
(1982) 02 GAU CK 0017
In the Gauhati High Court

Smt. Tarulata Devi and Others

APPELLANT

Vs

Nikhil Bandhu Mishra and Others

RESPONDENT

Date of Decision : 08-02-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 310, 483

Citation : (1982) CriLJ 1665

Hon'ble Judges : K. Lahiri, J

Bench : Single Bench

Judgement

K. Lahiri, J.—The criminal revision is an off-shoot of a proceeding u/s 145 of the Criminal P.C. for short "the Code".

2. The object of Section 145 of "the Code" is to prevent breach of peace and for that end to provide a speedy remedy by bringing the contending parties before the Court and ascertaining who of them was in actual possession, to maintain status quo until their rights are finally determined by a competent court. The life of the order is conterminous with the passing a decree by Civil Court and the moment the Civil Court makes an order of eviction the final order of the Criminal Court stands superseded. The section authorises a Magistrate to issue a declaratory order in favour of the party that he is entitled to possession "until evicted therefrom in due course of law". The Magistrate does not decide or purport to decide a party's title or right to possession of the land as these areas are especially reserved for the Civil Court. The foundation of assumption of jurisdiction is an apprehension of breach of the peace. The Magistrate makes only a temporary order irrespective of the rights of the parties which will have to be agitated and determined in the manner provided by law. u/s 145(1) the jurisdiction of a Magistrate is exclusively limited to decide whether any and which of the parties was, on the date of the preliminary order, in possession of the land in dispute. The order only declares the actual possession of a party on the specific date.

However, in the event of any party who has been forcibly and wrongfully

dispossessed within 2 months next before the date of the preliminary order the Magistrate is authorised to treat the party who was dispossessed as if he had been in possession on such date. The power is enjoined in proviso to Section 145(4) read with Sub-section (6) thereof. It is true that the Magistrate has to decide who is in actual possession on the date of his preliminary order but if he finds that the party in de-facto possession on that date had obtained possession forcibly and wrongfully dispossessing the other party within 2 months next preceding the date of his order the Magistrate can treat the dispossessed party as if he was in possession on such date and restore possession to him, and, prohibit the dispossessor from interfering with the possession until eviction of that person in due course of law.

It is evident that the proviso to Section 145(4) is grounded on the principle that forcible and wrongful dispossession is not to be recognised under the criminal law, The word "dispossessed" in the proviso means and includes to be out of possession, ousted, ejected, removed from the premises or excluded. Even a person having a right to possession cannot dispossess another by taking the law into his hands and making a forcible entry otherwise than in due course of law. The relevant observation of the Supreme Court in *R.H. Bhutani Vs. Miss Man J. Desai and Others*, is extracted hereinbelow (Paras 13, 14):

The next ground for the High Court's interference was that assuming that the appellant was forcibly and wrongfully dispossessed and the said Salim was assaulted, the said dispossession was completed, a complaint of assault was lodged and the police had already taken action before the preliminary order was passed on June 20, 1966. Therefore, it was said, there was no longer any dispute on the date of the order likely to lead to breach of peace and consequently the order did not comply with the requirements of Section 145(1) and was without jurisdiction. This reasoning would mean that if a party takes the law into his hands and deprives forcibly and wrongfully the other party of his possession and completes his act of dispossession, the party so dispossessed cannot have the benefit of Section 145, as by the time he files his application and the Magistrate passes his order, the dispossession would be complete and, therefore, there would be no existing dispute likely to cause breach of peace. Such a construction of Section 145 in our view, is not correctThe word "dispossessed" in the second proviso means to be out of possession, removed from the premises, ousted, ejected or excluded. Even where a person has a right to possession but taking the law into his hands makes a forcible entry otherwise than in due course of law, it would be a case of both forcible and wrongful dispossession; (*Edwick v. Hawkes* (1881) 18 Ch D 199 and *Bai Jiba Vs. Chandulal Ambalal*, Sub-section (6) of Section 145 in such a case permits the Magistrate to direct restoration of possession with the legal effect that it is valid until eviction in due course of law. In *Bai Jiba Vs. Chandulal Ambalal*, the High Court of Bombay held that it would be unfair to allow the other party the advantages of his forcible and wrongful possession and the fact that time has elapsed since such dispossession and that the dispossessor has since then been in possession or has filed a suit for a

