
(1970) 04 GAU CK 0004
In the Gauhati High Court

Thounaojam Munal Singh

APPELLANT

Vs

Karam Iboyaima Singh and Others

RESPONDENT

Date of Decision : 16-04-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 144, 145, 438
Evidence Act, 1872 — Section 114

Citation : AIR 1971 Guw 1 : (1971) CriLJ 62

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Judgement

R.S. Bindra, J.C.

1. This reference u/s 438, Criminal P.C. by Shri P. N. Roy, the Additional Sessions Judge, Manipur, covers two -criminal revision cases Nos. 1 and 2 of 1969 arising out of two proceedings u/s 145, Criminal P.C. dealt with by the Sub-divisional Magistrate, Bishenpur, in two separate orders, each dated 10-12-1968. Practically speaking, only two points were urged before Shri P. N. Roy, namely. (1) that notice of the proceedings had not been served on all the parties concerned and so the proceedings stood vitiated, and (2) that the Sub-divisional Magistrate had not perused the written statements, affidavits and documents filed by the contestants and so his conclusion lacked validity. The learned Additional Sessions Judge recorded the finding, while discussing the first point, that the notice of the proceedings had actually been not served on all the parties concerned and on that basis expressed the view that the proceedings stood vitiated. He found no substance in the second objection inasmuch as, it was held, the Sub-divisional Magistrate had digested all the material on record before giving his final orders in the two cases. The precise recommendation made by him as a consequence of these conclusions was that orders in both the proceedings should be quashed and the cases remanded to the Sub-divisional Magistrate for fresh decision after serving notices on all the parties concerned.

2. Shri A. Nilamani Singh, representing the defeated party, challenged in this

Court the correctness of the finding of the Additional Sessions Judge that the Sub-divisional Magistrate had carefully gone through all the material on record before giving his findings in the two cases.

3. For proper appreciation of the points requiring determination in this reference it is necessary that the essential facts should be outlined. Like the Sub-divisional Magistrate, I also propose dealing with the two cases separately, though they raise some common questions of law, because questions of fact are not identical. I would firstly reproduce the facts of Criminal Misc. Case No. 54 of 1967. On 18th of October 1967 the Wapokpi Co- operative Collective Farming Society (hereinafter called the registered Society) made an application u/s 107, Criminal P.C. to the Sub-divisional Magistrate, Bishenpur, through its chairman K, Iboyaima Singh, against 23 persons" alleging that the latter were out to trespass on 32 paris of land forming part of Dag No. 10063 of village Wapokpi and thereby interfere in their established possession, and praying that they should be bound down for keeping the peace.

That application was sent by the Magistrate to the Police for enquiry and report. On 7-11-1967 an application was made to the same Magistrate- by Th. Munal Singh, the Secretary of Wapokpi Utlou Yanghi Loumee Farming Co-operative Society of Wapokpi Khunou (hereinafter referred to as the unregistered Society) against 13 persons seeking an ex parte order u/s 144(2), Criminal P.C. respecting 1100 paris of land including aforementioned- ed 32 paris. That application was also forwarded to the Police for enquiry and report. On 14-11-1967 the Police suggested in their report Xo the Magistrate that action u/s 144, Criminal P.C. was indicated in view of the impending breach of peace between the two parties.

The Magistrate, however, reached the conclusion on scanning through the available material that the situation could be met only by an order u/s 145, Criminal P.C. Consequently, he passed the preliminary order u/s 145(1), Criminal P.C. on 16-11-1967 and issued notices to both the parties directing them to submit their written statements, affidavits and documents in support of their respective claims to the possession of the land measuring 41 paris described in the order.

In addition, with a view to obviate threatened breach of peace the Magistrate attached the land and directed the Police to arrange harvesting of the standing crops. In the preliminary order the Magistrate described Shri K. Iboyaima Singh (Chairman of the registered Society representing that Society) as the first party, and Th. Modhu Singh (Secretary of the unregistered Society representing that Society) as the second party.

4. The second party alleged in its written statement dated 30th of August 1967 that the unregistered Society is comprised of 61 persons, that the land in dispute forms part of village No. 64 B. T., bearing the name Kumbi, that the set of 61 persons had reclaimed the land about 10 years ago, that they had built an

earthen bund around the land at considerable expense, a part of which was contributed by the Government that they had also dug a channel to drain out the surplus water out of the land, that the members of the registered Society had managed to secure an allotment of this land on 18-11-1966 from the Director of Settlement, that at their instance the Chief Commissioner cancelled that allotment in a revision lodged by them, and that that cancellation had been challenged by the registered Society by a writ petition .filed in the Court of the Judicial Commissioner (which was then pending). It was alleged further that the members of the unregistered Society had been continuously in possession of the land during the last 10 years and that it were they who had grown the crops in the year 1967, a part of which they had harvested before the land was attached. As many as 14 documents and 10 affidavits were filed in support of the allegations made in the written statement.

