

(1962) 07 GAU CK 0001
In the Gauhati High Court

U.F. Siem and Others

APPELLANT

Vs

U. Lebanon Kherkongor and Another

RESPONDENT

Date of Decision : 31-07-1962

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 145, 439

Citation : AIR 1963 Guw 38 : (1963) CriLJ 565

Hon'ble Judges : G. Mehrotra, C.J

Bench : Single Bench

Judgement

G. Mehrotra, C.J.—This is a petition u/s 439, Cri.P.C. The relevant facts are that the Burrabazar Market is situated within the town of Shillong. Within the market there is the Myllem Siemship Police Station building. The property belongs to the siemship of Myllem. U Jormanik was the Siem of Myllem, appointed by the Governor of Assam under paragraph 19 of the Sixth Schedule to the Constitution. His appointment was approved by the District Council of United Khasi and Jaintia Hills. On 7th July 1959 the Executive Committee of the said District Council suspended U Jormanik with effect from 8th July 1959 and appointed one U Jum Singh as Acting Siem. The suspension order was challenged. By an order of the Supreme Court dated the 20th September 1960 the order of suspension dated the 7th July 1959 was held valid.

Thereafter the Executive Committee of the District Council by its order dated the 15th October 1960 reaffirmed the suspension of U Jormanik and he was directed to hand over charge of the Siemship to the said U Jum Singh. During the regime of U Jor Manik's Siemship opposite party No. 1 U Lebanon Khatkoiigor, a Myntri to the Durbar, was appointed to be in charge of the said Bazar. On 26th October 1960 U Jum Singh, acting Siem of Myllem, convened a Durbar and in that Durbar it was decided that the three Cabinet Myntries were to be replaced and U James Myntri who is petitioner No. before this Court, was put In charge of Bara Bazar in place of opposite party No. 1.

On the 1st November 1960 petitioner No. 7 under instructions of the Acting Siem

took over the collection of the tolls from the permanent stall-holders and others. On the 2nd November, 1960 the collectors made certain collection of tolls. On the 3rd November 1960 the Acting Siem applied to the District Magistrate, Shillong for police protection as the collection of tolls by his nominee was being interfered with. The Subdivisional Magistrate, Shillong initiated proceedings under Section 145, Cr.P.C. and police was directed to attach Barabazar and the Tiana. The Executive Officer, Shillong Municipality was appointed to act as official receiver of the Barabazar to manage the market and to collect the tolls.

The petitioners before this Court were impleaded as first party in this proceeding and the opposite parties with some others were made second party. Parties were called upon to submit their written statements. Written statements were filed by both the parties in support of their respective claims. Though the parties filed documents in support of their case, the Sub-Divisional Magistrate by his order dated the 12th January 1981 declared possession of the second party U Lebanon (opposite party No. 1) and U Niha Singh (opposite party No. 2) on the Myllem Thana Building and the Barabazar market respectively and forbade any disturbance unto their possession until evicted therefrom by a competent court.

The Sessions Judge was moved against this order by the petitioners. The Sessions Judge however by his order dated the 15th December 1961 rejected the petition holding that he has no jurisdiction in the matter", inasmuch as the order passed by the Subdivisional Magistrate purported to be in his capacity as Assistant to the Deputy Commissioner and thus the Deputy Commissioner was the proper authority to entertain this petition. The present petition has been filed against the order of the Magistrate. The order of the Magistrate is challenged on a number of grounds.

2. Mr. Ghose for the petitioners contends that the dispute as regards the Siemship and the consequent right to manage the market is finally settled by the Supreme Court. There was thus no dispute in existence regarding an Immovable property and the question of passing an order u/s 145, Cr.P.C. did not arise. He secondly urged that the opposite parties claimed possession through the previous Siem and not in their own independent right. When the acting Siem appointed the other petitioners to manage the market and the validity of the appointment of the acting Siem could not be disputed, the petitioners had right to get possession and the right to remain in possession claimed by the opposite party could not be recognised.