declaration of title and for injunction restraining disturbance of his possession is no ground for the Magistrate to refuse to pass an order for restoration of possession once he is satisfied that the dispossessed party was in actual or deemed possession under the second proviso. Similarly in *Amritlal N. Shah Vs. V. Nageswara Rao*, it was held that merely because there has been no further violence after one of the parties had wrongfully and forcibly dispossessed the other it cannot be said that there cannot be breach of peace and that, therefore; proceedings u/s 145 should be dropped. It may be that a party may not take the law in his hands in reply to the other party forcibly and wrongfully dispossessing him. That does not mean that he is not to have the benefit of the remedy u/s 145. The second proviso to Sub-section (4) and Sub-section (6) contemplates not a fugitive act of trespass or interference with the possession of the applicant the dispossession there referred to is one that amounts to a completed act of forcible and wrongful driving out a party from his possession (of *Smt. Subarna Sunami and Others Vs. Kartika Kudei and Others*, It is thus fairly clear that the fact that dispossession of the appellant was a completed act and the appellant had filed a criminal complaint and the police had taken action thereunder do not mean that the Magistrate could not proceed u/s 145 and give directions permissible under Sub-section (6).

3. In this background let me consider the case. On 15-12-1979 the petitioner lodged a complaint with the Officer-in-Charge of Silchar Police Station that she was in peaceful possession of the disputed land measuring 7 katha, had fenced the land in her possession and constructed a thatched house which was in the process of completion. When the 2nd party arrived in a truck with readymade fencings and while she was with-the labourers working in the house they broke her old fencing and replaced them by new fencing, ousted her from her house forcibly by dragging her out therefrom. The police initiated a proceeding u/s 144 Cr. P.C. apprehending breach of peace and submitted a report whereupon on 17-12-1979 the learned Magistrate drew up a proceeding u/s 144 Cr. P.C. The 2nd party appeared and claimed that the land had been purchased by them whereupon the learned Magistrate was satisfied that the disputes were relating to dispute concerning land and as to who was in actual possession thereof. So the learned Magistrate (on 26-12-1979) converted the proceeding into one u/s 145 Cr. P.C. Therefore, admittedly the order u/s 145(1) was drawn within 2 months from the date of dispossession. In due course the parties filed their written statements. The 1st party examined 5 witnesses whereas the 2nd party examined 3 witnesses. The owners of the land who are near relations of the 1st party were added as 1st party and naturally they supported the case of Tarulata's possession. According to the 1st party the land was purchased by them on 27-11-1978 and they took possession, fenced it and Tarulata was in actual physical possession thereof till 15-12-1979 having constructed a temporary house. The 2nd party claimed that they had purchased the land on 20-3-1978 by two registered deeds, got possession thereof on the date of sale and were in continuous possession since then. The learned Magistrate first

decided the question as to whether there was any apprehension of breach of peace in respect of the disputed land. He took into account the Police Report, considered the evidence of the witnesses Anowar Ali and Niranjana Nath and concluded that there was apprehension of breach of peace in respect of the disputed land. The learned Magistrate considered the objection raised by the 2nd party that the disputed land was not ascertainable. He decided the point in favour of the 1st party. He concluded that the subject matter of the proceeding had been claimed by the 2nd party and they had full knowledge as to the specific land which was the subject matter of the dispute. The learned Magistrate on appreciation of evidence of the parties and the witnesses held that the second party-men were fully aware about the precise subject matter of the dispute, it may be stated here that the land was attached during the course of the proceeding and both the parties claimed the very attached land as their land. As such the learned Magistrate, as revealed from the evidence, was fully justified in arriving at the conclusion that the disputed land was ascertainable both the parties had full knowledge about the precise subject-matter of dispute and no prejudice had been caused to any of the parties. Thereafter, the learned Magistrate considered the crucial question which was itemed as Point No. 3 by the learned Magistrate, which runs as follows:

3. Who was in possession of the land on 16-12-1979 and before and whether the claim of the 1st party of illegal and forcible dispossession -is true and correct.