5. The first party filed its written statement on 24th September, 1968 wherein it was pleaded that the land in dispute was khas land forming part of village Wapokpi (Kumbi) and that as early as the year 1940 K. Iboyaima Singh began reclamation thereof and founded a new village called Wapokpi Khunou. By the year 1960, thirty houses had been built in that village. Th. Munal Singh of the unregistered Society shifted to the new village in the year 1959 from Thoubal. Sometime thereafter, Th. Munal Singh and one Kh. Daujee, the latter of village Ithai Khunou, hit upon the idea of forming a Society with the ultimate object of securing settlement of the khas land which had been reclaimed by the residents of Wapokpi.

These two persons wanted also to bring in the Society some residents of villages other than Wapokpi and collected large sums of money from them on the promise of getting land settled in their favour. When the residents of Wapokpi Khunou got wind of that development, they held a meeting on 15-1-1963, presided over by Th, Chaoba, when it was decided in the presence of the village Chowkidar to organise a Society comprising only of the genuine residents of Wapokpi Khunou. Pursuant to that decision, Modhu Singh made an application on 22-1-1963 to the Registrar of the Co-operative Society for registration of their Society with 36 persons as promoters including K. Iboyaima Singh as the Chairman. Another prayer made in that application was that the Society sponsored by Th. Munal Singh should not be granted registration. R. K. Sanahal Singh, an Inspector of the Cooperative Societies, visited the village on 4th and 5th of November, 1963 to ascertain the facts mentioned in the application dated 21-1-1963. He recommended in his report that the Society sponsored by Modhu Singh should be registered and not the one promoted by Th. Munal Singh. Consequently, the first mentioned Society was registered (sometime in 1964-65). The members of that Society then took steps to construct a bund around the area measuring 100 paris besides a channel to drain out the surplus water. They also raised money for purchasing a share of the Co-operative Bank Manipur. In course of time, their total membership swelled to 100 and the total area measuring 100 paris brought within the bund was reclaimed.

In para 15 of the written statement it was pleaded that during the recent survey the land involved in this case was shown in possession of the members of the registered Society. It is thereafter, it was added, that the registered Society moved the Government for settlement of 100 paris of land to them and they succeeded in securing the settlement on 18-11-1966.

The unregistered Society then challenged the validity of that settlement by filing a revision petition in the Court of the Chief Commissioner who quashed the allotment, it is claimed, quite illegally on 15-6-1967. The legality of Chief Commissioner's order was assailed in a writ petition filed by the registered Society in the Court of the Judicial Commissioner. (That writ petition, I may mention, was rejected by the Court sometime in the year 1969). In para 21 of the written statement it was alleged that though the members of the registered Society were in occupation of the land covered by Dag No. 10063 and their names were recorded as such in the survey documents, but a few persons belonging to the unregistered Society were also entered as in possession of that land though that entry did not correspond with the state of affairs at the spot.

Taking advantage of that wrong entry, it was alleged further, the members of the unregistered Society in collusion with Kh. Mera Singh and W. Luwang Singh, who were encroachers over khas land situate on the north of the total area of 100 paris in dispute between the present parties, -put in concerted efforts to deprive the members of the registered Society the fruits of their long drawn-out labours. (It may be stated here that the rest of the 59 paris of land out of a total 100 is the subject of the second case between the parties). It was asserted that the members of the first party had been in possession of the land measuring 41 paris as also the adjoining area measuring 59 paris to the entire exclusion of the members of the unregistered Society and that it were they who had grown the crops which were standing on the land at the time of its attachment pursuant to the preliminary order dated 16-11-1967.

6. The first party relied upon 17 affidavits and as many number of documents to shore up their claim made in the written statement.

7. The first point urged for" the petitioners, the second party before the Magistrate, was that though in the heading of the preliminary order the second party was mentioned as comprising 71 persons besides Th. Munal Singh, that order was served only on Th. Munal Singh and one Iboton Singh, and that as a consequence of the failure on the part of the Magistrate to effect service on all concerned the proceedings stood invalidated. Shri Manisana Singh, appearing for the respondents, submitted that since Th. Munal Singh had put in the written statement on behalf of the unregistered Society and not in his individual capacity, non-service of notice on others constituted at the best an irregularity curable u/s 537, Criminal P.C. and not an illegality vitiating the proceedings.

It is undeniable that in the heading of the preliminary order the second party is mentioned as Th, Munal Singh, Secretary of the unregistered society, and

Others, it is equally correct that the written statement was filed by Th. Munal Singh "on behalf of himself and his party" as stated in the heading of that document. It is also beyond dispute that service of the notice was effected only on Th. Munal Singh, and Iboton Singh. This Iboton Singh is the Chairman of the unregistered Society while Th. Munal Singh is the Secretary thereof. Another important fact besides the three just outlined is that in the preliminary order the Magistrate described the second party as "Thounaojam Munal Singh. Secretary of Wapokpi Utluou Yangbi Loumee Farming Co-operative Society (representing the Society hereinafter referred to as the 2nd party)". The first party was described as "Karam Iboyaima Singh, Chairman of the Wapokpi Co-operative Collective Farming Society (representing the Co-operative Society hereinafter referred to as the 1st. party)".

