
(1961) 09 GAU CK 0002
In the Gauhati High Court

U. Join Manick Syiem

APPELLANT

Vs

U. Rose Mohan Roy Myntri and Others

RESPONDENT

Date of Decision : 19-09-1961

Acts Referred:

Constitution of India, 1950 — Article 244, 366

Penal Code, 1860 (IPC) — Section 124A, 147, 153, 380, 384

Citation : (1963) CriLJ 417

Hon'ble Judges : G. Mehrotra, C.J;S.K. Dutta, J

Bench : Division Bench

Judgement

G. Mehrotra, C.J.—The petitioner U Join Manick Syiem has tiled this petition challenging the order passed by the Additional Deputy Commissioner, Shillong. The proceedings arose before the Additional Deputy Commissioner on a report by the officer-In-charge of the Cherra police station.

The case set up by the opposite parties was that U Debindra Nath Khongsit, one of the Ekhot Dorbaris of the Cherra Seimship was in actual possession of the Laitryngew Office of the Cherra Siemship since the 18th November 1957 under the supervision at first of late Myntri Harrison Dohling and then of U Rose Mohan Roy Myntri.

On the 12th November 1960 the persons arrayed as Second party numbering 2 to 10 in the petition betel the Additional Deputy Commissioner, at the instance of second party No. 1 who is the petitioner before this Court, entered into the office building by breaking open the lock on the door at 10-30 A.M. The Darbar Siem of the Cherra Siemship on the 16th November 1937 had decided that U Debindranath Khongsit should take charge of the Leitryngew Office from the 18th November 1957. Accordingly he took charge of the said office. This arrangement was subsequently confirmed by the Darbar Hima on the 17th September 1958.

The petitioners before the Additional Deputy Commissioner, Shillong (hereinafter called "the first party") prayed under the application that there being a dispute tending to the possession of the office building and there being a likelihood of the

breach of peace, action should be taken u/s 145, Cr.P.C. The additional Deputy Commissioner by his order dated the 17th April 1961 declared the first party to be entitled to possession until evicted therefrom in due course of law and directed the second party not to interfere with the possession of the first party. The first party were directed to be restored to the possession of the Laitryngew Office.

2. The contention raised by the present petitioner is that he is the Siem of the Cherra Siemship and has been the executive authority of the Siemship for the last forty years. In 1957 on the report of a Commissioner appointed by the Siem of serious irregularities and shortage of Rs. 5,198/- the Siem suspended all the three Officers of Laitryngew Office and appointed new ones in their place. U Debindra Nath of the first party and two others were requested to help supervising the works of the Office. Gradually U Debindra Nath started having absolute control over the tolls and levies. He was prohibited from doing so.

About the 1st September 1958 U Debindra Nath and U Rose Mohan Roy Myntri and others forcibly entered into the office and drove away the officer-in-charge U Bristerwel. A case was filed by the Siem against U Debindra Nath and others under Sections 147/380/384, Indian Penal Code. The case was ultimately withdrawn on U Debindra Nath's tendering apology and at the Darbar on the 28th November 1959 a settlement was arrived at between the parties. In accordance with the resolution of the Darbar dated the 28th November 1959 U Debindra Nath handed over papers of the office and rendered accounts of collections up to 18th December 1959 to the men appointed by the petitioner. He was however allowed to supervise the work.

After sometime in October 1960 he again started working against the instructions of the Siem and the Siem issued orders removing him and the two Assistants from their office and directing them to hand over the papers to U. Bristerwel and others. U. Debindra Nath avoided carrying out the direction of the Siem and he with the other two who had been removed, went away with the keys of the office. So on the 12th November 1960 the office of the Siem on the orders of the Siem broke the locks of the office and have been running the office smoothly since then.

3. The case of the petitioner on merits therefore, is that as a Siem he was entitled to take possession of the office and if in the exercise of that right he directed his men to break open the lock and take possession of the office, there was no dispute within the meaning of Section 145, Cr.P.C. which could be the subject matter of any order under the aforesaid section.

