

in actual fact no violation of the Punjab Security of Land Tenures Act may occur by exercise of the right of pre-emption.

Bhupinder Singh  
v.  
Surinder Kaur  
and another

The other questions, as I have already mentioned, are questions of fact which cannot be raised in second appeal.

Dulat, J.

The result is that the appeal on behalf of the vendee fails and is dismissed while the appeal of the plaintiff-pre-emptor is allowed. The order of remand made by the learned Additional District Judge is set aside and the decree granted by the Court of first instance in favour of the plaintiff is restored. The parties will bear their own costs.

D. K. MAHAJAN, J.—I agree.

Mahajan J.

B.R.T.

#### REVISIONAL CRIMINAL

*Before A. N. Grover and S. K. Kapur, J.J.*

PARTAP SINGH,—*Petitioner*

*versus*

STATE,—*Respondent*

**Criminal Revision No: 194-D of 1964:**

*Code of Criminal Procedure (Act V of 1898) —S. 145—Applicability and scope of—Whether applies to evacuee property acquired under S. 12 of the Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954).*

1965  
April, 6th.

*Held*, that the object of section 145 of the Code of Criminal Procedure is to bring to an end by a summary process disputes relating to properties which are in their nature, likely, if not supposed, to end in breaches of the peace. The section was enacted for the maintenance of public peace, law and order and the fact that the property vests in the Central Government would not have the effect of abrogating the provisions of section 145, Criminal Procedure Code. Section 145, Criminal Procedure Code, is designed to protect deprivation of possession by persons taking law into their own hands and has no concern with determination of any legal right to possession. It does not seek to perpetuate illegal possession but merely directs the subjects

to assert their rights in accordance with law. The section itself is indicative of the differences between actual possession and right to possession mentioned therein. The dictionary meaning of the word "actual" is real or existing in fact. The word, therefore, connotes possession as a fact. "Possession" has two meanings, namely, mediate possession and immediate possession. The distinction between two categories of possession is that possession held by a person through another may be termed as mediate while that which is acquired or retained directly or personally may be distinguished as immediate or direct. The basis of action under section 145 is the likelihood of breach of peace. Even when an allottee, who had once been put in possession and dislocated seeks to recover possession, such allottee cannot be allowed to take law in his own hands and if the burden of his act falls on peace, Magistrate of the first class can certainly step in. Such an allottee is as much bound to assert his right to recover possession in accordance with law as any other person. He must also recover possession through channels of law and the mere fact of his being an allottee does not confer any such privilege as to enable him to break the law. The fact that property vesting in the Central Government under Displaced Persons (Compensation and Rehabilitation) Act, 1954, enjoys an exemption from process of courts does not deprive a Magistrate of the jurisdiction to take proceedings under section 145, Criminal Procedure Code, if other conditions are satisfied. In making an order under section 145, the Magistrate is not proceeding against any property vesting in the Central Government but is merely acting in aid of maintenance of peace till possession is delivered to the person entitled to the same, in accordance with law. Even where a statute prescribes a code for recovery of possession from wrongful holders of property, any attempt to dislocate the person in possession, save in accordance with law, may give rise to likelihood of breach of peace entitling a Magistrate to act under section 145. No right of any one to the property vesting in the Central Government is affected or prejudiced in any manner by an order under section 145. The temporary measures taken under section 145, Criminal Procedure Code, do not in any way destroy the sanctity of section 15 of the Act or as a matter of that any other provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

R. C. SAWHNEY, ADVOCATE, for the Petitioner.

YOGESHWAR DAYAL, ADVOCATE, for the Respondent.

#### ORDER

Kapur, J.

KAPUR, J.—This criminal revision which arises out of proceedings under section 145, Criminal Procedure Code, was referred to a Division Bench because our learned brother Gurdev Singh, J., was not inclined to agree with what

His Lordship termed as a wide proposition laid down in *Sayed Salauddin Ahmad v. Janki Mahton and others* (1)

Pratap Singh  
v.  
State

Kapur, J.

