

4. In support of attack (d) learned counsel for the petitioners challenges the constitutional validity of sections 4 and 7 of the Haryana Municipal Common Lands (Regulation) Act, 1974. No such challenge was made in the petition itself or before the Full Bench which, day before yesterday, considered questions of constitutional validity arising in the case. Nor again was any permission sought before the Full Bench for an amendment of the petition. In this view of the matter we refuse to allow Mr. Mittal to raise the point.

5. In the result the petition fails and it is dismissed but with no order as to costs.

K. T. S.

Before K S. Tiwana, J.

SATGURU JAGJIT SINGH AND OTHERS—*Petitioners.*

versus

JEET KAUR AND OTHERS—*Respondents.*

Criminal Misc. No. 3977-M of 1977

March 31, 1978.

Code of Criminal Procedure (2 of 1974)—Sections 145 and 146(1)—Attachment under section 146(1)—Whether leads to the termination of proceedings under section 145—Magistrate—Whether can proceed after attachment to determine the possession under section 145(4).

Held that if a Magistrate identifying the seriousness of the emergent situation exercises discretion under Section 146(1) of the Code of Criminal Procedure 1973 for the reasons given in this provision and attaches the subject matter of the dispute, it cannot, result in the automatic folding up of the proceedings under section 145 of the Code. The purpose of this provision in the Code is to de-escalate the conflict between the parties in regard to a dispute regarding any land or water and to determine who was in possession of the subject matter of the dispute on the date of the order or who was wrongfully dispossessed within two months of the report. The proceedings which are initiated under Section 145 of the Code have to be taken to a logical end in accordance with the provisions of Chapter X, 'D' part, of the Code and cannot be dropped midway

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to leave the contesting parties in the lurch after attachment. It cannot be inferred that the delivery of possession is to elude the person who is wrongfully dispossessed inspite of the fact that the statements of claim and evidence referred in section 145 entitle him to the restoration of possession by the Magistrate. Thus, attachment under section 146(1) of the new Code does not lead to the termination of the proceedings under section 145 and the Magistrate who has passed a preliminary order under section 145(1) of the Code has a right to proceed with the case and in view of the statements of the parties and the evidence led before him has to determine the possession in the light of the provisions of section 145(4) of the Code.

(Paras 7 and 12)

DISSENTED FROM

Chandi Prasad and others v. Om Parkash Kanodia and others, 1976, Criminal Law Journal 209.

Md. Muslehuddin and another v. Md. Salahuddin, 1976 Criminal Law Journal 1150.

Hakim Singh and others v. Girwar Singh and others, 1976 Criminal Law Journal 1915.

Dandapani Pala and others v. Madan Mohan Pala and others, 1976 Criminal Law Journal 2014.

Mansukh Ram v. The State and another, 1977 Criminal Law Journal 563.

DISSENTED FROM.

Petition under Section 482 of New Criminal Procedure Code, 1974 praying that the orders of the Court below directing the production of further evidence including the orders dated 21st June, 1977 and other dates as also entire proceedings taken after the attachment of the property in dispute under section 146(1) of the Code may be quashed and the direction be issued to the Court below to stay its hand and wait for the decision of the Civil Court regarding the title and the possession of the parties in respect of the property in dispute. Any other order may be passed which may be just and proper. Pending the decision of this petition further proceedings in the Court below may be stayed.

H. S. Gujral, Advocate, for the petitioner.

(N. S. Gujral, Advocate with him).

Harbans Singh, Advocate, for respondents 1 and 2.

S. S. Ahlawat, for the State.

Ashutosh Mohunta, Advocate, for respondents 1 and 2.

JUDGMENT

K. S. Tiwana, J.—The facts of this petition under section 482 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the New Code) are that a report was made by the police about the apprehension of the breach of the peace between the parties in regard to the possession of land in dispute to the Executive Magistrate, Sirsa, who passed orders under section 145(1) of the New Code and attached the subject-matter of the dispute under section 146(1) of the New Code. He directed the parties to file written statements of their claims and also to lead evidence. Some evidence was examined before him. The petitioners have filed this petition in this Court on the ground that once an attachment is made under section 146(1) of the New Code, the proceedings under section 145 of the Code terminate and the Magistrate becomes *junctus officio*. He seeks the quashing of the proceedings, which the Magistrate is now taking under section 145 of the New Code and also the evidence recorded by him. The petition is opposed by the respondents.