4. The Additional Deputy Commissioner has set out in his order the case of each of the parties. The first party's contention is that he took over charge of the office on the 18th November 1957 in pursuance of a decision arrived at by the Darbar Siem of the Cherra Siemship held on the 16th November 1957 which was subsequently confirmed by the Durbar Hima on the 17th September 1958. As the

officer-in-charge of the office U Debindra Nath collected tolls and levies. This continued till the 12th November 1960 when the second party forcibly entered into the office by breaking open the locks of the office. The second party's contention was that any decision arrived at by the Darbar Hima not presided over by the Siem was not valid and would not bind the Siem.

The Additional Deputy Commissioner has observed that in proceedings u/s 145, Cr.P.C. the validity of the constitution of the Darbar was not to be decided. He has disbelieved the case set up by the present petitioner that after the filing of this criminal case the matter was amicably settled and U Debindra Nath handed over the charge to the men of the petitioner and rendered accounts of the collections up to the 18th December 1959. He has however, found that there are materials on the record to show that U Debindra Nath submitted a statement of accounts from June 1959 to 18th December 1959 to the second party on the 29th December 1959. But from this fact it could not be inferred that U Debindra Nath had actually handed over the possession of the building to the petitioner and that he ceased to be in actual possession of the office from that day. The order of suspension issued by the petitioner was resented to by the Myntries. The Darbar had taken some action against the Siem on the 29th November 1959 and had passed a resolution for his suspension and forwarded It to the District Council for action.

He has in effect come to the conclusion that U Debindra Nath was in actual possession of the Laitryngew office from 18th November 1957 to 12th November 1960 in pursuance of the decision of Darbar Siem held on 16th November 1957 and that he was forcibly dispossessed by the second party on 12th November 1950 and thus the first party should be treated to be in possession of the land.

5. Before dealing with merits of the petition a preliminary point raised by the petitioner's counsel has to be disposed of. In fact the case has been referred to this Bench by the learned single Judge as the preliminary point raised by the counsel for the petitioner as to the maintainability of the application u/s 146, Criminal P.C. before the Additional Deputy Commissioner Is of some importance. The contention of the petitioner is that the provisions of the Criminal Procedure Code do not apply to this area and consequently the Additional Deputy Commissioner was not empowered to deal with the matter u/s 145, Cr.P.C. The contention is that there is no other law in force in this area under which the Additional Deputy Commissioner could decide the disputes relating to the land in a manner provided u/s 145, Cr.P.C. The question of jurisdiction does not appear to have been raised before the Deputy Commissioner. As however It goes to the very root of the matter, this Court cannot shut It out in revision.

6. The contention of the opposite party is that the territory of Cherra Siemship within which the office Is situate, territorially forms part of the State of Assam. Section 1(2) of the Cr.P.C. provides that the Act will extend to the whole of India except the States of Jammu and Kashmir and Manipur. The words "the whole of India except the States of Jammu and Kashmir and Manipur" were substituted by

the Adaptation Orders 1948 and 1950 and Act 1 of 1951. As the territory in which the office is situated is a part of the Indian territories, the Cr.P.C. by its own force applies to this territory. This argument loses sight of the other part of the sub-section which provides that

But, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force, or shall apply to-

(a) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;

(b) heads of villages in the State of Madras; or

(c) village police officers in the State of Bombay: Provided that the State Government may, if it thinks fit by notification in the official Gazette, extend any of the provisions of this Code with any necessary modifications, to such excepted persons.

Even if it be accepted that the Cr.P.C. extends to the territory in question, still the provisions of the Criminal Procedure Code will not affect any special or local law now in force in that territory.

7. In the year 1937 the Governor of Assam in the exercise of the powers vested in him by Section 6 of the Scheduled Districts Act XIV of 1874 made certain rules for the administration of Justice and police in the Khasi and Jaintia Hills. The Justice was administered in this area in accordance with the aforesaid rules. Thereafter on the 25th January 1950 the Khasi Settlements (Administration of Justice) Order 1950 was made by the Governor of Assam and the administration of Justice was carried on in accordance with the aforesaid provisions in this area. There was thus a local law in force in this area dealing with the administration of Justice on the relevant dates and the provisions of the Cr.P.C. will not affect such a law.

It should also be pointed out that by a notification issued by the Chief Commissioner published in the Assam Gazette of the 4th August 1898 in the exercise of the powers conferred by Section 2 of the Assam Frontier Tracts Regulation, 1880, the Cr.P.C. ceased to be in force in the Khasi and Jaintia Hills. There was no notification issued by the Governor of Assam under paragraph 12 of the Sixth Schedule of the Constitution applying the provisions of the Cr.P.C. to this area, nor the Governor made any regulation in modification of the Administration of Justice Order already referred to, for the purpose of administering Justice in this area under the transitional provisions of paragraph 19 of 6th Schedule to the Constitution.

