

REVISIONAL CRIMINAL

Before J. S. Bedi, J.

SHIV LAL AND OTHERS,—Petitioners

versus

HIRA LAL,—Respondent.

Criminal Revision No. 49-R of 1968

September 23rd, 1968.

Code of Criminal Procedure (V of 1898)—S. 145 (4)—Magistrate attaching property under—Whether can appoint Receiver for administration thereof.

Held, from the perusal of section 145(4), Proviso 3 of Code of Criminal Procedure, it is clear that a Magistrate can attach the property in dispute at any time when the proceedings are pending before him under section 145(4) of the Code. The Magistrate can appoint a receiver also at that time of attachment. The power of attachment carries with it the power of appointment of receiver; otherwise, it will be entirely ineffective. It is not expected that the Magistrate after attaching the property under section 145 of the Criminal Procedure Code would himself go and take possession of it and start functioning as a receiver to administer it. (Para 2)

Case reported under section 438, Criminal Procedure Code by Shri C. S. Tiwana, Additional Sessions Judge, Hissar for revision of the order of Shri A. K. Sinha, Executive Judicial Magistrate, 1st Class, Bhiwani, dated 14th September, 1967, appointing the Sarpanch as a receiver in proceedings under section 145, Criminal Procedure Code.

U. D. GAUR, ADVOCATE, for the Petitioners.

M. K. MAHAJAN, ADVOCATE, for the Respondent.

JUDGMENT

BEDI, J.—Har Lal, son of Kewal made an application under section 145 of the Criminal Procedure Code against Shiv Lal, son of Arjan and others in the Court of the Executive Magistrate First Class. The Magistrate heard the arguments of the parties and also perused the records and felt satisfied that there was an immediate

danger of breach of the peace between the parties over the land in dispute. He, therefore, ordered that the land be attached and also appointed a Sarpanch as a receiver of the said property,—vide his order dated the 14th September, 1967. The respondents, i.e., Shiv Lal and party went up in revision against this interlocutory order to the Court of Session which came up before Shri C. S. Tiwana, Additional Sessions Judge, Hissar. On that day, the order was attacked on two grounds. Firstly, it was contended before him that the Magistrate having not mentioned that the case was one of emergency had no jurisdiction to attach the land in dispute. Secondly, it was urged before him that the Magistrate acted without jurisdiction when he appointed the receiver of the property. The first ground did not impress the learned Additional Sessions Judge but the second one appealed to him and he, therefore, felt that the Magistrate was given the power only to attach the property under section 145 of the Criminal Procedure Code and not to appoint a receiver and that the receiver could only be appointed under section 146(2) when the proceedings were referred to a civil Court by the Magistrate. He relied on *Diwan Chand and others v. Emperor*, (1) and recommended to this Court that the order of the appointment of the Sarpanch as receiver by the Magistrate should be set aside.

(2) After hearing the arguments I feel that the recommendation cannot be accepted and must be turned down. From the perusal of section 145, sub-section (4), proviso 3, which runs as under it is clear that the Magistrate can attach the property in dispute at any time when the proceedings are pending before him under section 145(4) —

“Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.”

It is also clear that the Magistrate can also attach the property over which there is dispute under section 146(2) of the Criminal Procedure Code but under this provision he can do so only when he, for the reasons given in the section itself, cannot decide the dispute between the parties and refers the matter to the civil Court. In the case before me the dispute between the parties was still pending before the

(1) A.I.R. 1929 Lah. 223.

Magistrate. As stated above, it is crystal clear that he could attach the disputed property. If that is so, I have no doubt in my mind that the Magistrate could appoint a receiver also at that time. The power of attachment naturally carries with it the power of appointment of receiver, otherwise, it will be entirely ineffective. It is not expected that the Magistrate after attaching the property under section 145 of the Criminal Procedure Code would himself go and take possession of the land and start functioning as a receiver.

(3) My attention has also been drawn by the opposite party to *Prem Kumar and another v. Benarsi Das* (2), wherein it was said down in unequivocal terms that attachment under section 145 might be made by taking possession or by appointment of a receiver or by a prohibitory order restraining payment of rent, delivery of possession, etc. These were, it was pointed out, the recognized modes of attachment and any one or the other method might be adopted as might be considered appropriate for the object in view and the Court was not restricted only to the last method which is provided by Civil Procedure Code.

(4) My attention was also drawn to *Jethmul Bhojraj and others v. Harbans Narain Singh and others* (3), wherein it was laid down—

“The right of the Magistrate to attach property in dispute under S. 145 (4), Criminal P.C. includes his right to make suitable arrangement for the management of the attached property. The order of attachment is not an administrative order, and, therefore, the right to take necessary steps for the management of the property attached, also cannot be said to be an administrative order * * *

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(5) Then my attention was drawn to *Joshua Sankaran v. Varghese Jacob* (4). It was laid down therein as under:—

“* * * The Magistrate cannot keep quiet if he is satisfied that the dispute about possession is likely to result in a breach of the peace. To prevent anything like that happening.

(2) A.I.R. 1933 Lah. 409.

(3) A.I.R. 1955 Patna 92.

(4) A.I.R. 1955 T.C. 190.

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he could attach the property and place it in the hands of a Receiver."

The same view is taken in *Maung San U v. Maung Lu Gale* (5) and *Nandkishore Prasad Singh v. Radhakishun* (6). I, therefore, following these rulings, turn down the recommendation made by the Additional Sessions Judge and dismiss this petition.

K.S.K.

APPELLATE CIVIL

Before S. B. Kapoor and H. R. Sodhi, JJ.

GRAM SABHA AND GRAM PANCHAYAT, BAHU JAMAL PUR, DISTRICT
ROHTAK,—Appellants

versus

JOGI RAM AND OTHERS,—Respondents

Execution Second Appeal No. 1414 of 1963

September 23, 1968

Punjab Village Common Lands (Regulation) Act (I of 1954)—S. 3—Shamiyat lands vested in the Gram Panchayat under—Whether can be sold or leased out in execution of a money decree—Code of Civil Procedure (Act V of 1908)—S. 51—Temporary alienation by way of lease—Whether can be granted by the executing Court.

Held, that it is not open to an executing Court, in execution of a money decree, to lease out the Panchayat land vested in it under the Punjab Village Common Lands Act. The lands belong to a corporate body which has limited powers of disposition and anything done contrary to the provisions of that Act will be *ultra vires*. The circumstances in which leases can be granted for the benefit of the inhabitants of the village concerned have been enumerated in the rules made under the Act and the executing Court cannot over-ride those

(5) A.I.R. 1938 Ran. 88.

(6) A.I.R. 1943 Patna 124.