By Sub-section (1) of Section 145, Criminal P.C. the Magistrate is enjoined, on being satisfied that a dispute likely to cause breach of the peace exists concerning any land within the local limits of his jurisdiction, to make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader. Sub-section (3) of the same Section enacts that a copy of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

It will be noticed that in Sub-section (1) the expression used is "the parties concerned in such dispute" while in Sub-section (3) the words to be noted are "upon such person or persons as the Magistrate may direct". Service of the order made under Sub-section (1), according to Sub-section (3), has to be effected on such person or persons as the Magistrate may direct. It is with this background of the law that I proceed to discuss the tenability or otherwise of the principal point raised on behalf of the petitioners. To reach correct conclusion, the preliminary order made by the Magistrate on 16-11-1967 must be carefully examined and analysed.

I have reproduced above the description of the two parties given in that order. The second party mentioned therein I may repeat, is Th. Munal Singh, the Secretary of the unregistered Society, representing the Society. In the penultimate para of the preliminary order the direction given by the Magistrate was that a proceeding u/s 145 Cr.PC be drawn and a notice thereof issued "to both the parties". Consequently, the notice had to be served on the two parties mentioned in the body of the order itself and not in its heading, and since indisputably that direction of the Magistrate was carried out, service having been effected admittedly on Th. Munal Singh as the Secretary of the unregistered Society and on K. Iboyaima Singh, the Chairman of the registered Society, I cannot find any fault in the matter of service of the notice of the preliminary order, and so the objection raised on behalf of the petitioners has to be negatived.

8. Although there is no provision in the Criminal Procedure Code corresponding to Order 1, Rule 8, Civil Procedure Code, yet it does not appear to be beyond the power of the Magistrate to direct, in the context of a large number of persons involved in the dispute or for some such other" reasons, that notice of the preliminary order be served on one or more of them in their personal as well as representative capacity. In the case of Nanhe Mal and Others Vs. Jamil-ur-Rahman and Others, Mukerji, J. held that in a dispute between two communities the Magistrate would be justified in choosing out who should be the right persons to represent each community and after hearing whom he should either permit a community to do a certain thing or to prevent it from doing it till a Civil Court had decided upon the rights of the parties.

The dispute in that case between the Hindus and Mohammedans was in respect of right to draw water from a well, and the Magistrate directed that the notice of the order be issued u/s 145(1) Cr.PC only to some of " the Hindus and Mohammedans. The High Court repelled the contention of the Hindus that service of notice should have been effected on all the members of their community to give legal shape to the final order made in the case. I respectfully agree with the observations made by Mukerji J.

In the instant case it will be noted that the petitioners never raised any objection respecting the service of notice during the long period the proceedings remained pending with the Magistrate, and that Th. Munal Singh filed the written statement and fought the case in a representative capacity. He and the Chairman Iboton Singh having been served with the notice it is legitimate to presume that all the persons constituting the unregistered Society had learnt about the proceedings drawn up u/s 145. This conclusion is reinforced by the fact that the revision petition in the Court of the Sessions Judge was also filed by Th. Munal Singh in his representative capacity and none else joined him. It was Th. Munal Singh who had been carrying the entire burden of fighting the battle on behalf of his unregistered Society ever since he fell out and parted company with the" residents of Wapokpi Khunou. Therefore, it is too late in the day for Th. Munal Singh to cavil at final order made in the case on the score that other members of his unregistered Society had not been notified of the proceedings. He himself having represented the Society in the case, it does not now befit him that he lacked that status.

9. I may mention in passing that there is divergence of judicial opinion in India on the point whether non-compliance with the provisions of Sub-section (3) of Section 145 invalidates the proceedings or constitutes only an irregularity curable by Section 537 of the Code. In this respect I invite attention to Notes 15 and 28 u/s 145 of Chitaley's Commentaries on the Code of Criminal Procedure, 6th Edition. I do not propose discussing the merits of the two views because the fate of the case in hand can be decided without giving a finding on that point. However, I venture to state that if direction is given in the preliminary order for giving notice thereof to certain specified persons the failure to do so must prima

facie invalidate the proceedings because it would offend the principle of natural justice that no order having civil consequences can be made against a person without giving him an opportunity of being heard in the matter.

10. Reverting to the present case. I may emphasise that the objection about non-service of the notice on other members of the unregistered Society has been adopted by one who admittedly had (been served with that notice. Though, speaking technically, a revision petition may be filed even by a person having no connection with the case but it is not usual practice of the High Court to take action at the instance of such a person unless the matter involved is of some special importance, e.g., where the impugned order touches an issue of public importance. However, such is not the situation in the present dispute. It is a dispute between a number of private persons relating to a piece of land in which the public as such has not much of interest. Hence, it is not open to Th. Munal Singh to canvass for annulment of the final order on the basis that other members of his unregistered Society had not been served with the notice. If those, persons, or any one of them, had genuine grievance against that order, they or he could have challenged the same by filing a revision petition or in any other manner legally permissible.