(Emphasis added).

The learned Magistrate took into consideration the documents and oral evidence adduced in the case and on appreciation found the evidence of the witnesses for the 1st party was reliable. The learned Magistrate held that the evidence produced by the 2nd party was not reliable and held that the 2nd party had no possession over the disputed land prior to 15-12-1979. While considering the merits of the case the learned Magistrate considered the Registered Deed executed in favour of the 2nd party (vide paragraphs 2, 1 and 3.3 of the order). The learned Magistrate also took into consideration the "jamabandi" i.e. the records of right. While considering the sale deed of the 2nd party and the records of right the learned Magistrate found that the 2nd party purchased 10 Katha 8 chataks of land in Dag No. 649 and mutation in respect thereof was allowed. The learned Magistrate has held that the burden of proof lay on the 1st party to establish that she was in possession of the disputed land till 15-12-1979. The learned Magistrate considered the evidence of all the witnesses, found them to be reliable and accepted their testimony that Tarulata Devi, 1st party No. 1, was dispossessed in the manner claimed by her and he decided point No. 3 in her favour. While considering the respective claim of the parties he considered the evidence of the witnesses for the 2nd party. The learned Magistrate concluded that "...and being satisfied by the enquiry without reference to the merits of the claim of either of the said parties to the legal right of possession that the claim of actual possession by the said 1st party is true.

(Emphasis added).

Therefore, the learned Magistrate while arriving at the conclusion that the 1st party was in possession of the disputed land till 15-12-1979 was conscious that he was to decide the question without reference to the merits or claims of any of the parties to the right to possess the subject of dispute. Accordingly the learned Magistrate declared possession in favour of the 1st party until evicted therefrom in due course of law.

4. Being aggrieved by the order the petitioners 2nd party preferred a revision before the Sessions Judge, Cachar at Silchar who set aside the order on the grounds that (1)- the Magistrate not only declared possession of the land and house in favour of the 1st party but ordered the 2nd party to be thrown out from the land and house by Police within 24 hours (2) the Magistrate converted the proceeding u/s 144 into u/s 145 Cr. P.C. on 4-2-1980 which was beyond 2 months from the date of the alleged dispossession (vide para 5 of the learned Judge's order), presumably the learned Judge thought that the Magistrate had no jurisdiction to restore possession under proviso to Section 145(4) read with Sub-section (6); (3) that before initiation of the proceeding u/s 145 Cr. P.C. the learned Magistrate held a local enquiry u/s 310 Cr. P.C. According to the learned Judge these were sufficient for setting aside the order without entering into the merits of the case. However, the learned Judge held that the court below had gone wrong in deciding the rights of the parties and did not decide the question as to who was in possession on the date of drawal of the proceeding. The learned Judge also held that the Sale Deed and the Jamabandi were not considered by the learned Magistrate. The learned Judge concluded-

Thus we see that the matter which could have been the subject matter of civil suit unfortunately got in the hand of the police and then to the Executive Magistrate who steam-rolled the whole thing and pronounced an utopian decision which amounts to misusing the process of law at the cost of innocent parties who seek justice from the court of law.

I have heard the learned Counsel for the petitioner as well as Mr. Acharyya, the learned Counsel for the opposite party at length. The finding of the learned Judge that the Magistrate not only declared possession of the land and house in favour of the 1st party but also ordered that the 2nd party "must be thrown out from the land and house by police within 24 hours" is not to be found in the order of the learned Magistrate. On the contrary, I find that the learned Magistrate passed the following order:

I do further direct and require the 2nd party members to forthwith vacate the disputed land and hand over the possession thereof to the 1st party. The possession of the D/L shall be handed over by the 2nd party within 200 P. M. on 11-4-1980 or before.