(2) The Code of Criminal Procedure, 1898, (hereinafter referred as the Old Code) was amended in 1955 and the power of attachment was given to the Magistrate in case of emergency in section 145 under sub-section (4). In some cases where the Magistrate could not himself determine about the possession of the subject-matter of the dispute in accordance with the provisions of section 145 of that Code, he had the power to refer the matter to the Civil Court under section 146 of that Code. In the new Code, the power of attachment has been omitted from section 145 and it is now provided in section 146(1). The right of the Magistrate to refer the matter to the Civil Court has also been omitted.

Sections 145 and 146 of the new Code are as under:—

“145(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local 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, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.”

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- (2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.
- (3) A copy of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.
- (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, decide 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) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed, and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.
- (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 disturbances 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.

- (b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).
- (7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.
- (8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.
- (9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.
- (10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Section 146(1)

If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties

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was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof.

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) * * * * *

(3) The interpretation of this new provision under section 146(1) of the Code has led to a difference of opinion in the different High Courts of the country in *Chandi Prasad and others v. Parkash Kanodia and others* (1), a Single Bench of Allahabad High Court, *Md. Muslehuddin and another v. Md. Salahuddin* (2), a learned single Judge of the Patna High Court; *Hakim Singh and others v. Girwar Singh and others* (3), a learned Single Judge of the Delhi High Court, *Dandapani Pala and others v. Madan Mohan Pala and others* (4), a Division of the Orissa High Court and *Mansukh Ram v. The State and another* (5), a learned Single Judge of the Rajasthan High Court have taken the view by interpreting section 146(1) of the new Code that once the Magistrate attaches the subject-matter of the dispute in a case of emergency, then the proceedings under section 145 of the new Code terminate and the Magistrate ceases to have any jurisdiction to further proceed in the case. According to this view, the matter has then to be decided by competent Court and attachment made under section 146(1) has to continue till such a decision. On the contrary, in *Ram Adhin v. Shyama Devi and others* (6), a learned Single Judge of the Allahabad High Court and in *Cajitan A. D'Souza and another v. The State of Maharashtra and*

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- (1) 1976 Cr. Law Journal 209.
 (2) 1976 Cr. Law Journal 1150.
 (3) 1976 Cr. Law Journal 1915.
 (4) 1976 Cr. Law Journal 2014.
 (5) 1977 Cr. Law Journal 563.
 (6) 1977 Cr. Law Journal 453.

others (7), a Division Bench of the Bombay High Court have expressed a diametrical opposite view holding that section 146(1) is subservient and ancillary to section 145 of the new Code and the proceedings once initiated under section 145 have to continue irrespective of the attachment under section 146(1) and the Magistrate has to decide the question of possession in the light of the provisions of section 145. This view also gets support from *Chandu Naik and others v. Sitaram B. Naik and another* (8). No case of our High Court having a bearing on the point has been brought to my notice.

(4) It becomes necessary to notice both the view-points, which sharply differ about the interpretation of section 145 and section 146 of the Code and the reasons in support of the conclusions.

(5) In *Chandu Prasad's case* (1), (*supra*) the learned Single Judge held :—

“We have to interpret the law as it stands. There is no provision for attachment under section 145, Criminal Procedure Code, under the new Code similar to the provision of attachment under section 145(4), Criminal Procedure Code (old). It is not necessary for a Magistrate to pass an order of attachment in every case. He can then proceed under section 145, Criminal Procedure Code, and pass the final order. But as soon as he passes the order of attachment, consequences are to follow as provided under section 146(1), Criminal Procedure Code (New). The word “Magistrate” has been clearly used as something different than ‘a competent authority.’”

