

Before J. M. Tandon, J.

HARBANS LAL and another,—*Petitioners.*

versus

HANS RAJ and others,—*Respondents.*

Criminal Misc. No. 3071-M of 1979.

September 8, 1979.

Code of Criminal Procedure (2 of 1974)—Section 145—Complainant alleging joint possession of land with others—Proceedings under section 145—Whether can be initiated.

Held, that unless the complainant alleges exclusive possession of a property it is not within the competency of the authorities to start proceedings under section 145 of the Code of Criminal Procedure 1973. Under sub-section 6 of Section 145 of the Code, the Magistrate has to decide as to which of the two or more contesting parties was in possession of the property. The finding on this point by the Sub-Divisional Magistrate is not called for in a case where joint possession of land with others is alleged. Under such circumstances the proceedings started under section 145 of the Code are illegal and misconceived. (Para 7).

Petition under Section 482 Cr.P.C. praying that the preliminary order dated 5th June, 1979 be ordered to be quashed and the proceedings pending in the court of S.D.M. Faridkot may be ordered to be cancelled.

It is further prayed that till the decision of the main petition, S.D.M. Faridkot may be directed not to proceed with the case and the proceedings pending before him be ordered to be stayed.

Puran Chand, Advocate, with Nirmal, Advocate, for the Petitioner.

O. P. Goyal, Advocate, Bachittar Singh, Advocate for state.

JUDGMENT

J. M. Tandon, J.

(1) Harbans Lal, Bachna Ram petitioners, Hans Raj respondent and Kaur Chand are sons of Moti Ram. They jointly own land in Arnawali and Kutianwali, Tehsil Muktsar. Hans Raj submitted a complaint to the Senior Superintendent of Police Faridkot alleging that the land owned by him and his three brothers in Arnawali and Kutianwali is in their joint possession and

the cultivation thereof is jointly supervised by them. His brothers did not give him, his share of the crop in *Kharif* 1978. He had further been threatened that if he insisted on the demand then harm may be done to his life. He prayed for protection and for starting proceedings under section 406, Indian Penal Code against Kaur Chand and Bachna Ram. A copy of this complaint was marked to the S.H.O. Police Station Lambi. The S.H.O. made enquiry and submitted his report dated February 28, 1979 under Section 145 of the Code of Criminal Procedure (hereafter the Code) stating that Hans Raj and his brothers own and cultivate land jointly in villages Arnawali and Kutianwali. The share of the produce for *Kharif* 1978 has not been given to Hans Raj. His brothers have grabbed his share. Hans Raj has also complained that his brothers do not allow him to cultivate the land separately and they want to grab the whole of the joint land forcibly. The wheat crop is near harvesting. There is likelihood of dispute between the parties and they may harm each other physically. It was recommended that the land may be attached and a Receiver appointed for the income of the standing crop till the decision of the dispute between the parties.

(2) On receipt of the report of the S.H.O. Lambbi, the Sub-Divisional Magistrate passed the preliminary order it reads:

“Whereas from the police report of Police Station, Lambi I am satisfied that a dispute likely to cause breach of peace exists concerning possession of land 1080 *kanals*, 19 *marlas* situated in village Kutianwali and Arniwala Wazira Sub Tehsil Malout between the parties mentioned above list of *Khasra* numbers are attached.

Now, therefore, in exercise of the powers of conferred under section 145(1) of the Code, I direct the parties to attend this court in person or by a pleader on the 4th April, 1979 and to put in written statement of their respective claims as respects the facts of actual possession of the subject matter of dispute and further require them to put in such documents or to adduce, the evidence of such persons as they rely upon in support of their respective claims.

The police report shows that there is imminent apprehension of breach of peace between the parties as a result of dispute stated *ad hoc*. Being a case of emergency I

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direct that the subject matter of dispute shall remain attached pending completion of enquiry. The Naib Tehsildar Malout shall act as Superdar. A copy of this order be sent to the S.H.O. Lambi for service on the parties concerned. A copy of this order be also placed on a conspicuous place within the area where the subject matter of dispute is situated."

(3) In the present petition under Section 482 of the Code filed by Harbans Lal and Bachna Ram, the prayer made in that the proceedings under Section 145 of the Code which are now pending in the Court of Sub-Divisional Magistrate, Faridkot on transfer from that of Sub-Divisional Magistrate Muktsar be quashed.

