

THE HIGH COURT OF MADHYA PRADESH BENCH AT GWALIOR

(Single Bench — Rajendra Mahajan J.)

Miscellaneous Criminal Case No. 7910/2013

Rajendra Singh, S/o Shri Kunwarlal
Baghel, aged 46 years, R/o village
Hargnakhedi, Tahsil, Sironj, Distt. Vidisha
(M.P.).

Petitioner

Versus

1. Rajendra Singh, aged 52 years.
2. Raghuveer Singh, aged 54 years.
3. Surendra Singh, aged 48 years.
4. Indrabhan Singh, aged 40 years.
5. Chandrabhan Singh, aged 38 years.
6. Udaybhan Singh, aged 36 years.

All respondents are S/o Shri Chattar
Singh, R/o village Hargnakhedi, Tahsil
Sironj, Distt. Vidisha (M.P.).

7. State of M.P. through the District
Magistrate Vidisha.

Respondents

For petitioner :- Shri Pawan Singh Raghuvanshi,
learned counsel.

For respondents :- Shri R.K. Upadhyay, learned counsel.
No.1 to 6.

For respondent :- Shri Shiraz Quraishi, learned Public
No.7/State. Prosecutor.

ORDER

(Passed on the 9th day of November, 2017)

The petitioner has filed this petition under Section 482 of the Cr.P.C. against the order dated 24.07.2013 passed by the Additional Sessions Judge, Shironj, district Vidisha in Criminal Revision No.120/2012, whereby the learned ASJ has affirmed the order dated 10.07.2012 passed by the Sub-Divisional Magistrate Shironj, district Vidisha in Case No.227/145/2010 under Section 145 Cr.P.C. resultantly dismissing his criminal revision under Section 397 read with 401 Cr.P.C.

2. The necessary facts for adjudication of this petition are given below:-

(2.1) On 05.10.2010, the SHO, Police Station Pathariya, district Vidisha filed Istgasa (police report) No.6/2010 under Sections 145, 107 and 116 Cr.P.C. before the Court of Sub-Divisional Magistrate Shironj district Vidisha (for short "the SDM Court") stating therein that an agricultural land bearing Survey No.189 the total area about 1.202

hectare (for short “the land”) is situated at village Hargnakhedi under the territorial jurisdiction of Police Station Pathariya. Party No.1, the petitioner herein, and party No.2, respondents No.1 to 6 herein, are claiming their possession over the land. Therefore, the said dispute between the parties is likely to cause breach of peace.

(2.2) Upon the said Istgasa, Case No. 227/145/2010 (for short “the case”) came to be registered in the SDM Court.

(2.3) On 08.10.2010, the learned SDM passed an order under Section 145(1) Cr.P.C. directing the Police Pathariya to hand over the possession of the land on Supurdginama to one Dinesh Kumar S/o Salak Ram Baghel R/o Dhimroli until further orders.

(2.4) Later, the SDM proceeded in the case in accordance with the provisions of Section 145 (4) Cr.P.C. and received the evidence oral as well as documentary of party

No.1/petitioner and party No.2/respondents No.1 to 6. Party No.1/petitioner had given evidence to the effect that the land was the ownership of minor Ratan and Shivnarayan both the sons of Late Pappu. Their mother and natural guardian Rani Bai sold the land to him out of the family necessity vide the registered sale deed dated 08.01.2010 and handed over the possession of it. Ever since, he has possession over the land and he does cultivation thereon. On the basis of the sale deed, the land has also been mutated in his name in the revenue records. On the other hand, party No.2/respondents No.1 to 6 claimed that the land is in fact government land and the government had given the patta of the land to one Babua. After his death, the patta was transferred to his son Pappu. Upon the death of Pappu, the patta of the land was transferred to his sons Ratan and Shivnarayan appointing their mother Rani Bai as guardian. On

27.06.2008, Pappu gave the land for cultivation to Rajendra Singh S/o Chattar Singh respondent No.1 of party No.2 for a period of seven years i.e. till 30.05.2015 having taken Rs.60,000/- in cash from him in the presence of the witnesses. He also executed a document in this regard, which was duly notarized by him. As such, party No.2/respondents No.1 to 6 has actual possession over the land. They also took a legal objection in the case that Babua and his progeny are members of Sahariya tribal. Therefore, Rani Bai had no right to sell the land to party No.1/petitioner without seeking permission from the Collector Vidisha in view of the provisions of Section 165 (7-B) of the M.P. Land Revenue Code 1959 (for short the "MPLR"). Moreover, Rani Bai had no right to sell the land to party No.1/petitioner without seeking due permission in accordance with law because her minor sons are Bhumiswami of the land.

Hence, the sale deed executed by Rani Bai in favour of party No.1/petitioner is null and void *ab initio*.

(2.5) On 10.07.2012, the learned SDM passed the final order under Section 145 Cr.P.C. As per the last para of the order, the learned SDM has held that the land is patta land of the government. Therefore, the possession over the land cannot be declared either of party No.1/petitioner and party No.2/respondents No.1 to 6. The learned SDM has also restrained both the parties from going over the land directing the police Pathariya that if any of the party take forcibly possession of the land, then the preventive measures against the defiant party be taken. The learned SDM has further directed the Naib Tahsildar, Circle 4 to institute the proceedings for declaring the land qua the government land.