In *Md. Muslehuddin's case* (2) (*supra*), the argument raised was that simply because the learned Magistrate has attached the property in dispute under section 146(1) of the new Code, his jurisdiction to decide the question of possession under sub-section (4) of section 145 does not cease and even if he has attached the property, he can decide as to which of the parties was in possession at the relevant time. The argument did not favour with the learned Judge. Repelling this, the learned Judge observed:—

“I am unable to accept this argument. According to the proviso to sub-section (1) of section 146, the Magistrate can

(7) 1977 Cr. Law Journal 2032.

(8) AIR 1978 S.C. 333.

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withdraw attachment only when he is satisfied that there is no longer any likelihood of breach of the peace in regard to the subject of dispute. In such a case, the proceeding under section 145 itself will have to be dropped and no question of deciding as to which of the parties was in possession at the relevant time would arise. When the Magistrate attaches the subject of dispute the property becomes *custodian legis* and, therefore, provision has been made in the Code that the Magistrate may, after he has attached the property, make such arrangement as is necessary and proper for looking after the property or if he thinks fit appoint a receiver thereof. In my opinion, the Magistrate is not entitled to proceed to decide under section 145 as to which of the parties is in possession after he has attached the subject of dispute under section 146(1) of the Code. Therefore, the order of the learned Magistrate directing the parties to adduce evidence in order to enable him to decide the question of possession after he has attached the subject-matter of dispute under section 146(1) is illegal."

The learned Judge further observed:—

"If the Magistrate could legally attach the property under section 146, he could not legally proceed under section 145 of the Code to decide the question of possession. Once the Magistrate considers that it is a case of emergency and attaches the subject of dispute under section 146(1) of the Code, he has no jurisdiction to take evidence and decide as to which of the parties was in possession at the relevant time. In the circumstances, the entire impugned order has to be quashed.

In *Hakim Singh's case* (3) (*supra*), the learned Judge observed as under:—

"Now, section 145 of the new Code has done away with the afore-mentioned proviso to sub-section (4) under the old Code enabling the Magistrate to attach the subject of dispute. But similar provision has been added to sub-section (1) of section 146 empowering the Magistrate to attach the property if he considers the case to be one of emergency.

The intention of the legislature in making these changes is obvious. It has taken away the powers of the Magistrate to refer the dispute to a Civil Court and has left the parties to approach the competent Court for the determination of their rights. After all section 146 is a preventive measure in order to prevent a breach of the peace. This object is satisfied the moment the Magistrate decides to attach the subject of dispute. Once he has made the attachment the proceedings pending under section 145 come to an end. He can later on withdraw the attachment if he feels satisfied that the likelihood of breach of the peace no longer exists. But then all the proceedings will come to an end since the object to prevent breach of the peace will have been achieved. In case the attachment continues the Magistrate's only power is to appoint a receiver and thus act under sub-section (2)."

In Dandapani Pala's case (3) (supra), a Division Bench of the Orissa High Court observed:—

"Three contingencies have been contemplated in which an order of attachment can be passed:—

- (i) Where the Magistrate is satisfied that the case is one of emergency; or
- (ii) If the Magistrate after inquiry holds that none of the parties was in possession on the date of the preliminary order or within two months preceding it in case of dispossession; or
- (iii) If the Magistrate is unable to satisfy himself as to which of the parties was in possession on the appropriate date. The last two situations would arise only after inquiry is complete. Parliament has equated the first contingency, namely, after passing of a preliminary order if the Magistrate is satisfied that it is a case of emergency at par with the other two contingencies. No further inquiry is possible in the two other contingencies. Therefore, there is no occasion to contend that when an order is passed on the first of these contingencies, the proceeding under section 145 of the

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Code survives and an inquiry as envisaged in that section is yet to be undertaken. Besides, the language of the provision is clear enough to support the conclusion that the dispute before the criminal court comes to an end and which party is entitled to possession has to be determined by the competent court."

The learned Judges of this Division Bench further held as under:—

"The legal position, therefore, is that once an order under section 146(1) of the Code is passed on being satisfied about the existence of any of the three contingencies, the proceeding under section 145 terminates. The direction of the learned Magistrate that the proceeding would continue in spite of his order of attachment under section 146(1) of the Code is, therefore, wrong."

