

Chandu Naik and Others

Vs

Sitaram B. Naik and Another

Criminal Appeal No. 308 Of 1977

(V. R. Krishna Iyer, N. L. Untwalia JJ)

06.12.1977

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by special leave arising out of proceeding under Section 145 of the Code of Criminal Procedure, 1973 - hereinafter called the Code, initiated at the instance of respondent 1 (for brevity, hereinafter the respondent). the said respondent filed an application on July 29, 1975 against appellants 1 and 2 before the Magistrate alleging that there is a Hotel known as 'Suresh Maharashtra tea & Cold Drinks & Eating House' on the disputed land which was owned by and in occupation of respondent. the appellants forcible disposed him from the Hotel on July 5, 1975. The application under Section 145 was filed initially against appellants 1 and 2. But at the instance of appellant 3 he was also subsequently joined as a party to the proceeding.

2. The Magistrate passed a preliminary order under Section 145(1) of the Code on July 29, 1975 asking the parties to appear before him and put in their written statements. On the same date, however, he attached the disputed property under Section 146(1) of the Code. The appellants put in their written statements on August 2, 1975. Thereafter the case was heard by the Magistrate from time to time.

3. The Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975 - hereinafter called the Act, came into force replacing Ordinance promulgated earlier. The Act was deemed to have come into force in the area where the disputed property is situated on November 1, 1975. It seems the Hotel was constructed and is situated on a piece of "vacant land" in an "urban area" within the meaning of the Act. The Act was passed to prohibit Unauthorised occupation of vacant lands in the urban areas of the State of Maharashtra and to provide for summary eviction of persons from such lands. The Competent Authority under the Act was empowered under Section 4 to evict persons from Unauthorised occupation of vacant lands. Section 8 of the Act which provided for a bar of jurisdiction of Courts reads as follows :

No Court shall have jurisdiction to entertain any suit, prosecution or other proceedings in respect of the eviction of any person from any vacant land under this Act or in respect of any order made or to be made or any action taken or to be taken by the competent authority in exercise of the powers conferred by or under this Act or to grant any stay or injunction in respect of such order or action. If any such suit or other proceedings in respect of eviction of any person from any vacant land is pending on the appointed date in any Court, it shall abate; and it shall be lawful for the Competent Authority to evict such person from Unauthorised occupation of the vacant land under the provisions of this Act and to remove and forfeit any property from such land as provided in this Act.

4. The Magistrate in his order dated January 21, 1977 passed in the proceeding aforementioned took the view that in view of Section 8 of the Act, he ceased to have jurisdiction to proceed with the case, inasmuch as he will have to order eviction of the appellants from the disputed property if the case of the respondent was found to be true. The appellant filed a revision in the Bombay High Court from the said order of the Magistrate but failed. The High Court agreed with the view taken by the Magistrate and dismissed the revision. Hence this appeal.

5. In our opinion the Courts below have committed an error of law in applying the bar of Section 8 to the present proceeding. Firstly in the context of the Act the bar is not attracted to any suit or proceeding in respect of the eviction of any person from any vacant land started in relation to a dispute of possession between two private persons. The bar is attracted if the suit or proceeding concerns the eviction of any person from any vacant land by the Competent Authority. In other words, no suit or proceeding for eviction can be entertained by any Court if the competent Authority is entitled to evict the person under Section 4. He will be entitled to evict any person if he is in unauthorised occupation of vacant land, but not in the case of dispute between two private persons, either of them claiming to be in authorised occupation. For deciding such a dispute, the competent Authority does not come into the picture. Secondly, in substance and in effect a proceeding under Section 145 of the Code is not for the purpose of evicting any person from any land but is primarily concerned with the prevention of the breach of the peace by declaring the party found in possession to be entitled to remain in possession until evicted therefrom in due course of law. The proviso to sub-section(4) of Section 145 states :

Provided that if it appears to the Magistrate that any party has been forcible 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 disposed as if that party had been in possession on the date of his order under sub-section (1).

Sub-section 6(a) treats the party dispossessed within the period provided for in the proviso to sub-section (4) as being in possession of the disputed land on the date of the order made under sub-section (1). Restoration of possession to the party forcibly and wrongfully dispossessed attracting the proviso to sub-section (4) is, in substance and in effect, putting back the party to possession for deciding his possession on the date of the preliminary order made under sub-section (1). Although the party who forcibly and wrongfully dispossessed the other party attracting the application of the proviso to sub-section (4) of Section 145 of the Code has to be factually and physically evicted from the property, by a legal fiction it is only for the purpose of treating him in possession on the date of the preliminary order. Hence the Courts below were wrong in their view that the proceeding abated and the Magistrate had no jurisdiction to dispose it of in accordance with the law in face of Section 8 of the Act. If the proceeding had so abated the attachment order passed by the Magistrate on July 29, 1975 could not survive and the Magistrate could not allow it to continue as he has done in this case.

6. We, therefore, hold that the proceeding in question in this case did not abate and it has to be disposed of by the Magistrate in accordance with the provisions of law contained in Sections 145 and 146 of the Code. For the guidance of the Magistrate, we think it expedient in the interest of justice to indicate briefly as to how the Magistrate is to proceed for disposing of the proceeding.

7. 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 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.

8. For the reasons stated above, we allow this appeal, set aside the orders of the Courts below, send back the case to the Magistrate and direct him to proceed to dispose it of in the light of this judgment as expeditiously as possible, because considerable delay has already occurred.

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