Apart from it, even if the Cr.P.C. applies, Section 145, in terms only gives power to the District Magistrate, Subdivisional Magistrate or Magistrate of the first class to draw up proceedings. The "District Magistrate" and the Subdivisional

Magistrate" are defined in Sections 10 and 12 of the Criminal Procedure Code. The expression; "Additional Deputy Commissioner" does not come in any of these definitions. Unless therefore, there was any order In force modifying the terms of Section 145, Criminal P.C. so far as the area In question is concerned no action could be taken by the Additional Deputy Commissioner u/s 145, Criminal P.C.

8. The next question, however, which arises for consideration is if there is any other law In force in this area under which the Additional Deputy Commissioner could decide disputes between the parties relating to land similar to that contemplated u/s 145, Criminal Procedure Code.

9. Article 244(2) of the Constitution provides that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam. Paragraph 1 of the Sixth Schedule lays down that the tribal areas In each item of Part A of the table appended to paragraph 20 of the Schedule shall be an autonomous district and paragraph 20 of the Sixth Schedule provides that the area specified In Parts A and B of the table below shall be the tribal areas within the State of Assam. Item 1 of Part A of the Table Is the United Khasi-Jaintia Hills District. The effect of sub-paragraph 2 of paragraph 20 read with the proviso is that the United Khasi-Jaintia Hills District shall comprise of the territories which before the commencement of the Constitution were known as the Khasi States and the Khasi and Jaintia Hills District excluding any area for the time being, comprised within the cantonment and Municipality of Shillong. The area of Cherra Siemship Is thus included In Part A Item 1 of table of paragraph 20 and the administration of this area is to be governed by the provisions of paragraphs 1 to 17 of the Sixth Schedule.

Paragraph 2 of the Sixth Schedule prevides for the creation of a District Council for each autonomous district and the district council shall be a body corporate and shall have perpetual succession and a common seal and shall by the said name sue and be sued. Under paragraph 2 (4) of the said schedule the administration of an autonomous district vests in the District Council for such district.

Paragraph 2 (6) of the Sixth Schedule gives power to the Governor to make rules for the first constitution of District Councils. It further enumerates certain specific things which can be provided for in the rules. After the first District Council has been constituted, the power to make rules in respect of the matters enumerated in paragraph 2 (6) of the Sixth Schedule vests in the District Council. Paragraph 3 of the Sixth Schedule specifies the powers of the District Councils to make laws. The subjects are enumerated in this paragraph in respect of which the District Council can make laws. this paragraph lays down the items in respect of which the District Council can exercise legislative powers. The law made by the District Council have to be submitted forthwith to the Governor and unless assented to by him will have no effect.

Paragraph 4 of the Sixth Schedule provides that the administration of justice in the autonomous districts vests in the District Council and the District Council is given power under the aforesaid paragraph to constitute Village Councils or Courts for the trial of the suits and cases between the parties all of whom belong to scheduled tribes other than the suits and cases to which the provisions of sub-paragraph 1 of paragraph 5 of this Schedule apply to the exclusion of any courts in the State. This sub-paragraph also empowers the District Council to appoint suitable persons to be members of such village council or presiding officers of such courts.

Paragraph 5 (1) of the Sixth Schedule gives power to the Governor for the trial of suits or cases arising out of any laws in force in any autonomous district or region becoming a law specified in that behalf by the Governor or for the trial of offences punishable with death, transportation for life or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region to confer on the District Council the powers under the Criminal Procedure Code.

Paragraph 12 gives power to the Governor by public notification to apply any Act of Parliament or of the legislature of the State to the tribal area. He can also direct that certain Acts of the Parliament or of the legislature shall not apply to that area. Paragraph 19 deals with the transitional provisions. Till the District Council has been constituted, the administration of the District will vest in the Governor and the Governor in order to run the administration of the area till the District Council is constituted, has been given power to apply any Act of Parliament or of legislature by a public notification. The Governor has also been given power to make regulations for the peace and good government of any such area and the regulation can repeal or amend any Act of Parliament or of the legislature of the State or any existing law for the time being applicable to such area. The regulations made under the provisions of this paragraph by the Governor have to be submitted to the President and shall have no effect unless assented to by him.