(6) In *Mansukh Ram's* case (5) (supra), a learned Single Judge of the Rajasthan High Court held:—

"But after the commencement of the new Code of Criminal Procedure the provision of attachment of the subject of dispute in case of emergency contained in the third proviso to sub-section (4) of section 145, Old Criminal Procedure Code has been omitted from there and has been incorporated in sub-section (1) of section 146, new Criminal Procedure Code. As a consequence of this change, the Sub-Divisional Magistrate can now attach the property in dispute indefinitely until such time as a competent court has decided the rights of the parties thereto. In view of this change, the attachment made under sub-section (1) of section 146, new Criminal Procedure Code on the ground of emergency will now continue until a competent court has decided the rights of the parties to the subject of dispute with regard to the person entitled to the possession thereof and the Sub-Divisional Magistrate shall have no power to hand over possession of the disputed property to the party in whose favour he may ultimately pass a final order, upon inquiry, under sub-section (6)(a) of section 145, new Criminal Procedure Code. As the attachment once made on the ground of emergency is now

operative even after the Sub-Divisional Magistrate has found in favour of a party on the question of possession of the subject of dispute, an inquiry as to possession as envisaged by sub-section (4) of section 145, new Criminal Procedure Code, will serve no purpose and, in my opinion, will be unnecessary. There is no doubt that the Sub-Divisional Magistrate is not a competent Court to determine the rights of the parties to the subject of dispute with regard to the person entitled to the possession thereof, because under sub-section (4) of section 145, new Criminal Procedure Code he is required to decide the question of actual possession only without reference to the merits or claims of any of the parties to a right to possess the subject of dispute. The result of the above discussion is that after attachment of the subject of dispute under sub-section (1) of section 146, new Criminal Procedure Code on the ground that the case is one of emergency, a proper inquiry into the question of possession as contemplated by sub-section (4) of section 145, new Criminal Procedure Code, is of no use, because the attachment will subsist even after the final order which may ultimately be passed by the Magistrate after such inquiry into the question of possession and the Sub-Divisional Magistrate will have no power to restore the successful party to possession. The Sub-Divisional Magistrate after having once attached the subject of dispute on the ground of emergency is, therefore, not empowered to proceed further under section 145, new Criminal Procedure Code, except for the purpose of ascertaining whether there is any dispute or whether there is no longer any likelihood of breach of the peace with regard to the subject of dispute, because in that case he can withdraw the attachment at any time."

Expressing the contrary view to the one quoted above, Shrivastava, J., of the Allahabad High Court in *Ram Adhin v. Shyama Devi and others* (6) (supra), held: —

"A literal interpretation will, therefore, lead to the result that as soon as the Magistrate attaches the property on account of emergency, he will have no jurisdiction to

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decide the question of possession. This will clearly be inconsistent with sub-section (4) of section 145, which says that, if possible, the Magistrate shall decide which of the parties was, at the date of the order passed under sub-section (1) of section 145, was in possession of the subject of dispute. Sub-section (4) thus makes it clear that normally and primarily it is the duty of the Magistrate to decide the question of possession.

After noting the three contingencies in the same order as noticed in *Dandapani Pela's case* (4) (supra), the learned Judge further held:—

“Because under the new Criminal Procedure Code, the power has been given to the Magistrate to continue attachment even after proceedings have been consigned and therefore all the contingencies in which the Magistrate can attach the subject of dispute have been given by the Legislature at one place, namely, Section 146(1). The underlying object of Chapter X, Criminal Procedure Code, is to maintain peace and tranquillity and it is, therefore, certainly desirable that the question of possession should be decided by the Magistrate whenever possible and as quickly as possible in order to avoid any breach of the peace. In cases where the property is attached on account of emergency, such attachment is meant to apply only to those cases where the Magistrate is deciding the question of possession himself and pending his decision it is necessary to maintain peace. The attachment in the other two cases is meant to maintain peace, pending decision of the rights of the parties by a competent court. In all these three cases, it is however, the Magistrate who will decide whether the attachment at any stage is to be withdrawn or not. It is, therefore, evident that a literal interpretation sought to be put on section 146(1) will not only lead to an anomalous situation but will also be inconsistent with the main provisions incorporated in section 145. The Magistrate would refrain from attaching the property even in cases of emergency simply because such an attachment would terminate his jurisdiction. This cannot possibly be the intention of the legislature.”