11. Shri Nilamani Singh, representing the petitioners, raised another legal point on the basis of Sub-section (3) of Section 145. That Sub-section requires that at least one copy of the order shall be published by being affixed to some conspicuous place at or near the subject of dispute. It was contended by Shri Nilamani Singh that it was for the respondents to establish that the copy of the notice had been affixed to some conspicuous place at or near the land in dispute and that since there was no data on the present record to show that a copy was affixed on such conspicuous place, the final order could not stand and so must be quashed.

In my opinion argument lacks even semblance of plausibility. Firstly, this point does not appear to have been urged before the learned Sessions Judge. Secondly, since it is not denied that a copy was affixed on the land in dispute it would be legitimate to presume that the requirements of the law had been complied with by the Police who carried out the writ issued by the Magistrate. Reference in this connection is invited to illustration (e) to Section 114 of Evidence Act which states that the court may presume that judicial and official acts have been regularly performed. In the report made by the Police, after compliance with the direction issued to them, it was stated that a copy of the order had been affixed to the land in dispute in the presence of the parties and that its contents had been read in their presence and within their hearing.. Actually, the attachment of the land was also effected in the presence of the parties. Hence, I repel the point raised by Shri Nilamani Singh.

12. This takes me to the second question debated in the Court, namely, that the Magistrate having failed to peruse the written statements filed by the parties and the affidavits and documents relied upon by them the entire proceedings have to

be quashed. A large number of authorities was cited in support of the proposition that the failure of the Magistrate to consider the affidavits and documents would make his order illegal. This proposition in its abstract form was not contested by the opposite counsel whose main plank in refutation of the contention was that the Magistrate had actually considered the affidavits as well as the documents relied upon by the two parties in support of their claim of possession over the land in dispute. The learned Additional Sessions Judge did not agree with the petitioner's counsel that the Magistrate had not perused the affidavits in the manner required by law. In his opinion the Magistrate had "perused the affidavits, discussed evidence and has properly appreciated it". He invited pointed reference to the case of Naina Sah and Another Vs. Ramrup Sah and Others, where it was held that the manner of the examination of the affidavits by a Magistrate cannot be uniform, that it will vary in each case according to the nature of the dispute between the parties and the contents of the affidavits, that in vast majority of the cases the affidavits filed by the parties are of stereotyped nature giving rise to difficulties in judging properly the truth or otherwise of the assertions contained therein, and that in consequence the Courts have to consider the affidavits in the light of the other evidence, if any, on the record. In para 9 of the Magistrate's order it is emphatically stated that he had carefully considered parties' evidence comprising a large number of affidavits and documents. Thereafter, the Magistrate proceeded to discuss firstly the affidavits and documents relied upon by the respondents herein and thereafter of the petitioners in a really serious and Judicial manner. Towards the close of para 12 of the order, he happened to record the finding that the evidence,, both documentary and oral (by the word oral he obviously meant the evidence in the shape of affidavits), weighed heavily in favour of the 1st party, namely, the respondents herein, on the point of possession on the date of preliminary order was passed. He concluded with the observation that the actual physical possession of the disputed land was definitely with the first party. In view of. the elaborate discussion done by the Magistrate of the entire material placed before him by the parties, I cannot accept the contention of Shri Nilamani Singh to the contrary.

13. The next point urged by Shri Nilamani Singh was that the Magistrate had taken into consideration certain documents filed by the first party which were clearly inadmissible in evidence for ,the reason that they had not been proved. On that premise he made the submission that the impugned order must be scrapped. In the category of inadmissible evidence, he listed the documents Exts. P/1 to P/10 and P/12. Ext. P/1 is a copy of the resolution passed by the residents of village Wapokpi Khunou on 15-1-1963. while Exts. P/5 to P/10 are copies of other resolutions passed from time to time by the promoters of the registered Society.

During the course of proceedings before the Magistrate, the original resolutions were produced before him and he happened to make a note on each of those documents that they had been compared with the original and found correct. In

addition, we have the affidavits of a large number of persons including K, Ibovaima Singh that all these resolutions had been duly passed in their presence. In face of this data I cannot accept the submission of Shri Nilamani Singh that the documents Exts. P/1 and P/5 to P/10 had not been properly proved. Exts. P/3 and P/4 are copies of the enquiry reports made by R. K. Sanahal Singh, an Inspector of Co-operative Societies, on the basis of his personal enquiries held in village Wapokpi Khunou on 4th and 5th of November 1963. On the authority of Abdul Sayeed Khan and Others Vs. Jagarnath Nonia and Another, it was urged by Shri Nilamani Singh that these two reports had not been properly proved.