10. An examination of these provisions leads to the result that the administration of the tribal area vests in the District Council and is to be run in accordance with the provisions of paragraphs 1 to 17 of the Sixth Schedule. The District Council has been given certain legislative powers to frame laws on certain matters enumerated in paragraph 3. The District Council has also been given power to administer justice by creation of courts and by conferring certain powers on them. With the exception of certain offences described in paragraph 5 in respect of them, the criminal justice is to be administered by the District Council itself or certain court and officers on whom the powers have been conferred by the Governor under the Criminal Procedure Code. Till the District Council is constituted paragraph 19 provides for the running of the administration by the Governor in the manner provided under the said paragraph.

In the present case it is not disputed, that the District Council has come into

existence. The question therefore, of running of the administration by the Governor under paragraph 19 of the Sixth Schedule does not arise in the present case. The entire administration of the autonomous district is thus to be carried on in accordance with the provisions of paragraphs 1 to 17 of the Sixth Schedule. As I have already pointed out earlier, there is no notification by the Governor applying the provisions of the Criminal Procedure Code to this area in the exercise of its powers under paragraph 12 of the Sixth Schedule. It can also not be said that the disputes similar in nature to those arising u/s 145, Criminal Procedure Code are disputes to which the provisions of paragraph 5 (1) of the Sixth Schedule shall apply. That being so, the District Council could constitute courts for the trial of suits and cases between the parties, all of whom belonged to scheduled tribes, similar to the one u/s 145, Criminal Procedure Code.

11. Sub-paragraph 4 of paragraph 4 of the Sixth Schedule provides that the District Council may with the approval of the Governor, make rules regulating the constitution of village councils and courts and the powers to be exercised by them under the paragraph and also to lay down the procedure for the trial of suits and cases under sub-paragraph (1). In the exercise of the powers conferred under sub-paragraph 4 of paragraph 4 of the Sixth Schedule to the Constitution, the District Council of the United Khasi-Jaintia Hills with the previous approval of the Governor of Assam, made certain rules called "The United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953", under which certain courts were constituted and powers of those courts are laid down. The courts provided under Rule 4 of these rules are - (i) Village Courts, (ii) Subordinate District Council Court and Additional Subordinate District Council Court and (iii) District Council Court.

The relevant rules which may be set out are Rules 21 and 22. They are as follows:

21. (1) A Subordinate District Council Court or an Additional Subordinate District Council Court shall not be competent to try suits and cases in respect of offences -

(i) under Sections 124A 147 and 153 of the Indian Penal Code,

(ii) under Chapter X of the same Code in so far as they relate to the contempt of a lawful authority other than an authority constituted by the District Council,

(iii) of giving or fabricating false evidence, as specified in Section 193 of the same Code, in any case triable by a Court other than a Court constituted by the District Council under these rules.

(2) Unless specially empowered by the Governor by notification in the Gazette, a Subordinate District Council Court or an Additional Subordinate District Council Court shall not be competent to exercise powers in -

(a) cases relating to the security for keeping the peace and good behaviour similar to those contemplated u/s 107 of the Code of Criminal Procedure, 1898;

(b) cases relating to the security for good behaviour from persons disseminating seditious matter similar to those contemplated u/s 108 of the same Code;

(c) cases relating to the security for good behaviour from vagrants and suspected persons similar to those contemplated u/s 109 of the same Code;

(d) cases relating to the security for good behaviour from habitual offenders similar to those contemplated u/s 110 of the same Code;

(e) urgent cases of nuisance or apprehended danger similar to those contemplated u/s 144 of the same Code;

(f) disputes as to immovable property of the nature similar to that contemplated u/s 145 of the same Code;

(g) cases in which a public servant who is not removable from his office save by or with the sanction of the Government of Assam or some higher authority is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.

(22).(1) Suits and cases referred in Rule 21 shall continue to be tried and dealt with by the existing Courts until such time as the Governor deems fit to invest the Subordinate District Council Court and Additional Subordinate District Council Court with such powers by notification in the Gazette.

(2) For the purposes of this rule the existing Courts mean the Courts of the Deputy Commissioner and his Assistants.

