

Miss Vimla Mehra v. The State of Punjab through Executive Magistrate, Amritsar, and others (A. P. Chowdhri, J.)

exercising its power under Article 161 of the Constitution, and, the Governor was bound to act on the said advice. The fact that the case was sent back to the State Government for reconsideration of the case of the detenu on the objections, referred to above, indicates that the Governor did not agree, to act according to the advice of the State Government in this case, even though the said advice, was, legally and, constitutionally binding on him.

(10) The detenu was not granted parole till 30th June, 1987 as suggested by the Governor to the Chief Minister, while, returning the case of the detenu for grant of pre-mature release, to the State Government. The case was resubmitted to the Governor in August, 1987 and the mercy petition was rejected on 9th September, 1987, when, there was no elected Government in the State, as by then the State had already been placed under the President's Rule. Mere fact that subsequent mercy petitions moved on behalf of the detenu through his mother Smt. Gurmail Kaur on some additional grounds were rejected by the Governor would not make any material difference, as far as the recommendation by the State Government dated 29th September, 1986 for grant of pre-mature release is concerned. The said order which is legally valid and had been passed by the State Government in due exercise of its powers under Article 161 of the Constitution of India, still subsists, and, the same is binding on the State Government. Since the detenu has already undergone more than 8½ years of actual sentence and fulfills all other conditions of the order of the State Government dated 29th September 1986 concerning his premature release, he is directed to be set at liberty forthwith subject to normal safeguards and conditions. This petition is accordingly allowed.

R.N.R.

Before : A. P. Chowdhri, J.

MISS VIMLA MERHA,—Petitioner.

versus

THE STATE OF PUNJAB THROUGH EXECUTIVE MAGISTRATE,  
AMRITSAR, AND OTHERS,—Respondents.

Criminal Misc. No. 5986 of 1989.

8th September, 1989

*Criminal Procedure Code (II of 1974) Ss. 482, 145, 146(1)—  
Delivery of Possession to Petitioner by Competent Court—Respon-  
dents obtaining orders of temporary injunction and filing complaint—  
Executive Magistrate ordering petitioner to hand over the possession  
to respondent—Such Order—Legality of.*

*Held*, that the Executive Magistrate does not have jurisdiction to act as a super Court in order to set the alleged wrong right. The aggrieved party must have remedy in the Competent Court. In the facts of the present case, admittedly possession had been taken rightly or wrongly by the petitioner, the possession cannot be taken back except by instituting appropriate proceedings in the competent Court. The forum for such a relief is not the Executive Magistrate under section 145 of the Code. The forum of the Executive Magistrate is not the correct forum and in the facts and the circumstances of the case, resort to proceedings under section 145 and 146 of the Code is a clear abuse of the process of the Court.

(Para 4).

*Petition Under Section 482 Cr.P.C. praying that this petition be accepted and the orders of the respondent No. 1 Annexure P-1 and P-2 quashed. It is also prayed that the operation of the order Annexure P-1 and P-2 be stayed till the conclusion of the present proceedings in this Hon'ble Court.*

*Criminal Misc. No. 5986 of 1989.*

*Petition under Section 482 of Cr.P.C. praying that the stay order granted by this Hon'ble Court on 13th June, 1989 may kindly be vacated and directions may kindly be issued to restore the possession of the entire building as ordered by the Learned Trial Magistrate may kindly be passed.*

*Any other appropriate order as deemed fit in the circumstances of the case may be passed.*

Harinder Singh Giani, Advocate, for the Petitioner.

Rosy A. Singh, Advocate, for the State.

G. K. Chatrath, Advocate, for the Respondents.

#### JUDGMENT

A. P. Chowdhri, J.

(1) This is a petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') arising out of the following facts. The petitioner instituted an application under section 13 of the East Punjab Rent Restriction Act, 1949, against Janta Girls High School, Chheharta, through its President Shri Chaman Lal in the court of Rent Controller, Amritsar, on

Miss Vimla Mehra v. The State of Punjab through Executive Magistrate, Amritsar, and others (A. P. Chowdhri, J.)

---

July 20, 1988. Written statement was filed by the President of the said Society and order of ejection was passed by the Rent Controller on 1st February, 1989. The land lady took out execution of the order of ejection and obtained possession of the premises through baillif on 28th April, 1989. The Society instituted a suit through its President and Manager on 9th May, 1989 for possession of the building. Alongwith the suit, an application for temporary injunction was filed. By order dated 12th May, 1989, Sub Judge 1st Class, Amritsar, restrained owner landlords (a) from alienating the suit property, and (b) parting with its possession in favour of any other person till further orders. The petitioner also instituted a suit seeking an injunction restraining the State of Punjab, the District Education Officer and the Headmistress of the Janta Girls High School, Chheharta from recovering from the petitioner the grant-in-aid already advanced to the school as the amount had already been duly disbursed to the members of the staff and the petitioner was not concerned therewith in any manner. It was at this stage that the members of the staff of the Janta Girls High School, Chheharta made a complaint to the Executive Magistrate, Amritsar, under section 145 of the Code whereupon the impugned order Annexure P1 under section 145(1) of the Code was passed on 2nd June, 1989. On the same day, an order under section 146(1) of the Code was passed by the Executive Magistrate appointing District Education Officer (Secondary), Amritsar, as Receiver with the direction to take over possession of the school building and to run the school until decree or order to the contrary was passed by a competent Court determining the rights of the parties. Through this petition, both these orders under sections 145 and 146 of the Code are sought to be quashed.