The learned Magistrate nowhere passed an order that the 2nd party should be thrown out from the land and house by police within 24 hours. The undoubted,

power of the Magistrate-to treat a party who was dispossessed as if he had been in possession on the date of drawal of the proceeding" in the event of forcible and wrongful dispossession within 2 months next before the date of preliminary order was very much there vide proviso to Section 145(4). The Magistrate has also the power to forbid all disturbances of such possession so declared. When he makes a declaration under proviso to Sub-section (4) of Section 145 he has power to restore possession of the disputed land to the party forcibly and wrongfully dispossessed. The learned Magistrate found on evidence that the petitioner was forcibly dispossessed on 15-12-1979. As such the undoubted power to restore possession in favour of the 1st party, who was wrongfully and forcibly dispossessed, was very much there with the learned Magistrate. Therefore, the order of the learned Magistrate, in the instant case, directing the 2nd party to vacate the disputed land by a certain time fixed by him falls squarely within the ambit of his power and jurisdiction. As the Court had ancillary power to make an effective order, in the instant case the order was undoubtedly in consonance with the provisions of Section 145(6) of the Code. Therefore, the finding of the learned Judge cannot be accepted at this end. The learned Judge was wrong in coming to the conclusion that the proceeding was converted on 4-2-1980. It has been admitted by the learned Judge in his report that the proceeding u/s 144 was converted into the proceeding u/s 145 on 26-12-1979, well within the period of 2 months from the date of dispossession (15-12-1979). As such the learned Magistrate had jurisdiction to restore possession under proviso to Section 145(4) read with Sub-section (6). I am constrained to observe that the findings of the learned Judge that the Magistrate had no jurisdiction to restore possession to the 1st party u/s 145(6) is absolutely without merit. In so far as the local enquiry is concerned, it may be stated here, that it was done before drawal of the proceeding u/s 145 Cr. P.C. and no reliance at all was placed on the report while considering the merits of the case. Further holding of the local enquiry did not oust the jurisdiction of the Court to hold and conclude the enquiry u/s 145 of the Code. The next finding of the learned Judge that "the learned Magistrate assessed the right of the parties" is palpably incorrect. The learned Magistrate considered the crucial question as to which of the parties was in possession on 15-12-1979, the date of forcible and wrongful dispossession. The Magistrate never considered the merits of the claim of any of the parties to right to possession. I have alluded that the learned Magistrate framed Issue No. 3 to find out as to who was in possession on 15-12-1979 and whether the claim of the 1st party about illegal and forcible possession was true and correct. While considering the question the learned Magistrate considered the documentary as well as oral evidence of the parties. The Magistrate held on facts that the 1st party was in possession of the land on 15-12-1979 until she was dispossessed by the 2nd party. The learned Magistrate considered the evidence adduced by both the parties. As such I have no hesitation in arriving at the conclusion that the finding of the learned Judge that the Magistrate considered the merits of the claims of the parties to a right to possess the subject matter of the dispute is not correct. The learned Magistrate only considered the crucial question as to which

of the parties was in possession on 15-12-1979 and found that the 1st party was in possession and she was forcibly evicted therefrom. I have already stated that the learned Magistrate considered the documentary evidence produced by the 2nd party in para 2.1 and 3.3 of his order. As such the findings of the learned Judge are not based on records.

5. I have failed to see how this was a subject matter of civil litigation and not a case for due disposal u/s 145. Admittedly there was apprehension of breach of peace arising out of dispute concerning land and house. It is difficult to fathom why the learned judge held that the Magistrate had no jurisdiction to decide the question u/s 145 Cr. P.C. Mr. Acharyya the learned Counsel for the opposite parties tried to justify the observation by stating that the learned Judge meant that the Civil Court was perhaps the proper forum for decision of the dispute. I have no hesitation in coming to the conclusion that the learned Magistrate found that there was apprehension of serious breach of peace in respect of the dispute concerning land. As a matter of fact the police had asked for an enquiry u/s 144 of the Code. The learned Magistrate initiated the proceeding u/s 144 upon holding that there was likelihood of breach of peace. He also held in his final order that there was likelihood of breach of peace arising out of the incident and the dispute was in respect of land, Under these circumstances, I must accept the contentions of the petitioner that none of the findings of the learned Judge is good ground for interference in revision and the findings are not based on material available on records. As such the order of the learned Judge is liable to be set aside.