Here again I regret my inability to agree with Shri Nilamani Singh. In that case the Magistrate happened to take into consideration two reports of the Police and another report made by one Anchal Adhikari though the same had not been relied upon by the parties nor was there any affidavit in proof thereof. However, in our case the two reports were relied upon by the first party, the documents Exts. P/3 and P/4 are certified copies of the original reports, and in addition there are a number of affidavits to the effect that Inspector Sanahal Singh had visited the village on 4th and 5th of November 1963 and after holding the enquiries had made the reports. It is also in the affidavits of the first party that the registration of their Society was effected and that of one sponsored by Th. Munal Singh was rejected on the footing of the reports made by Sanahal Singh. Consequently, the authority relied upon is clearly distinguishable on facts and so I repel the argument raised on the strength of it.

13A. Ext. P/2 is a certified copy of an application dated 21-2-1963 made by L. Modhu Singh, Secretary of the registered Society, to the Registrar of the Co-operative Societies, Manipur, There is the affidavit of that Modhu Singh affirming that he had made that application. Therefore, the document was properly proved and so the Magistrate could have taken it into consideration.

14. The document Ext. P/12 contains a list of persons who according to the petitioners were encroachers on the land now in dispute. In paras 16 and 17 of his written statement, supported by his own affidavit, K. Iboyaima Singh asserted that this list had been attached by the petitioners to the revision petition filed by them before the Chief Commissioner against the order dated 18-11-1966 by which 224.37 acres of land were settled with the first party. The first party wanted to establish that a large number of persons entered in that list were not eligible for getting settlement of the land in dispute. Shri Nilamani Singh urged that the authenticity of this list had not been proved. If this list was not authentic, it was open to Th. Munal Singh to seek the permission of the Court for controverting the same by putting in a counter-affidavit. This was never done.

The authenticity of that list is proved by the affidavits sworn by K. Iboyaima Singh and L. Modhu Singh, respectively the Chairman and the Secretary of the registered Society, I think these two affidavits constitute enough of evidence to prove the authenticity of the document specially when no attempt was made by Th. Munal Singh to challenge either those affidavits or the list before the

Magistrates. All that was held in *Raghunath Behera and Others Vs. Purna Chandra Mahanta and Others*, , an authority relied upon by Shri Nilamani Singh to support the point under discussion, was that private documents can be marked only on proof of execution unless they are otherwise admitted and that if the documents are not marked as exhibits, they cannot be used as legal evidence. These observations are unexceptionable but they do not help the point canvassed by Shri Nilamani Singh. The document was duly exhibited and its authenticity was established by the affidavits sworn by K. Iboyaima Singh and L. Modhu Singh.

15. Another point raised by Shri Nilamani Singh was that the learned Sub-Divisional Magistrate had not given full weight to the admissions made by K. Iboyaima Singh in the complaint which he lodged with that Magistrate on 14-3-1967 (copy Ext. D/7). True, that according to recitals in the document the persons mentioned as respondents therein and who are members of the unregistered Society had forcibly entered into possession of the land on 11-3-1967. However, the document relates to an occurrence of 11-3-1967 on which date the lands in Manipur lie vacant. The sowing starts in June after the monsoons have broken. The Sub-Divisional Magistrate was not concerned, I may emphasise, with the possession over the land in March 1967. The crucial date for him was 16-11-1967 when he passed the preliminary order. It is not improbable that just as the party of Th. Munal Singh had entered upon the land on 11-3-1967 when it was lying vacant, the party of K. Iboyaima Singh stole march over them when the time came for sowing the paddy crops in June or July 1967. We have the unequivocal finding of the Sub-Divisional Magistrate that it was the party of K. Iboyaima Singh who were in occupation of the land on 16-11-1967. I cannot dismiss that finding only on the footing that in Ext. D/7 it was admitted by K. Iboyaima Singh that on the morning of 11-3-1967 the other party had forcibly entered upon the land. The members constituting the registered Society are residents of" Wapokpi Khunou where the land is situate and so they could go conveniently to that land any time and assume possession over it. It is not the case of the present petitioners that his men remained present over the land all the 24 hours after the occurrence dated 11-3-1967.

16. Shri Nilamani Singh also founded some argument on the strength of entries in the Dag Chitha Ext. P/II pertaining to Dag No. 10063. According to those entries the land covered by Dag No, 10063 was in possession of Wapokpi Co-operative Collective Farming Society and 50 others including Th. Munal Singh and some persons now constituting his unregistered Society in the year 1961. It was the contention of Shri Nilamani Singh that if Th. Munal Singh and some of his associates were in occupation of the land in the year 1961, the Magistrate should have presumed that they continued in possession until the date of the preliminary order. That argument is self-defeating.

If Th. Munal Singh and his associates could be presumed to have continued in possession from the year 1961 until 16-11-1967, the members of the registered

Society could also legitimately claim an identical presumption in their favour for they were also recorded as in possession in 1961. However, it was the clear-cut case of both the parties that no person belonging to the other party was in possession of the land on 16-11-1967. Therefore, nothing turns on the basis of entries in Ext. P/II. We have the definite assertion of K. Iboyaima Singh that disputes cropped up between the two parties sometime in the year 1962. It was on 15-1-1963, vide Ext. P/I, that the residents of Wapokpi Khunou passed a resolution for organising a Co-operative Society comprising only of the genuine inhabitants of that village. Therefore, it looks obvious that by that date the leaders of the two groups, namely. K. Iboyaima Singh and Th. Munal Singh, had parted company. Hence, the entries in the Dag Chitha for the year 1961 had no probative value for the state of affairs on 16-11-1967.