12. Rule 21 (1) is a complete bar to trials of suits and cases in respect of offences enumerated therein by the Subordinate District Council Court or the Additional Subordinate District Council Court. Rule 21 (2) deals with the powers which can be exercised by the Subordinate District Council Court or Additional Subordinate District Council Court after it has been specially empowered by the Governor by notification in the Gazette to do so; Rule 21 (2) (f) relates to disputes as to Immovable property of the nature similar to that contemplated u/s 145, Criminal Procedure Code. If specially empowered by the Governor by notification, the Subordinate District Council Court or the Additional Subordinate District Council Court could exercise powers similar in nature to that contemplated u/s 145 of the Criminal Procedure Code in respect of the disputes relating to Immovable property. Rule 22 makes provision for the trial of suits and cases referred to in Rule 21 till such power has been conferred by the Governor on the Subordinate District Council Court and Additional Subordinate District Council Court by the existing courts. Rule 22 [2] defines the existing, court as the court of the Deputy Commissioner and his Assistants for the purposes of this rule.

Reading these two rules together it will be apparent that the trial of the cases referred to in Rule 21 is to be dealt with by the Deputy Commissioner and his Assistants till such time as the power has been conferred by the Governor on the

Subordinate District Council Court and the Additional Subordinate District Council Court. Rule 26 provides that -

Whenever a Court of the District Council is satisfied that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of its jurisdiction, such Court shall refer the matter to the Deputy Commissioner through the Chief Executive Member and the Deputy Commissioner, whenever such a reference is made to him, shall take such action as he considers necessary under the law.

This rule also points out that the cases relating to disputes regarding land likely to cause a breach of the peace are to be dealt with by the Deputy Commissioner. If this rule is valid, this to my mind, clearly gives power to the Deputy Commissioner or his Assistants to decide cases of disputes as to Immovable property and to exercise powers similar to the one contemplated u/s 145 of the same Code in respect of cases. These rules have been framed in the exercise of powers under paragraph 4 (4) of the Sixth Schedule to the Constitution. It cannot be argued that the District Council was not competent to pass these rules. These rules were framed with the previous approval of the Governor of Assam.

13. Mr. Lahiri for the petitioner has very strongly contended that Rule 22 goes beyond the ambit of paragraph 4 (4) of the Sixth Schedule to the Constitution. Paragraph 4 according to his contention does not give any power to the District Council to confer any power to try suits and cases of a particular description on the Deputy Commissioner or his Assistants. The District Council under this paragraph is competent to create courts for trial of certain cases but it cannot confer such powers on the existing courts.

His second contention is that Rule 22 does not confer any such power. It only provides that the Deputy Commissioner and his Assistants will continue to try such suits, which necessarily presupposes an existing power in the Deputy Commissioner and Assistants to him to try such suits and cases under any existing law. the source of the authority to try such cases therefore has to be established under the provisions of the existing law and the source of such authority if any does not lie in Rule 22.

After the coming in force of the District Council, the administration of justice vests in the said Council. Paragraph 4 of the Sixth Schedule to the Constitution which I have already quoted, gives power to the District Council to create courts and sub-paragraph 4 specifically empowers the District Council to frame rules for regulating the powers to be exercised by such courts.

It cannot be doubted that under the provisions of paragraph 4 the District Council could have conferred under the rules power on the courts created by the District Council under the said rules to try suits and cases relating to disputes in respect of Immovable properties. If the District Council could have provided for the trial of such suits and cases by the courts created under the rule and such

courts could also have been invested with such powers by the Governor, the District Council could make a rule that such suits and cases will be dealt with by the Deputy Commissioner and the Assistants to the Deputy Commissioner till such power has been given to the courts created under the rules by the Governor. The power to frame rules regarding the administration of justice includes within its ambit the power to provide for the trial of suits and cases by the existing courts for such time as time District Council provides under the rules.

The District Council having exercised Its powers under paragraph 4 of the Sixth Schedule and having provided for the administration of Justice in this area, the administration of Justice could only be regulated by the provisions of ouch rule. If the Deputy Commissioner or Assistant to the Deputy Commissioner, entertains any such dispute, his power can only be referable to Rule 22 and not to any other law and unless It can be held that Rule 22 is beyond the rule making power given to the District Council under paragraph 4 of the Sixth Schedule to the Constitution, the source of the power to try such suits will be nothing else but Rule 22 and mere use of the words "continue to be tried" will not invalidate the rule.