It was then contended that in view of the nature of the property, the question of the right to remain in possession was relevant to ascertain the factum of possession. The nature of the property is such that only constructive possession was possible and to decide as to which of the parties was in constructive possession, the right to possession had to be determined. The Magistrate was not right in holding that the inquiry as to the right of possession was barred in the circumstances of the present case. It was lastly contended that if there was any apprehension of the breach of peace, proceedings u/s 107, Cr.P.C. could be

taken. But it was not a case for the exercise of powers u/s 145, Criminal Procedure Code.

3. It is immaterial to decide the question whether the Magistrate took cognisance as an Assistant to the Deputy Commissioner under the provisions of the Rules for the Administration of Justice and Police in the Khasi-Jaintia Hills or as a Magistrate u/s 145, Cr.P.C. as in any view of the matter it cannot be argued that this Court has no jurisdiction to revise the order passed by the Magistrate. As held by this Court in its decision dated 19-9-61 in Criminal Revn. No. 57 of 1961, Union of India (UOI) Vs. Prakash Ch. Sahu, , the Assistant to the Deputy Commissioner has power to take action similar to the one contemplated u/s 145, Criminal P. C. in view of R. 22 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953.

4. The admitted facts are that U Jormanik was the Siem of Myllem. His appointment by the Governor was approved by the District Council, United Khasi-Jaintia Hills. On the 7th July 1959 the Executive Committee of the District Council suspended U Jormanik with effect from the 8th July 1959 and appointed U Jum Singh as acting Siern. The order of suspension was challenged and ultimately the Supreme Court by its decision dated the 20th September 1960 : AIR 1951 SC 276, T. Cajee v. U. Jormanik Siem declared that the order of suspension dated the 7th July 1959 was valid.

The Executive Committee thereafter by its order dated the 15th October 1960 re-affirmed the suspension of U Jor Manik and asked him to hand over charge of Seimship to the said U Jum Singh. U Jum Singh took charge on 17th October 1960. The contention of the petitioners is that U Lebanon Kharkongor, a Myntri to the Durbar who was placed in charge of Bara Bazar under the Siem-ship by U Jor Manik, was removed from the charge of the Bazar and petitioner No. 7 U James Myntry replaced him and was in charge of the Bazar.

On the 1st November 1960 the petitioner No. 7 took charge of the collection of the tolls from the permanent stall-holders and others, and he along with the Deputy Siem U Francis Siem who is petitioner No. 1, took charge of the thana in the Bara Bazar. U Lebanon then came and interfered with the petitioners' right to collect tolls from the Bazar. Thereafter on the 3rd November 1960 the Acting Siem applied to the District Magistrate, Shillong for police protection in case collections were interfered with as on the previous day, i.e. 2nd November 1960.

The Sub-Divisional Magistrate on that application after getting police report initiated proceedings u/s 145, Cr.P.C. and the Bazar was attached. The Executive Officer, Shillong was appointed to act as Official Receiver of the Bazar. It will thus appear that the Supreme Court finally determined that U Jor Manik's suspension was valid and thus any action taken by him as Siem for the management of the Bazar cannot bind the, newly appointed Siem. There was thus no bona fide dispute with regard to the market and Section 145, Cr.P.C. will not be attracted. It does not appear what independent right the opposite party U Lebanon can

claim, apart from his appointment by U Jor Manik Siem as the Myntri in charge of the Bazar.

5. The relevant portions of Section 145, Cr.P.C. are as follows:

145. (1) Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information 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 his jurisdiction, he shall 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, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute and further requiring them to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims.

* * * * * 4. The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documents and affidavits, if any, so put in, hear the parties and conclude the inquiry, as far as may be practicable, within a period of two months from the date of the appearance of the parties before him and, it possible, decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in as to the facts contained therein:

Provided further that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

* * * * * 6. If the Magistrate decides that one of the parties was or should under the second proviso to Sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction, and when he proceeds under the second proviso to Sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