Briefly stated the facts of the case are that there was some dispute regarding possession of 14 plots of land measuring in all 39 bighas, 14 biswas which were at one time evacuee property. Proceedings under section 145, Criminal Procedure Code, were initiated at the instance of the police. By his order, dated the 25th of July, 1963, the learned Magistrate held that it was the first party, namely, Prabhu, Data Ram, Munshi, Ramu, Bhartu, Mohan, Roop Chand, Udmi, Budha, Amar Singh, Teka and Bhima who were in actual possession of the land in dispute on 1st of December 1962, the date of preliminary order. The Magistrate accordingly ordered the possession to be delivered to first party and directed the second party, namely, Partap Singh not to interfere with the peaceful possession of the first party unless the first party was evicted in accordance with law. The case set up by Partap Singh, the second party, was that the said plots of land were allotted to him and Mohan Lal on 5th of January, 1961, by the Ministry of Rehabilitation and the possession thereof was delivered to them by the Managing Officer on the spot on 3rd of June, 1962. It was further contended by Partap Singh that intimation about delivery of possession was sent to the Tahsildar on 4th of June, 1962, and entry regarding transfer of possession was made in Roznamcha on 12th of June, 1962. Preliminary order was passed under section 145(1), Criminal Procedure Code, on 1st of December, 1962. The learned Magistrate after going through the material on record held that the second party had failed to establish beyond doubt that possession over all the 14 plots was delivered to him. He further held that even if the possession of all the 14 plots had been delivered on 3rd of June, 1962, it was of no avail to the second party since the actual possession on the date of the preliminary order alone had to be taken into consideration under section 145, Criminal Procedure Code. In the end the learned Magistrate concluded that on 1st December, 1962, the actual possession of the disputed plots was with party No. 1. Aggrieved by this order Partap Singh filed a revision petition before the Additional Sessions Judge. The learned Additional Sessions Judge following the decision of *Sayed Salauddin Ahmad's case* held that

(1) A.I.R. 1957 Patna 549.

Pratap Singh  
v.  
State  

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Kapur, J.

since the property was evacuee property, the provisions of section 145, Criminal Procedure Code, did not apply. In this view the learned Additional Sessions Judge recommended to this Court that the proceedings taken by the trial Court under section 145, Criminal Procedure Code, and the order of the learned Magistrate made in this behalf be quashed. When the matter came before Gurdev Singh, J., his Lordship expressed some doubt as to the correctness of the rule laid down in the Patna decision and as stated above the case was referred to a Division Bench. This is how the matter has come before us.

It is not disputed before us that the property in dispute was at one time evacuee property but was later acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and became part of the compensation pool, constituted under section 14 of the said Act. In view of this it is not necessary to express our views directly regarding the Patna decision which turns on the provisions of the Administration of Evacuee Property Act. We say "directly" because we have been asked to hold that the same principle applies to properties vesting in the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The learned Magistrate rightly held that he had, for the purposes of section 145, Criminal Procedure Code, to decide as to which of the parties was in actual possession on the date of preliminary order made under section 145(1), that is, the 1st of December, 1962. No doubt by virtue of second proviso to sub-section (4) of section 145, Criminal Procedure Code, if it appeared to the Magistrate that any party had, within two months next before the date of the preliminary order, been forcibly and wrongfully dispossessed, he could treat the party so dispossessed as if he had been in possession on the date of the preliminary order, but that also could, at the most, require determination of the position only on a day two months next before the date of the preliminary order. The allegation of the second party, namely, Partap Singh that the actual possession was obtained by the allottee from the Managing Officer on 3rd of June, 1962, would, therefore, be not decisive of the issue. The learned Magistrate, therefore, rightly went into the question of actual possession on the date of the preliminary order.

It has been contended by the learned counsel for Partap

Singh that the principle laid down in the Patna Judgment would be applicable to property acquired under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The contention is that under section 12(2) the evacuee property acquired under section 12(1) vests absolutely in the Central Government free from all encumbrances and under section 15 no property forming part of the compensation pool and vesting in the Central Government under the said Act can be proceeded against for any claim in any manner whatsoever in execution of any decree or order or by any other process of any court or other authority. We are, however, of the view that section 145, Criminal Procedure Code, was applicable and the Magistrate was entitled to take proceedings under the said provision. The object of section 145, Criminal Procedure Code, is to bring to an end by a summary process disputes relating to properties which are in their nature, likely, if not supposed, to end in breaches of the peace. The section was enacted for the maintenance of public peace, law and order and the fact that the property vests in the Central Government would not have the effect of abrogating the provisions of section 145, Criminal Procedure Code. Section 145, Criminal Procedure Code, is designed to protect deprivation of possession by persons taking law into their own hands and has no concern with determination of any legal right to possession. It does not seek to perpetuate illegal possession but merely directs the subjects to assert their rights in accordance with law. The section itself is indicative of the differences between actual possession and right to possession mentioned therein. The dictionary meaning of the word "actual" is real or existing in fact. The word, therefore, connotes possession as a fact. "Possession" has two meanings, namely, mediate possession and immediate possession. The distinction between two categories of possession is that possession held by a person through another may be termed as mediate while that which is acquired or retained directly or personally may be distinguished as immediate or direct. We need not go into the question as to what is the precise meaning to be attributed to the term "actual possession" in section 145, Criminal Procedure Code, for it admits of no doubt that immediate or direct possession is on any interpretation actual possession within the meaning of the said provision. We will also assume that mediate possession of the Government through an allottee is actual possession within the

Pratap Singh  
v.  
State  

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Kapur, J.