In *C. A. D'Souza's case* (7) (supra), a Division Bench of the Bombay High Court held:—

“If section 146 were to be read apart from section 145, a literal construction as urged on behalf of the petitioners was possible. On a literal construction of section 146, the provision in so far as is relevant would read that if the Magistrate at any time after making the order under subsection (1) of section 145 considers the case to be one of emergency, he may attach the subject of dispute until the competent court has determined rights of the parties thereto with regard to the person entitled to the possession thereof. However, as pointed out above, sections 145 and 146, contemplate a composite scheme regarding determination of disputes relating to possession of immovable property between the parties, and it would appear that the provisions of section 146 are intended to subservise the object of a proceeding under section 145, such object being to determine which party was in possession on the date of the preliminary order and to declare such party in possession to be entitled to retain possession until eviction therefrom in due course of law and forbidding all disturbances of such possession until such eviction. This object would be defeated if merely because during the continuance of the proceedings after preliminary order is passed, the Magistrate considers the case to be one of emergency and closes the proceedings on that ground. In our view, the intention of the Legislature in making the said provisions of section 146 is to vest the Magistrate with necessary powers to preserve the subject of dispute till the determination of the proceedings under section 145 by attaching the subject of dispute in case an emergency arises. It seems to us that the provisions of section 146 are ancillary to those of section 145. The rule of harmonious construction must prevail over the rule of construing a provision literally where the result of a literal construction would have the effect of rendering some other provisions otiose or nugatory. On a harmonious construction of the two provisions, it appears to us that section 146 cannot be construed as an independent section but must be construed as a part of section 145 and cannot override

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the provisions of section 145. The consequences of construing the section literally will have to be borne in mind, for, if such a construction is adopted, merely because of a situation of emergency having arisen, the proceedings under section 145 must be abruptly terminated. On such a construction, the whole scheme of the proceedings under section 145 would be rendered nugatory and infructuous. We do not think that such an intention can be attributed to the Legislature. Hence, we are of the view that the Magistrate does not become *functus officio* merely because of his passing an order of attachment during the pendency of the proceedings before him, because he considers the case to be one of emergency. In the view of the matter that we are taking regarding the interpretation of sub-section (1) of section 146 read with section 145, we hold that in the event of the Magistrate attaching the subject of dispute on the ground of emergency at any time after making the preliminary order under sub-section (1) of section 145, he would be bound to proceed with the inquiry and pass final orders under sub-section (6) of section 145. On his passing such final orders, the emergency attachment would naturally come to an end. In case, however, the Magistrate cannot come to a definite conclusion regarding the particular party being in possession of the property, the emergency attachment would continue until adjudication by the competent court, that is the civil court determining the rights of the parties to the dispute relating to the subject matter of the dispute. In view of the proviso to sub-section (1) of section 146, it would, however, be open to the Magistrate to withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of the breach of the peace with regard to the subject of dispute."

In this case the answer returned was that the Magistrate does not become *functus officio* merely by reason of his passing an order of attachment during the pendency of the proceedings before him on the ground that emergency has arisen.

(7) Sections 145 and 146 of the new Code are the beneficial provisions. They occur in Chapter X of the new Code. The

