

(1894) 12 CAL CK 0003
In the Calcutta High Court

The Katras-Jherriah Coal Company

APPELLANT

Vs

Sibkrishta Daw and Company

RESPONDENT

Date of Decision : 17-12-1894

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 145, 146

Citation : (1895) ILR (Cal) 297

Hon'ble Judges : W. Comer Petheram, C.J.;Beverley, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J. and Beverley, J.—There is really no dispute about the facts in this case, and the only thing we have to consider is what is the just and legal order to make, under the circumstances disclosed by the evidence of both parties.

2. On the 13th of October 1893 Babu Purno Chunder Daw, the second party in these proceedings, let certain collieries at Sheebpur with their appurtenances to the Katras-Jherriah Coal Company, who are the first party, for the term of eight months on certain terms as to royalties, etc., and subject to a proviso that the company should be at liberty to purchase the whole of the property demised, at any time during the term, for the sum of one hundred and fifty thousand rupees, payable partly in cash and partly in debentures of the company. The company took possession of the property and proceeded to work the collieries, and on the 29th of December gave notice to the lessor of their intention to purchase the whole property in accordance with the proviso. When this was done, the contract of sale was complete, the property was sold to the company, within both the ordinary and the legal meaning of the word, and all that remained to be done was to carry out the contract by the conveyance of the property, and the payment of the price in the manner provided by it. After this the usual correspondence seems to have passed between the solicitors as to the title and the various clauses of the proposed conveyance, and on the 10th of August the vendor's solicitor wrote to the purchaser's solicitor making certain demands,

and saying that unless the matter was at once completed on the terms required by him, his client would consider the matter at an end, and everything as cancelled. There is nothing in these papers to enable us to express any opinion as to which party was in the wrong in any of the questions which had been raised, or indeed to say what those questions were, but on the 11th the purchaser's solicitors replied, repudiating the right of the vendor to cancel the contract, discussing the questions raised in the letter of the 10th, and saying that their clients had always been ready and willing to carry out the contract.

3. On the same 10th of August, the vendor, Purno Chunder Daw, sent a person of the name of Boroda Kanta Ghosh, who had been a contractor at Sheebpur, from Calcutta to Sheebpur to work the collieries for him. This person arrived at the place on the morning of the 11th, and on the 13th Behari Lal Chatterjee, the head Babu in the vendor's office at Calcutta, left for Sheebpur to make arrangements for the working of the collieries, and from the 14th to the 23rd these two persons were engaged in informing the people engaged in working the collieries that Purno Chunder had not sold the collieries and in getting them to agree to work for them. From the time when the company began to work the collieries in October, Mr. John English was the Resident Manager on their behalf, and continued to be so until the 9th of August 1894, when he was dismissed by the agents of the company, and handed over charge to Mr. Darby, who had been appointed by the company to take his place. Mr. English did not leave the place, but by the permission of Mr. Darby continued to occupy the manager's house, because he said it would be inconvenient for him to remove at the moment, and in fact he has remained there until the present time. Mr. Hunter was the Engineer of the company from the time when they commenced to work, and continued to be so until the 24th of August, when, in consequence of the action of Babu Purno Chunder, he refused to act for them any longer, and announced his intention of working for the other party. He has always resided in one of the houses at the collieries. On the night of the 14th Behari Lal Chatterjee and Mr. English went to Calcutta, where they saw Babu Purno Chunder on the 15th, when Mr. English obtained a letter from him appointing him to manage the collieries on his behalf. Mr. English returned to Sheebpur on the same night. Behari Lal Chatterjee returned on the night of the 17th. On the 16th Mr. Darby became alarmed, and applied to the Police Inspector for protection. On the 17th the Inspector sent a Head Constable to the place, and himself followed on the 19th. He then saw that "both Mr. English and Mr. Darby were Managers." On the 22nd he submitted a report, on receipt of which proceedings were taken u/s 107 of the Criminal Procedure Code, and on the 3rd of September both the Managers were bound down. On the 20th August Mr. Darby applied to the Sub-Divisional Officer at Ranigunge, asking that he would order that the company should be kept in possession of the Sheebpur Collieries. The Sub-Divisional Officer replied the same day, declining to accede to his request "as he appeared to be in possession of the collieries," and on the 21st Mr. Darby wrote again pressing his request, but no action was taken by the Magistrate. On the 24th a letter dated the 23rd was