(4) The learned counsel for the petitioners has contended that in view of the fact that Hans Raj respondent admitted in his complaint to the Senior Superintendent of Police, which was affirmed by the S.H.O. Lambi in his report dated February 28, 1979 as well that the land was in his joint possession with his three brothers, the proceedings under Section 145 of the Code could not be initiated. Reliance has been placed on *Nahar Singh vs. The State*, (1) *Hanumappa v. Kondappa*, (2). The argument of the learned counsel for Hans Raj respondent is that inspite of the fact that he and his brothers have been in joint cultivation of the land, he was not given his due share of the crop in *Kharif* 1978. He rather apprehended that he will not be given his share of the crop in *Rabi* 1979 as well. There being a dispute between the parties, the Sub Divisional Magistrate was competent to initiate proceedings under Section 145 of the Code. In my opinion the contention of the learned counsel for the petitioner must prevail.

(5) In 1951 Rajasthan 156 (supra) it was held that an order S. 145 of the Code could only be passed in favour of a party in exclusive possession of the property. No declaration of joint possession can be made under that Section.

(6) In 1964 Mysore 195 (supra) it was held that the mere putting forward of a case of joint possession by one party while the other party claims exclusive possession does not take the matter out of the

(1) A.I.R. 1951 Rajasthan 156.

(2) A.I.R. 1964 Mysore 195.

purview of S. 145 of the Code. As long as there is a dispute relating to a land which is likely to cause a breach of peace and the possibility of declaring one of the parties to be in actual possession, the requirements of S. 145 are satisfied. Otherwise all that one of the parties need do to secure the termination of the proceedings is to plead joint possession. This would defeat the object of S. 145 as a preventive measure against breach of the peace. The enquiry has to proceed until the Magistrate arrives at a finding whether one of the parties is in exclusive possession or both or in joint possession. In the former case he has to issue an order under sub-section (6) declaring such party to be entitled to possession until evicted in due course of law and forbidding all disturbances of such possession. If he finds the parties to be in joint possession, no such declaration can be made and the proceedings have to be dropped.

(7) The consistent view taken in all the authorities is that unless the complainant alleges exclusive possession of a property, it is not within the competency of the authorities to start proceedings under Section 145 of the Code. Under sub-section (6) of Section 145 of the Code, the Magistrate has to decide as to which of the two or more contesting parties was in possession of the property. The finding on this point by the Sub Divisional Magistrate in the instant case is not called for because it is admitted by Hans Raj complainant himself and affirmed in the report of the S.H.O. Police Station Lambi dated February 28, 1979 that he has been in joint possession of the land with his other brothers. Under these circumstances the proceedings started by the Sub Divisional Magistrate under Section 145 of the Code are illegal, misconceived and are liable to be quashed.

(8) The learned counsel for Hans Raj respondent has argued that impugned order of the Sub Divisional Magistrate starting proceedings under Section 145 of the Code and attaching the land of the parties is of interlocutory nature and the inherent powers under Section 482 of the Code should not be invoked. I am not impressed by this contention. It has been held above that the starting of proceedings under Section 145 of the Code by the Sub Divisional Magistrate in this case is misconceived and illegal. The prayer made by the petitioner is that the very proceedings be quashed. Under these circumstances it would be appropriate to invoke the powers under Section 482 of the Code to give redress to the aggrieved party.

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(9) In the result, I accept the petition and quash the proceedings under Section 145 of the Code including the preliminary order passed therein.

S.C.K.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

STATE OF HARYANA,—Appellant.

versus

KAILASHWATI and others,—Respondents.

Regular First Appeal No. 1800 of 1978.

September 11, 1979.

Land Acquisition Act (1 of 1894)—Sections 23, 28 and 34—Solatium—Whether a part of compensation—Interest on solatium—Whether payable.

Held, that solatium is an integral part of the compensation awarded to a landowner. Once, it is held as it inevitably must be that the solatium provided for under section 23(2) of the Land Acquisition Act, 1894 forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of section 28 does not even remotely refer to the market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under section 28, therefore, would include within its ambit both the market value and the statutory solatium. It would be, thus evident that the provisions of section 28 in terms warrant and authorise the grant of interest on solatium as well. (Paras 9 and 10).

Regular First Appeal from the order of Shri S. K. Jan, Additional District Judge, Hissar, dated 15th June, 1978, in L.A. case No. 15 of 1978 enhancing the compensation from Rs. 4,293.00 to Rs. 5,962.50 apart from the 15 per cent solatium and also to an interest at the rate of 6 per cent per annum from the date of taking possession till payment is made to them or deposited in court for payment whichever is earlier and further ordering that the interest will also be payable on the amount of solatium.