heading of the chapter is "Maintenance of public order and tranquillity". The purpose of these provisions in the Code is to de-escalate the conflict between the parties in regard to a dispute regarding any land or water and to determine who was in possession of the subject matter of the dispute on the date of the order or who was wrongfully dispossessed within two months of the report. This is the main purpose of these beneficial provisions as provided in the Code. In the scheme of Chapter X, 'D' Part, which concerns, "Disputes as to immovable property", section 145 appears first. According to sub-section (1) of this section, the Magistrate, if he is satisfied about the likelihood of the breach of the peace because of a dispute concerning land or water within his local jurisdiction, shall make an order in writing stating the grounds of his being so satisfied and require the parties concerned in such dispute to appear in his court on a given date and time to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. Under section 145(4), the duty of the Magistrate is primarily to decide whether any and which of the parties was in possession of the subject-matter of the dispute and guide-lines to arrive at such a decision are provided in this sub-section itself. This determination he is to make on the basis of the written statements put in by the parties and evidence led before him, but without reference to the merits of their rights to possession. If these factors are not to be determined after the attachment of the subject-matter of the dispute under section 146(1), then the very purpose of the legislature in enacting Chapter X, part 'D' would be frustrated. If a Magistrate identifying the seriousness of the emergent situation exercises discretion under section 146(1) for the reasons given in this provision and attaches the subject matter of the dispute, it cannot, in my view, result in the automatic folding up of the proceedings under section 145 of the Code. It would amount to, in the words of Shah, J. in *D'Souza's case* 7 (supra), "on such a construction, the whole scheme of the proceedings under section 145 would be rendered nugatory and infructuous." I view this situation from another angle also in the light of proviso to sub-section (1) of section 146. Under this proviso the Magistrate can withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace in regard to the subject matter of dispute. If this view is accepted that the Magistrate after attachment under section 146(1) becomes *functus officio* and cannot call upon the parties to the dispute to file written statements of their claims or adduce

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evidence before him in support of their claims, then in that situation what he would do with this property after release which was custody *res legis* with him. To whom he would restore possession? Cases may arise in which parties due to certain reasons, might abstain from approaching the competent court, which, according to the interpretation placed on section 146(1) by the learned counsel for the petitioners with the help of his above-cited authorities, is a civil court. In that position, how the dispute about possession of which the Magistrate took cognizance under section 145 is to be decided. According to section 145(4), the duty of the Magistrate is to decide upon the possession under Chapter X-D of the Code. Section 145 does not envisage any civil right to possession. Even a dispute between two trespassers has to be adjudicated upon under section 145 of this Code. The proceedings which are initiated under section 145 of the Code have to be taken to a logical end in accordance with the provisions of Chapter X 'D' of the Code and cannot be dropped midway to leave the contesting parties in the lurch after attachment. From the attachment, once it is made, it cannot be inferred that the delivery of possession is to elude a person who is wrongfully disposed in spite of the fact that the statements of claim and evidence referred in section 145 entitle him to the restoration of possession by the Magistrate.

(8) The settled principles of the interpretation of the statute are that the provisions are to be harmoniously construed to fulfil the purpose, for which those have been enacted in the light of the scheme of the statute and also the chapter in which those are provided. For the purpose of harmonious construction, section 145 and 146(1) of the new Code have to be read together to achieve the purpose of the maintenance of the public peace and tranquillity. The rule of interpretation is to juxta-pose the two provisions and then make a composite and comparative study. When this is done, in the background of the provisions of chapter X, the legitimate result which flows from it is that section 146(1) is sub-servient to section 145. For this I draw support from the observations in *D.Souza's case* (7) (supra). If any provision is subject to two interpretations, one of which is in conformity with the achievement of the purpose of a statute and the other negates that achievement, then the court will adopt the one which furthers the scheme and the purpose of the statute. In view of this principle, if the literal interpretation of section 146(1) as argued before me works to negate the purpose of section 145 by bringing the proceedings

under it to an abrupt end in spite of the fact that it is not intended by the provisions of section 145, it cannot be given that meaning. Maxwell in his book on the interpretation of statute, 12th Edition, at page 228 observes: "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning." In the same book at page 105, the same learned author expressed: "Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effects or consequences which would result from it, for they often point out the real meaning of the words. There are certain objects which the legislature is presumed not to intend, and a construction which would lead to any of them is, therefore, to be avoided. It is not infrequently necessary, therefore, to limit the effect of the words contained in an enactment (especially general words), and sometimes to depart, not only from their primary and literal meaning, but also from the rules of grammatical construction in cases where it seems highly improbable that the words in their wide primary or grammatical meaning actually express the real intention of the legislature."