received by the agents of the company in Calcutta from Babu Purno Chunder, informing them that he had appointed Mr. English manager of the collieries, and requesting them to make over charge to him. On the same day, the 24th, at about half past five o'clock in the morning, Mr. Darby found that all the persons employed at the place, except himself and his assistant, Mr. Deveria, had renounced the service of the company, and had agreed to work for Babu Purno Chunder. Mr. Hunter on that morning told him that he was no longer his servant, and that he had taken service with the other party, and on going to the pits he found Mr. English there, engaged in sending miners down to get the coal for his master Babu Purno Chunder. The Police Inspector was present, and when Mr. Deveria intimated his intention of using force to prevent the miners from going down the pits, he informed him that he should not allow force to be used, and Mr. English said that at a whistle he could call one or two hundred men to aid the police. Mr. Darby then went to his own bungalow, then to the office of the collieries where the books, papers and cash of the collieries were in the safe, locked up the office, handed the key to Mr. Deverine, the Police Inspector, and himself went to Ranigunge to see the Magistrate, leaving Mr. Deveria in charge of the house in which he had been living, and his servants in charge of his furniture, clothes and other effects. On the 28th Mr. Darby presented a formal petition to the Sub-Divisional Officer praying him to institute proceedings u/s 145 of the Code of Criminal Procedure, and that the company might be maintained in possession, and on the same day the Sub-Divisional Officer made an order refusing to interfere. As we have said before, the Sub-Divisional Officer, on the 3rd of September, made orders binding both Mr. Darby and Mr. English down to keep the peace, and, on the same day, he made an order u/s 145, ordering the company and Babu Purno Chunder to appear in his Court on the 10th and put in written statements, and adduce such evidence as they could in support of their claims. The taking of the evidence was commenced on the 10th, was concluded on the 26th, and on the 1st of October the Sub-Divisional Officer gave his judgment. He thought that, upon the authorities on the subject, the question he had to consider was who was in defacto possession on the 3rd of September, and he found that from the 16th of August to the 23rd, the second party was gradually gaining possession, and had from the 23rd of August to the time when he was giving his judgment, been de facto in "peaceful and undivided possession of the collieries, the tramways and wharfs." He adds that had he known from the first how serious the dispute was, he should have at once taken proceedings u/s 145, and that had he done so, there was little doubt that his decision would have been different, but, having regard to the fact that he thought his enquiry must be limited to the time subsequent to the 3rd of September, that being the day on which he first commenced his own proceedings under the section, he declared the second party to be in possession of the Sheebpur and Kanthi collieries, together with the tramways wharfs and buildings appertaining thereto, and maintained them in possession until ousted by law.

4. In the view we take of the facts of the case, it is not necessary for us to

express any opinion as to the exact point of time to which an enquiry under the section must be directed, and we only mention the point in order that we may not be understood as agreeing that in the present case the enquiry must be limited to the time during which the evidence was being taken. It is, we think, impossible to lay down any hard and fast rule which may be applicable in all cases, and we do not understand that the Courts have ever attempted to do so. All that they have done has been to decide when, according to the facts of the case then before them, the possession was to be found. In the present case, it is admitted on all hands that on the 20th of August the company were, at all events, in partial possession of the whole of the property which was the subject-matter of the dispute, and on that day Mr. Darby appealed to the Magistrate to have his possession maintained, which could mean nothing but that he asked for an enquiry u/s 145. This request was refused, because, as the Magistrate now admits, he had not sufficiently appreciated the position of affairs, which had no doubt changed to some extent when he actually commenced proceedings on the 3rd of September. But to hold that under such circumstances the Magistrate is precluded from enquiring into anything before the date when he recorded his own proceedings, which he now tells us he ought to have done thirteen days before, is, we think, to allow a person who has been acting in an unwarrantable manner to misuse the process of the law to enable him to carry out his high-handed and improper scheme, and this we cannot believe to have been the intention of the Legislature. But however this may be, we think it is clear upon the evidence of the second party themselves that they were not in possession of the subject-matter in dispute on the 3rd of September, and that they never in fact got into possession of an important part of it until they were actually put in possession of it by the final order of the Magistrate made in this proceeding on the 1st of October, and it cannot be doubted that a Magistrate under this section has no power to place either party in possession of the subject-matter in dispute, or any part of it, but only to find who is in possession of it as a whole, and, if that is impossible, to make an order u/s 146.