17. Shri Nilamani Singh also relied heavily on the recitals in Ext. D/8, a copy of the allotment order dated 18-11-1966 by which 224.57 acres of land were settled with the registered Society. It is mentioned in that document that "delivery of possession will be made by the Asst. Survey & Settlement Officer, Moirang camp, on production of receipt for depositing premium". The precise argument raised was that if the members of the registered Society were in possession of the land on 18-11-1966, there could have been no occasion for the Director of Settlement to mention in the order that the delivery of possession shall take place on the production of receipt showing the deposit of premium. The learned Magistrate took note of this objection on behalf of the second party, the petitioners in this Court, and dismissed the same with the observation that the delivery of possession contemplated in the allotment order was symbolic and not physical delivery. The Magistrate observed further that it is common knowledge that the settlement of Government land, in which category the land in dispute fell on 18-11-1966, is normally made in favour of the person or persons who are already in "occupation thereof. It was not denied by Shri Nila. mani Singh that preference is given in Manipur in the matter of settlement of khas land to the persons who have effected encroachment on such land. Therefore, the view taken by the learned Magistrate appears to be quite reasonable and I can find no fault with it. Hence. I find no merit in the argument raised.

18. The last point urged by Shri Nila-mani Singh was that the affidavits of some neighbours of the land in dispute produced by Th. Munal Singh had been rejected not on any rational basis but with the untenable observation that those affidavits were counter-balanced by affidavits relied upon by K. Iboyaima Singh of some persons holding land in the neighbourhood. The rejection by the Magistrate of the affidavits of the neighbours for the reason stated, I admit, is not very scientific. "But on that account alone I cannot agree that the impugned order suffers from any infirmity. It was the case of K. Iboyaima Singh right from the start that Th. Munal Singh had entered into conspiracy with the encroachers on the north of the land in dispute to deprive them (Iboyaima Singh and his associates) of the possession of the land in dispute over which they had sunk money and sweated to reclaim it. Hence, it is not surprising that the affidavits of

persons occupying the land on the north of the land in dispute were dismissed as unreliable.

19. After going through the massive record of the Magistrate's file comprising about 250 pages the impression left on my mind is that Th. Munal Singh tried to build his case on spurious and faked material. In his Court statement dated 16-9-1968, copy Ext. P/16, Th. Munal Singh deposed that the channel between the lands in dispute in this case and the other case they started to construct in the year 1962 that they secured some financial help from the Government in that connection, and that there was a document to prove the latter fact. However, in his affidavit dated 19th July 1968 he made no mention of the fact that any Government aid had been secured for digging the channel. Instead, he affirmed that financial assistance had been granted to him for building an earthen bund around the land in dispute and he placed reliance upon documents marked Exts. D/2 and D/3 in support of that assertion. It is not possible to reconcile the two statements made by the same person on solemn affirmation on two different dates.

In one statement he affirmed that the financial aid was secured for digging the channel and in the other his stand was that Government gave him some money for constructing the bund. Further, the documents Exts. D/2 and D/3 do not establish that any monetary aid had been given to Th. Munal Singh for construction of the bund around the land in dispute which admittedly is situate in village Wapokpi Khunou. The document Ext. D/3. which is dated 14-2-1968, shows that some money had been agreed to be paid by the President of India to Shri W. Samungoti Singh, Pradhan of Gram Pan-chayat, for execution of some excavation work. However, the certificate Ext. D/2 reveals that the money had been given by the President of India for construction of a kacha bund in village Ithai.

Further, we are concerned with the lands in village Wapokpi Khunou and the bund around that land while Ext. D/2 relates to a bund in the adjoining village Ithai. I regret that Th. Munal Singh should have relied upon documents Exts. D/2 and D/3 to establish his contention that it was he who had constructed the bund around the land in dispute with some financial aid received from the Government.

20. Ext. D/14 is a copy of the order dated 1-4-1967 passed by the Sub-Divisional Magistrate, Bishenpur. in proceedings u/s 107, Cr.PC initiated by K. Iboyaima Singh against Th, Munal Singh and 14 others. The Magistrate referred the matter for an enquiry and report to the Police before summoning Th. Munal Singh and others. The Police reported that the possession over the land in dispute was with K. Iboyaima Singh. This document obviously helps K. Iboyaima Singh and goes against Tn Munal Singh. I cannot comprehend what object Th. Munal Singh had in view when he produced this document before the Magistrate.

21. The conclusions listed above leave no room for doubt on the point that the Sub-Divisional Magistrate had correctly reached the finding that it was the

registered Society which was in occupation of the land on 11-11-1967. I am also satisfied that the final order made by him does not suffer from any legal infirmity. Hence, I decline the reference made by the Additional Sessions Judge respecting the revision petition No. 2 of 1969 arising out of the Criminal Misc. Case No. 54 of 1967.