6. However, I have noticed some omissions in the order of the learned Magistrate which are formal in nature. The Magistrate held that the 1st party was forcibly dispossessed but he did not render a finding that it was wrongful as well. Further, the final order is not directly in conformity with the provisions of Sub-section (6) of Section 145 of the Code.

7. Now the question is whether the matter should be remitted to the Magistrate for making a formal order in accordance with the provisions of Sub-sections (4) & (6) of Section 145 and he should be asked to render a finding as to whether the dispossession was wrongful as well, In my opinion, it would cause un-due harassment to the parties. When expeditious hearing is the prime object of the court-system and when the mandate of Section 483 of the Code is that the High Court should exercise superintendence over the Court of the Judicial Magistrate, subordinate to it to ensure that there is an expeditious and proper disposal of the case by such Magistrates, should this Court for the sake of formalities send down the matter to the Executive Magistrate? It is undoubtedly true that Section 483 does not apply insofar as the Executive Magistrates are concerned. But the main purpose of the judicial institution is to give quick and effective justice, of course if permissible under the law.

8. I called upon the parties to satisfy me as to whether the dispossession was wrongful or rightful. I have heard the learned Counsel for the parties. I have

perused the original complaint as well as the evidence on record. I find that the positive case of the 1st party was that her boundary fencing was damaged and she was dragged out of the house by force. She stated on oath that the house had been constructed by her and the 2nd party came in a truck with readymade fencing and forcibly entered inside the house, assaulted the labourers and forced her to leave the house. On protests she was physically assaulted. P. W. Niranjan Nath supported the case of forcible eviction or ejection of Tarulata from the house, Anwar Ali, Sunilal Bhattacharjee, Monajir Ali support the claim that Tarulata had constructed the house and the 2nd party used force to drive her out therefrom and in fact she was thrown out of the house. These were the acts of dispossession which stare on the face of the records. Assuming that the 2nd party had their right title or interest in the land yet they could not have taken forcible possession of the land and house which was in actual physical possession of Tarulata. They had no right to take the law into their hands, it was undoubtedly wrongful dispossession as ruled by the Supreme Court in *R.H. Bhutani Vs. Miss Man J. Desai and Others*, On perusal of the entire evidence I have no doubt that the dispossession was not only forcible but wrongful as well. The learned Magistrate inadvertently missed the word "wrongful" in his final order. In the facts and circumstances of the case, I am constrained to hold that Tarulata was forcibly and wrongfully dispossessed from the disputed land on 15-12-1979. There is another trivial irregularity in the order which can be corrected at this end. The learned Magistrate should have declared possession in favour of the 1st party as he has already done, but at the same time he should have passed an order that the 1st party would be entitled to possess the disputed land "until evicted therefrom in the due course of law", forbidding all disturbances of such possession until such eviction and the order should be served and published in the manner laid down in Section 145(3) of the Code. However, this is a formal irregularity and on that count the order cannot be declared to be invalid. The learned Magistrate has already declared possession in favour of the 1st party which shall be maintained. He has already directed restoration of possession in favour of the 1st party who were forcibly and wrongfully dispossessed. The direction is also valid. However, I add that the 1st party should be entitled to possession of the disputed land until evicted therefrom in due course of law and forbid all disturbances of such possession until such eviction with a direction that the order shall be served and published in the manner laid down in Section 145(6)(b) read with Section 145(3) of the Code. With this modification of the order the order of the Magistrate is restored.

9. In the result, the petition is allowed. The impugned order of the learned Sessions Judge passed on 28-8-1980 in Criminal Revision 9 (2) of 1980 is set aside.