5. The subject-matter upon which the Magistrate's final order operated was "the Sheebpur and Kanthi collieries, together with the tramways, wharfs and buildings appertaining thereto," and of this there can be no doubt, that the buildings which contained the office, where the business of the collieries was transacted, and where all the cash, books and papers of the business were kept, was not only a portion, but a very important portion, without which the business of the collieries could not be carried on. It is no doubt true that by the 23rd of August, the agents of Babu Purno Chunder had succeeded in getting all the persons employed in the actual work of winning the coal and conveying it to the wharfs to agree to work for them, and by this means had obtained control of the out-dpor operations, and their adherents were in such force on the ground, that any attempt, by Mr. Darby and Mr. Deveria to resist them must have been hope-leas. But this was not the state of things with reference to the office and some of the other buildings, or, in other words, to that portion of the subject-matter of the

dispute, where the indoor business of the collieries was carried on. The office was in the possession of Mr. Darby on the morning of the 24th. When he left, he locked it up, and handed the key to the Inspector of Police, no doubt for safe custody, and when Mr. English was giving his evidence on the 24th of September he told the Magistrate that he had not yet got possession of the office where he used to work, that it was at that time locked up with the papers of the Katras-Jherriah Coal Company in it in charge of the police.

6. These are the undisputed facts, and the only question is what is the proper order to make under the circumstances. It is clear that the order made by the Magistrate must be set aside, as its effect is to place the second party in possession of the office and other portions of the buildings, of which they had not obtained possession before, and no one suggests that the Magistrate had any power to do this, but it is pressed on us by Mr. Jackson that this is all we can do, and that when this is done we cannot ourselves make the order which on the undisputed facts the Magistrate ought to have made, and at first sight we were much disposed to take that view. An examination of the authorities however shows that this Court has on several occasions not only, set aside orders of Magistrates made under this Procedure, but has also itself made the order which should have been made by the Magistrate, upon the facts as proved at the inquiry [*Ambler v. Pushong* ILR Cal. 365 *Reid v. Richardson* ILR Cal. 361]. It is, we think, clear that if we have the power to make an order, this is a case in which we ought to exercise it, as if we merely set aside the Magistrate's order and leave matters in the condition in which that order has placed them, we shall be allowing the process of the law to be used by Babu Purno Chunder for a high-handed and unlawful purpose, inasmuch as Mr. English tells us that he can command the services of 5,000 miners to defend his position if it is assailed, and under such circumstances he would certainly be in a position to retain by force possession of the offices, etc., possession of which was improperly given him by the order of the Magistrate.

7. During the time from the 20th of August to the 3rd of September, the second party had no doubt gained possession of a large part of the subject-matter of the dispute, whilst the first party continued in possession of the remainder, and as under these circumstances it is manifestly impossible to find that either of the two parties was in possession of the whole, the case is literally within the provision of Section 146, and the only order which could legally be made under the circumstances would be an order attaching the subject-matter of dispute under that section. Such an order will have the effect of withdrawing the enjoyment of the collieries from both parties, until the dispute has been settled or decided by some tribunal competent to deal with it, and this is the order which we propose to make.

8. We set aside the order of the Sub-Divisional Officer of Ranigunge and direct that under the provisions of Section 146 of the Code of Criminal Procedure the Sheebpur and Kanthi collieries, together with the tramways, wharfs and buildings

appertaining thereto, be attached until a competent Civil Court has determined the rights of the parties thereto or the person entitled to the possession thereof.