(2) By order dated June 13, 1989 notice was given to the respondents and operation of the impugned orders Annexures P1 and P2 was stayed. Respondent No. 1 on the one hand and respondent Nos. 2 and 3 on the other hand, have filed their written statements. Respondent No. 1 in his affidavit has stated that on receipt of a complaint instituted by seven members of the staff of the school he was satisfied with the averments made therein and initiated proceedings under section 145(1) of the Code. He also passed order Annexure P2 and in compliance therewith the Receiver took possession of the premises on 5th June, 1989 and started running

this school from the same day. It was not brought to his notice that there were ejection proceedings before the Rent Controller and possession etc, was delivered in execution of the order of the Rent Controller. The petitioner instead of filing a reply and bringing the relevant facts to his notice has rushed to the High Court. He had, however, complied with the order of stay dated June 13, 1989.

(3) In a detailed reply filed by respondent No. 2 and 3, it was stated that the school had been running in the premises for over 30 years. It was constructed on the land belonging to the petitioner who was one of the founder members and Manager of the School. The school was receiving 95 per cent aid from the government on Delhi pattern. The petitioner had embezzled substantial amount of funds received from the government by way of aid. She was, therefore, made to draw money along with the District Education Officer. The school was managed by an elected body. Elections took place on 6th December, 1987 in which respondent No. 2 was elected as President and respondent No. 3 as Manager. The list of office bearers of the governing body was sent to the Registrar of Firms and Societies. The petitioner was divested of the powers as Manager by the duly constituted elected body. The eviction proceedings were challenged as totally sham on numerous grounds. Some Chaman Lal had been put up as respondent therein. In fact, Chaman Lal s/o Duni Chand has filed an affidavit in the civil Court stating that he was never President or member of the governing body of the school nor he appeared in the Court of the Rent Controller, Amritsar, in any proceedings filed by the petitioner. The petitioner, it was further pointed out, only owned the land underneath the school and the portion of the building from which ejection was sought was delineated in red in the plan filed in the ejection application. This was only a part of the total building which comprises of 12 rooms and a hall besides open ground. The school had about 300 or 350 students besides a staff and because of the aforesaid action on the part of the petitioner the students were facing undue hardship and their studies were suffering. The above reply was supported by affidavit of Shri Jagdish Singh, respondent No. 2, who is stated to have been elected as President of the governing body for the current year.

(4) None of the material facts averred in the petition have been specifically denied. For instance, it is not controverted that

Miss Vimla Mehra v. The State of Punjab through Executive Magistrate, Amritsar, and others (A. P. Chowdhri, J.)

---

the petitioner obtained an order of ejection from the Court of Rent Controller; that she took possession of the premises through execution of the order of ejection; that the civil Court restrained the petitioner only from alienating the property or parting with possession thereof. It must, therefore, follow that all these facts stands admitted. It is equally clear that until set aside, the order of Rent Controller and proceedings for delivery of possession through agency of the Court must be assumed to be valid. Not only that the proceedings before the Rent Controller including the proceedings for delivery of possession must be assumed to be valid till set aside, the Civil Court's order dated 12th May, 1989 proceeds on the assumption that possession had, in fact, been delivered to the petitioner. The delivery of possession of the property in dispute is a *fait accompli*. Here, it may be pointed out that there is a vital distinction between a 'claim' on the one hand and a 'dispute' giving rise to apprehension of breach of peace on the other hand. What the members of the staff of the school have put forward before the Executive Magistrate is a claim. It cannot be described as a dispute where intervention of the Executive Magistrate was called for in order to prevent breach of peace. An Executive Magistrate acquires jurisdiction only in order to prevent breach of peace between the two or more parties with regard to possession of immovable property. He does not have jurisdiction to act as a Supreme Court in order to set the alleged wrong right. The aggrieved party must have remedy in the competent Court. In facts of the present case, admittedly possession had been taken the rightly or wrongly by the petitioner, the possession cannot be taken back except by instituting appropriate proceedings in the competent Court. The forum for such a relief is not the Executive Magistrate under section 145 of the Code. In coming to this conclusion, I am not unmindful of the hardship caused to the students for no fault of theirs. Mere hardship, however, great does not justify throwing the law to winds. The school society may, therefore, take appropriate proceedings in the Court of competent jurisdiction to legally acquire possession. The forum of the Executive Magistrate is not the correct forum and in the facts and the circumstances discussed above, resort to proceedings under sections 145 and 146 of the Code is a clear abuse of the process of the Court. The said proceedings are, therefore, quashed.

---

P.C.G.