(2.6) Feeling aggrieved by the order of the learned SDM, party No.1/petitioner filed

Criminal Revision No.120/2012, which was decided by the Additional Sessions Judge Shironj vide order dated 24.07.2013, which is impugned herein. The learned ASJ has upheld the order passed by the learned SDM, dismissing the revision filed by party No.1/petitioner.

3. Learned counsel for the petitioner/party No.1 submitted that as per the proviso to Section 145(4) Cr.P.C., the Magistrate has to decide which party has possession over the land within two months next before the date on which the report is filed by the police concerned or other information received by him and if it is proved by evidence that one of the party in dispute has been forcibly and wrongfully dispossessed within the said period, then the Magistrate has to pass an order under Section 145(6)(a) Cr.P.C. restoring the possession of the dispossessed party. However, in the present case the learned SDM had not passed the order dated 10.07.2012 in accordance with the provisions of the aforesaid Sections. But he passed the order holding that the land being the government patta

land, therefore, possession of any of the party in dispute cannot be decided and declared over the land and directed the concerned Naib Tahsildar to proceed to declare the land is the government land. Thus, the learned SDM has passed the order exceeding his jurisdiction. Therefore, the order is patently illegal, perverse and arbitrary. He further submitted that the learned ASJ has not considered in the impugned order whether the order passed by the learned SDM is in accordance with the provisions of Section 145(4) Cr.P.C. but upheld the order of the learned SDM. Thus, both the orders be set aside with a direction from this Court to the learned SDM to decide in accordance with the provisions of Section 145(4) Cr.P.C. which party in the case has possession over the land and thereafter proceed further as per the provisions of Section 145(6) (a) Cr.P.C.

4. In reply, learned counsel for respondents No.1 to 6/party No.2 obliquely admitted that neither the order dated 10.07.2012 passed by the learned SDM nor the order dated 24.07.2013 passed by the learned ASJ is in accordance with the provisions of Sections 145(4) and

145(6)(a) Cr.P.C. However, he had brought to the notice of this Court that the SDM Sironj by the order dated 26.09.2011 passed in Case No.108/appeal/10-11 has struck off the name of petitioner as Bhumiswami over the land in revenue records and ordered that the name of said Ratan and Shivnarayan be recorded as Bhumiswami of the land in the revenue records.

5. Learned Public Prosecutor on behalf of respondent No.7/State supported the orders passed by the learned SDM and the learned ASJ.

6. I have considered the rival submissions raised at the Bar and perused both the orders and material on record.

7. To resolve the controversy raised in the present case, the relevant provisions of Section 145 Cr.P.C. are given below:-

Section 145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) Not relevant because the learned SDM has passed an order dated 08/10/2010 in the case thereunder.

(2) and (3) – Not relevant in the case.

(4) The Magistrate shall then, without

reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible decides whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which, the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Not relevant in the case.

(6)(a) If the Magistrate decides that one of the parties was, or should under the 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 proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(6)(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3.)

(7) to (10) – Not relevant in the case.

Upon the plain reading of Sub-Section (4) and its proviso, it is crystal clear in the case at hand that the learned SDM had to decide which party is in actual possession rightly or wrongly within two months next before the date on which the SHO Police Station Pathariya filed Istgasa and the learned SDM had no authority to decide the question of title over the land in the case. Upon the perusal of the entire material on record and the order of the learned SDM dated 10.07.2012, I find that both the contesting parties have adduced the oral as well as the documentary evidence claiming their actual possession over the land, but the learned SDM had not decided as to which party had actual possession over the land within the period as stipulated in Sub-Section (4) Cr.P.C. and its proviso. On

the other hand, the learned SDM has decided that the government has title over the land. Thus, the learned SDM has passed the order exceeding its jurisdictional competence. Therefore, the order dated 10.07.2012 passed by him is arbitrary, perverse and contrary to provisions of Section 145(4) Cr.P.C. In this connection, a reference may be made on the decisions rendered in Babulal S/o Karta and others Vs. Pratap Singh and others, 1999(1) MPLJ SN 32, Ramnaresh Singh Vs. Shyam Singh, 2011(3) JLJ 313, and Ashok Kumar Vs. State of Uttarakhand and others, (2013) 3 SCC 366. It is very unfortunate that the learned ASJ has not considered at all in the impugned order whether the learned SDM has passed the order within the sweep of Section 145(4) Cr.P.C. and its proviso but upheld the order of the learned SDM. Thus, the impugned order is also bad in law.

8. For the forgoing reasons and discussions, the order dated 10.07.2012 passed by the learned SDM and the impugned order dated 24.07.2013 passed by the learned ASJ are set aside and the case is remanded back to the Court of Sub-Divisional

Magistrate Shironj with a direction to pass an order *de nova* in terms of Sections 145(4) and 145(6)(a) and (b) Cr.P.C. on the basis of the evidence already adduced by the petitioner/party No.1 and respondents No.1 to 6/party No.2 without being prejudiced by the order dated 10.07.2012 and the order dated 24.07.2013 as expeditiously as possible. If the occasion arises in the case, the learned SDM may grant opportunities to the parties to adduce further evidence.

9. The State Government will have liberty to declare the land as government land following the due procedure of law.

10. In the aforesaid terms, this petition is finally disposed of.

**(Rajendra Mahajan)
Judge**

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