22. I now take up the consideration of the recommendation made by Shri P. N. Roy in reference to Criminal Misc. Case No. 15 of 1968. The stand of the two parties relevant to this case, as revealed by their written statements, was completely identical with that adopted respecting 41 paris of land involved in the other case. Hence I need not burden this judgment by reproducing the facts even briefly. Suffice to say that in this case, as in the other, it was K. Iboyaima Singh who moved the Sub-Divisional Magistrate on 14-5-1968 by an application u/s 107, Cr.PC complaining interference on the part of Th. Munal Singh and his party in his possession over 59 Paris of land. An incident dated 11-5-1968 was narrated in the application and the prayer made was that respondents of the application should be bound down for keeping the peace.

That application was followed, again as in the first case, by another moved by Th. Munal Singh on 25-5-1968 for taking action against 20 persons u/s 144 Cr.PC. Both the applications were referred by the Magistrate to the Police for enquiry and report. The Police submitted their report on 29-5-1968 stating that K. Iboyaima Singh and his party men were in possession of the land. The Magistrate passed the preliminary order u/s 145(1), Cr.PC on 30th May 1968. He also directed the attachment of the land involved in the dispute. Unlike in the first case, here the Magistrate did not specify in the preliminary "order the parties on whom the notice of the order was to be served though in the heading of the order 42 persons including Th. Munal Singh were described as the first party and K. Iboyaima Singh as constituting the second party.

The Police made a report dated 7-6-1968 to the Magistrate that the land had been attached and that a copy of the notice had been affixed at a conspicuous place of the land in dispute. Another fact mentioned in that report was that copies of the order were furnished to the parties concerned and their signatures taken. However despite that insertion in the report, parties' counsel were agreed in this Court that out of 42 persons comprising the first party notice had "been served only on five including K. Iboyaima Singh. The point which therefore arises for determination is whether on account of non-service of notice on the remaining 37 persons of the first party the proceedings stand vitiated. I think that that result cannot ensue in the context of the circumstances that I am going to narrate.

23. It is as clear as pikestaff that the battle for securing possession over and settlement of the land has been fought by the interested persons on party lines, one party headed by Th. Munal Singh and the other by K. Iboyaima Singh. Again, the parties are agreed that possession over the land had been exercised by one party or the other in their capacity as members of a Society and not on individual

basis. On 7-6-1968 land measuring 59 paris was attached by the Police pursuant to the direction issued in the preliminary order dated 30-5-1968 and that attachment was effected in the manner required by law. A copy of the order issued by the Magistrate was also affixed on some conspicuous place of the attached land.

The written statement filed on behalf of the first party on 8th of November 1968 was signed by Munal Singh, Khamba Singh and Kulachandra Singh, and it was thumb marked by W. Iboton Singh. Down below those signatures the writing made was: "1st party ? on behalf of themselves and other persons of the party." In the affidavit filed by Th. Munal Singh on the same date he happened to affirm in the first" para: "That I and my men numbering more or less 60 persons including some of those" now arrayed as 1st Party in the present case formed themselves into a Co-operative Society?". The underlined words indicate plainly that it was Th. Munal Singh who was the unchallenged leader of the first party. Besides the four signatories of the written statement, another two persons out of 42 happened to swear affidavits on behalf of the first party, and another four submitted some petition before the Sub-Divisional Magistrate in the present case.

The case remained pending before the Sub-Divisional Magistrate for about 6 1/2 months,, the preliminary order having been passed on 30th of May 1968 and the .final order having been made on 10th December 1968 by the Police, neither of the two parties could have ploughed that land or raised the crops thereon. All these facts when considered cumulatively in the background provided" by a long drawn out conflict, dating back to January 1963, between the two parties to secure settlement of the land in dispute, leave no scope for doubt that persons belonging to the party of Th. Munal Singh had full knowledge of the proceedings before the Magistrate. It may appropriately be added that the Society sponsored by Th. Munal Singh has not vet been registered and as such it may be safely presumed that the expense involved on the litigation must have been raised by subscription, contributed by the members of Munal Singh's party, and so none of them could be oblivious that their dispute with the party of K. Iboyaima Singh had gone to the Court.