14. The question may be examined from another point of view. Article 372 of the Constitution provides that all the laws in force in the territory of India Immediately before the commencement of this Constitution shall continue In force therein until altered or repealed or amended by a competent Legislature or other competent authority. By explanation to this Article the expretslon "law in force" includes a law passed or made by a Legislature or other competent authority In the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then In operation either at all or in particular areas. The effect of this explanation Is that the expression "law In force" Is wider in connotation than the words "existing law" In Article 366(10) of the Constitution. It Is under this provision that the rules for the administration of justice and police In the Khasl and Jaintla Hills made in the year 1937 can be regarded as law in force.

Article 372, however, provides for the continuance of "law in force" unless it has been repealed, The repeal may be express or implied. Paragraph 4 of the Sixth Schedule to the Constitution vests the administration of justice in the District Council and gives power to the District Council to frame rules for the regulation of the administration of justice in this area. When such a power has been exercised by enacting the rules of 1953, by implication the law relating to administration of justice other than the said rules cannot be regarded as being the law in force.

If that is the position, there will be no court which could try the offences under Sections 124A 147 and 153 of the Indian Penal Coda and other offences enumerated in Rule 21 of the 1953 Rules. If the administration of justice rules made in the year 1937 can be regarded as the law in force, there will be two parallel courts - one trying some offences under the Indian Penal Code and the

other trying other offences under the said Code. By Rule 58 the provisions in the Khasi States (Administration of Justice) Order, 1950 published In the Government of Assam's Notification dated the 25th January, 1950 and the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills published in the Government of Assam's Notification dated the 29th March 1937 stand repealed in so far as they relate to matters dealt with in these rules. If those rules stand repealed in express terms, the acceptance of the contention of the petitioner will mean that no court for the time being will be competent to try and deal with the; offences mentioned in Rule 21 of the 1953 Rules.

15. The next question which arises for consideration is whether the words "Additional Deputy Commissioner" will be included in the words "Deputy Commissioner". This point was never urged before and for the purpose of the present case it should be assumed that the expression "Deputy Commissioner" includes the "Additional Deputy Commissioner". In my opinion therefore, Rule 22 of the 1953 Rules gives power to the Additional Deputy Commissioner to deal with the cases relating to disputes as to Immovable property similar in nature to that contemplated u/s 145, Criminal Procedure Code and given him full powers to deal with such disputes in the manner contemplated u/s 145, Criminal Procedure Code.

16. Coming to the merits of the petition, in my opinion the petition should be allowed. There is no finding by the Additional Deputy Commissioner that the likelihood of the breach of the peace continues. The Additional Deputy Commissioner has only considered the question as to whether there was a likelihood of immediate breach of peace at the time of the passing of the preliminary order and he has come to the conclusion that on the 12th November 1960 at about 10.30 A.M. the second party broke open the lock of the office and forcibly entered into it and so there was a great tension between the parties. This being so he was inclined to hold that there was an apprehension of the breach of the peace which will justify the drawing up of proceedings u/s 145, Criminal Procedure Code. He has not come to any finding that the danger of the breach of the peace still continues. Nor has he applied his mind to the case set up by the present petitioner that after the lock was broken open by the second party, the work of the office is going on smoothly.

The power to deal with disputes relating to Immovable properties under the 1953 Rules is similar to that given to the Magistrates u/s 145, Criminal Procedure Code. The power u/s 145 is essentially for the maintenance of peace. Sub-section (5) of Section 145, Criminal Procedure Code provides that the Magistrate at the instance of any person can cancel his order provided he is satisfied that no dispute as aforesaid exists or has existed. The essence of the power u/s 145, Criminal Procedure Code being the maintenance of peace and to prevent breach of the peace. If the Additional Deputy Commissioner had applied his mind to the question of the likelihood of the breach of the peace, he may not have taken any action. But as I have already pointed out, he confined his investigation to the

existence of the likelihood of the breach of peace only on the date when the preliminary order was passed.