Pratap Singh  
v.  
State  

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Kapur, J.

contemplation of the said provision. Does that then destroy the jurisdiction of the Magistrate to act under section 145, Criminal Procedure Code. Our answer is in the negative. The basis of action under section 145 is the likelihood of breach of peace. Even when an allottee, who had once been put in possession and dislocated seeks to recover possession, such allottee cannot, in our opinion, be allowed to take law in his own hands and if the burden of his act falls on peace, Magistrate of the first class can certainly step in. Such an allottee is as much bound to assert his right to recover possession in accordance with law as any other person. He must also recover possession through channels of law and the mere fact of his being an allottee does not confer any such privilege as to enable him to break the law. Party No. 1 claimed to be in possession on 1st of December, 1962. That being so, section 145 could be invoked by the police in case the second party attempted to take forcible possession and likelihood of a breach of the peace arose. The fact that property vesting in the Central Government under Displaced Persons (Compensation and Rehabilitation) Act, 1954, enjoys an exemption from process of courts does not in our view deprive a Magistrate of the jurisdiction to take proceedings under section 145, Criminal Procedure Code, if other conditions are satisfied. In making an order under section 145, the Magistrate is not proceeding against any property vesting in the Central Government but is merely acting in aid of maintenance of peace till possession is delivered to the person entitled to the same, in accordance with law. Even where a statute prescribes a code for recovery of possession from wrongful holders of property any attempt to dislocate the person, in possession, save in accordance with law, may give rise to likelihood of breach of peace entitling a Magistrate to act under section 145. If we were to accept the argument of the learned counsel for Partap Singh, the whole object of section 145, Criminal Procedure Code, would be frustrated and the maintenance of law and order seriously impeded. No right of any one to the property vesting in the Central Government is affected or prejudiced in any manner by an order under section 145. The temporary measures taken under section 145, Criminal Procedure Code, do not in any way destroy the sanctity of section 15 of the Act or as a matter of that any other provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. In this view section 145 was clearly applicable and the

recommendation of the learned Additional Sessions Judge cannot be accepted. In view of the fact, however, that the learned Additional Sessions Judge has not decided the revision on merits the matter will have to go back for the determination of the issues on merits. The parties agree that it may now be sent back to Shri C. G. Suri, Additional Sessions Judge, Delhi. We accordingly direct that the matter will go back to the Court of Shri C. G. Suri, Additional Sessions Judge, who will go into the merits and decide the same in accordance with law. The parties will appear before the learned Additional Sessions Judge on the 28th of April, 1965.

Pratap Singh  
v.  
State  

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Kapur, J.

A. N. GROVER, J.—I agree.

Grover, J.

B.R.T.

APPELLATE CIVIL

*Before I. D. Dua and R. S. Narula, JJ.*

STATE OF PUNJAB,—*Appellant*

*versus*

KARNAIL SINGH AND OTHERS.—*Respondents*

**Regular First Appeal No. 100 of 1962**

*Land Acquisition Act (I of 1894)—Ss. 9, 18 and 25—Scope and construction of—Omission or refusal to make a claim by the person whose land has been acquired—Effect of—Land Acquisition Officer—Whether should inform claimants to make claims for compensation.*

1965  

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April, 7th.

*Held*, that section 9 of the Land Acquisition Act, 1894, provides for notice requiring all persons interested to appear before the Collector at a time and place not earlier than 15 days after the publication of the notice, and to state, *inter alia*, the nature of their interest and the amount and particulars of their claims to compensation. This notice is the essential pre-requisite of the Collector's power to acquire. Its absence or grossly defective character may adversely affect subsequent proceedings. The Collector is empowered to require such statement to be made in writing and signed by the party or his agent. This quite clearly suggests that the amount claimed can in law be stated orally. Section 25 lays down that the amount awarded by the Court of reference shall not exceed the amount awarded by the Collector when the claimant has refused to make such claim or has without