24. There is conflict of judicial opinion in India, as stated earlier, on what are the consequences of non-compliance with the provisions of Sub-section (3) of Section 145. According to one view, these provisions are of mandatory nature and on failure to comply therewith the proceedings are without jurisdiction and the final order made invalid. The contrary view is that the non-compliance does not affect the jurisdiction of the Magistrate and it is at the best an irregularity which may invalidate the proceedings where the parties are prejudiced by reason of such irregularity. I do not propose to discuss the merits of the two views for I think that the present case can be disposed of, like the first one, on the basis of its peculiar features without giving any finding on which of the two views is more rational. It was held in the case of Parmatma and Others Vs. State and Another, that non-service of notice of the proceedings started u/s 145 on two out of the

four brothers, who are presumably joint, though irregular will not vitiate the proceedings as the non-served brothers had been. effectively represented by the other two before the Magistrate. The Judicial Commissioner's Court, Nagpur. held in the case of Bhure Khan v. Fakira AIR 1924 Nag 171 , that where the parties concerned had full knowledge of the proceedings from start to finish, an omission to serve notice on them and to affix a copy of the Court's order as required by Sub-section (3) is an irregularity curable by Section 537 of the Code. It was held by the Allahabad High Court in the case of Nanhe Mal and Others Vs. Jamil-ur-Rahman and Others, that though there is no provision in the Criminal Procedure Code corresponding to 7 Rule 8 of Order 1 of the Civil Procedure Code, still the Magistrate would be justified in choosing in a case of dispute between two communities who out of them shall act as their representatives. In the present case, as shown above, four persons including Iboyaima Singh filed the written statement in a representative capacity, and in view of the facts marshalled above I have no misgivings that those four persons had fought the case in a representative capacity with the consent and knowledge of the others whom they professed to represent. It is not a mere coincidence that the Revision Petition No. 1 of 19G9 in the Court of the Sessions Judge was filed only by Th. Munal Singh in his capacity as "1st party". It is correct that the rest of the 41 persons constituting the first party were cited as respondents Nos. 2 to 42 in that revision petition but that circumstance is not of much consequence.

That course was obviously adopted to forestall any technical objection on behalf of K. Iboyaima Sinh and his party inasmuch as those persons had been mentioned by names in the preliminary order as constituting the first party along with Th. Munal Singh. If any of those 41 persons had individually felt aggrieved with the proceedings before the Sub-Divisional Magistrate and was further of the opinion that his interest would not be fully safeguarded by Th. Munal Singh, he would have rushed to the Court of Session with a revision petition.

Therefore, this Court cannot attach any importance to the fact that a few of them subsequently presented an application before the Sessions Judge stating that they had been prejudiced by non-service of notice on them. That application appears to have clearly been procured by Th. Munal Singh to help him score against the party of K. Iboyaima Singh in the Court of Session. People sitting on the fence until adverse order is passed cannot be heard subsequently to complain about it, and this is especially so when they do not challenge that order, as here, by taking recourse to the legal remedy provided for the purpose.

25. As a result of the above discussion I hold that Th. Munal Singh and three others had fought the case in a representative capacity, that in consequence no prejudice in the eye of law had been caused to any member belonging to the party of Th. Munal Singh, and that they are bound by that order unless, of course, it is set aside on some ground other than non-service of notice on them.

26. All other points raised by Shri Nilamani Sinh respecting this reference were identical with those raised in connection with the other reference, and since I

have exhaustively dealt with them above, I see no necessity of repeating what I have said there. However, I am tempted to refer to the affidavit filed by Shri Moirangthem Munal Singh, the Pradhan of Kumbi Gram Panchayat, which was filed on behalf of K. Iboyaima Singh. The witness affirmed that Kumbi Gram Panchayat comprises a number of villages including Ithai, Kumbi and Wapokpi Khunou, that both the parties to the case are known to him, and that he has knowledge about the nature of the dispute between them. He swore further that it was K. Iboyaima Singh who reclaimed the entire area comprising about one hundred paris and that this area has been in possession of K. Iboyaima Singh and his party members for a long time. In para 6 of the affidavit the witness said in reference to the list of 61 members of the proposed Society sponsored by Th. Munal Singh that those entered at Serial Nos. 37 and 41 had died about five years ago, that those mentioned at Serial Nos. 36, 40, 48, 53, 56 and 59 are minors below the age of 1." and as such not in a position to do cultivation, and that those entered at Serial Nos. 4, 7, 8, 34 and 61 are active members of the Society of K. Iboyaima Singh. He stated further that persons entered at Serial Nos. 2, 3, 5, 6, 9, 17 to 20, 23, 43, 44, 51; 52, 54 and 57 are adult residents of Wapokpi Khunou, Kumbi and Ithai Rhunou, while the rest are not residents of either of those villages or any villages close to them. He said in the next para 7 of the affidavit that persons entered at Serial Nos. 2, 3, 5, 6, 9, 17 to 20, 23, 43, 44, 51, 52, 54 and 57 never possessed or reclaimed any part of the land in dispute, nor constructed any bund around that land. In the last para 9 of the affidavit he affirmed that none out of 61 members of the first party (headed by Th. Munal Singh) excepting those who happen to be members of the second party (led by K. Iboyaima Singh) cultivates or possesses the land in dispute, Shri M. Munal Singh, the deponent, is not proved to be a partisan witness. In view of his unique position in the locality as a Pradhan of the Panchayat, his affidavit has to be taken at face value. Therefore, K. Iboyaima Singh has successfully established that it was he and his party who were in possession of the land on the date of the preliminary order.

27. As a result of the conclusions recorded above, I decline the reference in connection with both the cases with the consequence that the final order made by the Sub-Divisional Magistrate will hold good in each case.