(9) The fear expressed in *Ram Adhin's case* (6) (supra) that the Magistrates may refrain from attaching the subject matter of dispute because that would terminate their jurisdiction are well-founded. If the proceedings are to end as an exercise in futility after attachment under section 146(1), then the Magistrate might be tended not to evince that interest in these proceedings as they are presently taking by opting in favour of attachment.

(10) In *Chandu Naik's case* (8) (supra), the facts were that on a dispute regarding immovable property, proceedings under section 145 of the Code were initiated. The Magistrate passed a preliminary order section 145 on 29th of July, 1975, asking the parties to appear before him and

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in their written statements. On the same date, he attached the disputed property under section 146(1) of the Code. The appellants put in their written statements on 2nd of August, 1975. Thereafter, the case was heard by the Magistrate from time to time. On an objection by one of the parties, the Magistrate took the view that because of section 8 of the Maharashtra Vacant Land (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975, he had ceased to have jurisdiction to proceed with the case. The High Court in revision agreed with his conclusions. The Supreme Court in appeal held that the proceedings in question did not abate and those had to be disposed of by the Magistrate in accordance with the provisions of sections 145 and 146 of the Code. Remanding the case, the Supreme Court gave guidelines to the Magistrate in these terms:—

“The Magistrate, in the first instance, will try to conclude the proceeding in accordance with the various provisions of section 145 of the Code. If he is able to declare the possession of either party on consideration of the evidence adduced or to be adduced before him he would do so. In that event the other party will be forbidden from creating any disturbance of the possession (including the deemed possession, in case the application of the proviso to sub-section (4) is found necessary) of the party declared in possession. The Magistrate, then, will have to withdraw the attachment in accordance with the proviso to sub-section (1) of section 146, because, as per his order declaring a party in possession there would be no longer any likelihood of the breach of the peace with regard to the subject of dispute. The party not found in possession by the Magistrate will have to seek the redress of his grievance, if any, elsewhere. If, however, the Magistrate decides that none of the parties was in possession of the disputed property on the date of the order made under sub-section (1) of section 145 or if he is unable to satisfy himself as to which of them was then in possession of the subject of dispute he need not lift the attachment until a competent court had determined the rights of the parties as provided for in section 146(1). In such a situation recourse, if necessary, may be taken to sub-section (2) of section 146 of the Code either by the Magistrate or a Civil Court as the case may be.”

(11) In *Chandu Naik's case* (supra), the Magistrate after the preliminary order had attached the subject-matter of the dispute under section 146(1), of the Code. In spite of the language of section 146(1), the above observations were made by the Supreme Court. The view which I am taking on the basis of *Ram Adhin's case* (6) (supra) and (7) *D. Souza's case* (supra), is in consonance with the observations of the Supreme Court in *Chandu Naik's case* (8) (supra), that attachment under section 146(1) does not automatically lead to the termination of the proceedings.

(12) The net result of the above discussion is that attachment under section 146(1) of the new Code does not lead to the termination of the proceedings under section 145 and the Magistrate who has passed a preliminary order under section 145(1) of the Code has a right to proceed with the case and in view of the statements of the parties and the evidence led before him has to determine the possession in the light of the provisions of section 145(4) of the Code. The Magistrate in the case in hand did nothing wrong or illegal in asking the parties to produce evidence and also recording it when it was produced before him. In view of these observations, the petition is dismissed. The Magistrate is directed to proceed in accordance with the observations made above. The parties through their counsel have been directed to put in appearance before the Executive Magistrate trying the case on 25th of April, 1978.

K.T.S.

Before A. D. Koshal, Chief Justice and S S Sandhawalia, J;

FAQIR CHAND AND OTHERS—Appellants.

versus

THE FINANCIAL COMMISSIONER, PUNJAB, CHANDIGARH
ETC.—Respondents.

Letters Patent Appeal No. 366 of 1977

April 7, 1978.

Letter: Patent (Lahore)—Clause 10—Proceedings pending in the High Court—Grant, refusal or vacation of stay order by a single Judge during such pendency—Whether a 'judgment' within the meaning of clause 10—Appeal against such order—Whether competent.