under the Act, nor

any action by the Competent Authority is being challenged under the Act. Proceedings u/s 145 of the Code of Criminal Procedure are for the purpose of preventing breach of peace. What the Executive Magistrate is required to do is to find out who was in possession on the date or two months prior to the drawing of the preliminary order. He does not decide any question of title, nor does he decide who should be evicted and who should be entitled to possession under the Maharashtra Vacant Lands Act.

7. That being so, the learned Executive Magistrate has committed an error in holding that he has no jurisdiction to entertain the application. It is needless to say that Section 145 proceedings are summary proceedings which must be decided expeditiously in order to prevent the breach of peace. The Executive Magistrate should, therefore, decide who was in possession on the relevant day and decide the case as expeditiously as possible.

8. In the result, the rule is made absolute.