Section 145 is intended to provide a speedy remedy for the prevention of breaches of peace arising out of disputes relating to Immovable property by maintaining one or other of the parties in possession. The order is in the nature of a temporary order in regard to the possession of the property in dispute until

the parties get their rights determined by a competent court

The purpose of Section 145 is the prevention of the breach of the peace and not to provide parties with an opportunity of bringing their civil disputes before a Criminal Court or of manoeuvring for possession for the purpose of subsequent civil litigation. Sub-section (1) of Section 14b gives power to the Magistrate to issue an order asking the parties to file their written statements as regards the fact of actual possession of the subject of dispute. The proceedings can be initiated by the Magistrate if he is satisfied from a police report or other information that the dispute likely to cause a breach of peace exists. The existence of a dispute likely to cause a breach of peace is too foundation for the exercise of jurisdiction u/s 145 and the parties are called upon to put in their written statements as regards the fact of actual possession. Under Sub-section (4) the Magistrate after the perusal of the statements, documents and affidavits and after hearing the parties shall decide the question as to which of the parties was at the date of the order in such possession of the said subject. The Magistrate thus has to find out the actual possession of the parties. If therefore, the dispute exists in regard to a land which is likely to result in the breach of peace, the Magistrate can pass an order regarding the actual possession of the subject matter of the dispute.

The contention of the petitioners is that there exists neither a bona fide dispute likely to cause a breach of the peace, nor the opposite party in whose favour the order has been passed can be said to be in the actual possession. It is urged that the Supreme Court finally decided that the order of suspension of U Jor Manik was valid. That being so, there is no dispute in existence with regard to the right to manage the property and there is no likelihood of any breach of the peace as a result of the dispute between the parties. The Magistrate has rightly remarked that in the proceedings under Section 145, Criminal Procedure Code the Magistrate has only to decide about the fact of actual possession and not about the right to possession.

But when declaring that the opposite parties should remain in possession the Magistrate has held in favour of the opposite parties only on the finding that they being elected Myntris, have been exercising the right to collect tolls and thus they have got the right to remain in possession. The dispute relates to two properties. One is the right to collect tolls and the other is with regard to the police station building situated in the market. As to the right to collect tolls, from the very nature of the property there cannot be an actual physical possession of the property. The actual possession having regard to the nature of the property can only be of a right to collect. The opposite parties were as Myntris put in charge to collect the tolls on behalf of the Siem by U Jor Manik Siem. His suspension has been upheld. The new Siem had a right to arrange for the collection of the tolls and if he appointed the first parties to collect the tolls, it cannot be said that the opposite parties were in actual possession of the property in dispute. In the past when the opposite parties were making collection, they were doing so, on behalf

of U Jor Manik Siem and If the right of U Jor Manik Siem to make collection is terminated by his suspension, the opposite parties had no right to make collection and from the date the new Siem was appointed and he was handed over charge, the right to collect tolls wasted in him and possession of the opposite parties jessed.

6. As regards the police station the case of the first party was that on the 1st November 1960 when the Myntri appointed by the new Siem went to make collection along with U Francis Siem petitioner No. 1, they were obstructed by the old Myntri and they were not allowed to collect on the 1st and 2nd November 1960. In fact U Lebanon was arrested for his obstruction. The Magistrate has held that on the statement of the Acting Siem In the application made to the Deputy Commissioner It is clear that his party members were not allowed to take possession and to collect tolls and that he sought for police help to enable his Myntri to make the collection.

This statement clearly shows that the new Siem and his party represented by the first parties were never in possession on the date of the preliminary order, that is, the 3rd November 1960. At the same time if the opposite parties had made collection in the past their right to collect ceased on the suspension of the old Siem and, as the right to collect tolls was entrusted to another Myntri by the new Siem, the second party opposite parties cannot be deemed to be in actual possession even though they made collections in the past. As to the police station inside the bazar, the opposite parties cannot be said to be in actual possession after the charge was handed over to the new Siem. It is the new Siem who would be deemed to have come in possession after the charge was handed over and anybody who is in actual possession, his possession will in the eye of law be deemed to be for and on behalf of the new Siem.

There is thus neither a bona fide dispute existing, nor were the second party opposite parties in actual possession. If there was any likelihood of the breach of the peace, the Magistrate could have taken action u/s 107, Cr.P.C. But it is not a case where an order can be passed declaring the possession of the opposite parties over the petitioners before the Magistrate, The revision is allowed. The order of the Magistrate is set aside.