Reference in this connection may be made to the case of Bhinka and Others Vs. Charan Singh, The possession over the office claimed by the opposite party is only as an officer-in-charge of the office. He could not claim an exclusive possession over the building and even assuming that he did not hand over the charge of the office, it cannot be said that he could remain in possession of the office room in exclusion of the other members of public. The right of the opposite party in respect of the office was not such that he could exclude others from coming in the office. If therefore, he put the lock which excluded the other members of the public from entering into the office at the time when they were entitled to enter into the office, the members of the public had a right to open the lock and enter into the office so long as it did not result in any breach of peace.

17. The Additional Deputy Commissioner has not held that the opposite party had any right to exclude the other members of the public from entering into the office. Even therefore assuming that the petitioner as a Syiem had no authority over the opposite party and that he had not handed over charge as alleged by the petitioner, the petitioner was entitled to enter the office building and the powers of the Additional Deputy Commissioner could not be invoked under these circumstances under the provisions of Rule 22 of the 1953 Rules. The petitioner had come forward with a definite case that as a Syiem he had full control over the opposite party. The opposite party had to obey his instructions and as a Syiem he was entitled to enter into the office building. Without deciding that question the Additional Deputy Commissioner could not pass any order similar to one which could be passed u/s 145, Criminal Procedure Code in favour of the opposite party.

18. The case of the petitioner further was that the possession of the opposite party U Debindranath Khongsit even if it be assumed that he had not handed over the charge, was the possession for and on behalf of the petitioner and thus it cannot be said that when the petitioner himself took possession of the building, he dispossessed the opposite party U Debindra Nath Khongsit. The Additional Deputy Commissioner has not considered this aspect of the matter at all and he has not come to any finding that the possession of the opposite party U Debindra Nath can be regarded as possession of the petitioner himself. Having regard to the nature of the claim of the parties it was essentially a case for establishment of the right by either of the parties in a civil court and it was not a case where " the powers of the criminal court should have been invoked.

19. Dealing with the point raised by the petitioner that the Darbar Siem's decision of the 16th November 1957 and the resolution of the Darbar Hima dated the 17th September 1958 were ultra vires, the Additional Deputy Commissioner has held that this question cannot be investigated in the present proceedings, as he was only concerned with the actual possession. But he has assumed the

exclusive possession of the opposite party only on the ground that the present petitioner has failed to prove that the opposite party U Debindranath handed over charge amicably under a compromise. He has however found that the opposite party U Debindranath had submitted a statement of accounts from June 1359 to 18th December 1959 to the 2nd party on the 29th December 1959. This fact may be relevant in finding out the nature of possession of U Debindranath over the office building. Section 145, Criminal Procedure Code does not give power to the Magistrate to investigate into the question of right to possession, but there is no bar to the investigation of the question whether a particular party can be said to be in the constructive possession of the disputed land. A constructive possession will be as (much a possession in the eye of law as the actual physical possession.

20. In his report dated the 21st November 1960 the officer-in-charge of the Cherra Police Station has stated that on the 12th November 1960 at 10-30 A.M. the second parties other than second party No. 1 namely the present petitioner, forcibly entered into the office at Laitryngew by breaking open the lock of the door of the office and took possession of the entire office. He has further stated in his report as follows;

One U Debindro Khongsit who was the officer-in-charge of the said office and his party strongly objected but of no avail.

Now it appears that the said Khongsit party is trying to recoup the said office forcibly. But the Syiem party is also adamant and could try their utmost to keep the possession. As a result, there is every likelihood of serious breach of peace between the parties. And as such to avoid serious breach of peace, I have already submitted proceedings u/s 145 Cr.P.C. to be Oram up against both the parties and also to attach the said office immediately till the disposal of the proceedings. As the function of the office cannot be stopped for the interest at coal business at Laitryngew, I beg to suggest that D.C. United K-J. Hills may kindly, be moved to employ some suitable third party for the running of the office.

21. In the written statement filed by U Rosmohon Myntri and U Debindranath Khongsit of the first party as is mentioned that at first the chowkidar of the office wanted the key from U Rosemohon of the first party as desired by the second party on 12-11-60 and on refusal if the said U Rosemohon Myntri the second party people broke the lock and committed other mischiefs there regarding the said office and its papers and books. In paragraph 7 of the written statement they have mentioned that there is no Myntri of the Cherra Siemship siding with the time who alone has got no right of managing the affairs of the Siemship including the Laitryngew office. In paragraph 9 it is further admitted that the criminal case that by the Siem was withdrawn by him and U Debindra Nath Khongsit was thus allowed to continue in possession and management of the said office. The present petitioner in his written statement has set out his case.

22. U Ewell has filed an affidavit in support of the case of the first party. In

paragraph 3 of the said affidavit it is stated that the Siem alone without the Myntris in Durbar has got no power to decide important matters such as running the Laitryngew Cherra Office particularly as the Durbar Siem and Durbar Hima had already taken away all powers from the present Siem U Join Manik 3MB of Cherra Siemship and 2nd Party No. 1. In paragraph of the affidavit it is mentioned that on 12-11-60 U Bordra Singh and others of the second party except No. 1, that is the present petitioner, forcibly entered into the said office and dispossessed L) Debindra Nath Khongsit. To the same effect is the affidavit filed by other persons in support as the case of the first party.

23. Holando Lyngdoh, Secretary, Executive Committee, United Khasi-Jaintia Hills District Council has filed an affidavit in which he has stated that the Siemship is an administrative unit of the United Khasi-Jaintia Hills District Council and the Siemship maintains branch offices at Laitryngew, Bholaganj and Mawnihthied. The office belongs to the Siemship and the office collects tolls levies and cesses for the Siemship, one-eighth of which is credited to the District Council. The Chowkidar has also deposed about the incident of the 12th November 1960 but he has definitely stated that the petitioner was not one of those who came on that date and forcibly entered the office.

An affidavit has been filed by U Bronel Khonglji who claims to be the headman of Leitmauslang village. He has stated in the affidavit that the Cherra Siemship office at Laitryngew has been owned, managed and run by the Siem of Cherra through his officers and assistants now for many decades. He has further stated in paragraph 4 of his affidavit that no sane person could think of disputing with the Siem of Cherra regarding the right to own, manage or run the Laitryngew office for the purposes stated in the previous paragraph. He has further stated that there is no dispute noticeable to the general public of Laitryngew-Laitmauslang areas regarding the ownership, possession or management of the said Cherra Siemship office at Laitryngew at present. To the same effect is the other affidavits filed by the second party.

The second party has further filed the order of the Magistrate passed on the 30th December 1959 in the criminal case started by the petitioner against U Debindra Nath Khongsit and six others. The accused were discharged u/s 253, Criminal Procedure Code on the ground that the complainant had settled the case amicably and outside court and there was no hope of any good result or conviction in pursuing the case under the circumstances. For the peace of the people he allowed the petition of the complainant in which it was prayed that the accused should be discharged. From the proceedings of the Durbar held on the 28th November 1959 a copy of which has been filed along with the translation by the second party, it will appear that the matter was settled amicably and U Debindranath Khongsit who was also present there, was allowed to work as supervisor of the Laitryngew office of the Cherra Siemship. He had undertaken to submit accounts to the Siem.

24. Before that matter was put up before the Durbar, it appears that the matter

was settled before a committee and U Debindranath had agreed that the Siem would withdraw the criminal case and that he would render accounts to the Siem and the inhabitants and he will work as a supervisor. All these proceedings clearly show that the Siem was in control of the Siemship office and merely because U Debindranath was appointed officer-in-charge. It does not mean that he had a right to exclude the Siem from the possession of the office and any attempt on the part of the Siem to get into the possession of the office was dispossession of U Debindranath from the office. The Additional Deputy Commissioner has not given any finding on these points which were relevant for passing an order u/s 145, Criminal Procedure Code.

It is also clear from the case of the first party that the present petitioner who was second party No. 1, never forcibly entered on the 12th November 1960 into the office. No order therefore, could in any case be passed against the present petitioner. It is also not borne out by the materials on the record that there was any likelihood of the breach of the peace. In this view of the matter in my opinion this petition must be allowed. The order of the Additional Deputy Commissioner should be set aside.

S.K. Dutta, J.

25. I agree.

26. After the judgment was delivered, Mr. Lahiri, who appears for the petitioner, prayed that some direction should be given by this Court for delivery of possession to his client as the stay order passed by this Court could not be effected and the petitioner had already been dispossessed. We do not think that in this revision we can pass any order directing delivery of possession to the petitioner. As a consequence of the order passed by this Court if the petitioner has any remedy, he can approach the proper Court.