

PUNJAB AND HARYANA HIGH COURT

Hari Ram

Vs

Banwari Lal

Criminal Revn. No. 343-D of 1965

(S.K. Kapur, J.)

30.06.1966

JUDGMENT

S.K. Kapur, J.

1. The residents of Gobjndpuri Extension, New Delhi, encroached upon a portion of Government land and raised a construction thereon. It appears that thereafter the residents got divided into two groups. Banwari Lal and others, the first party, wanted to use the premises as Panchayat Ghar whereas Hari Ram and others, party No. 2, wanted to install a Sadhu by the name of Ram Rakha, a disciple of Baba Balak Ram, in the said premises with a view to convert the same into a temple. Hari Ram and others had actually inducted Ram Rakha into the premises but later an Banwari Lal and others turned him out and took forcible possession of the premises. They started using the premises as Panchayat Ghar. This dispute between the two groups resulted in a tension and the matter was reorted to the police. The police made a recommendation to the trial Magistrate for taking proceedings under section 145, Ciriminal Procedure Code. Shri R. B. L. Mathur, Sub Divisional Magistrate, New Delhi, on 11th December, 1963, passed the following order :-

"Whereas from the police reports dated 29-11-1963 and 4-12-1963 from Station House Officer, Kalkaji, it appears that a dispute likely to cause a breach of peace exists concerning a piece of land known as "Panchayat Ghar", within the local limits of my jurisdiction and since I am satisfied that a dispute likely to cause a breach of peace exists, therefore, I, R. B. L. Mathur, Sub Divisional Magistrate, Delhi, requires the parties concerned to attend my Court in person or by pleader on 20-12- 1963 and to put in written-statements of their respective claims as respect of the actual possession of the subject of dispute and further require them to put in such document, or to adduce, by putting in affidavits, the evidence of such person as they rely upon the subject of such claim.

Since I consider the case one of emergency I also order that pending decision of the enquiry the said property shall be attached. A copy of this order be published by being affixed to a conspicuous place at or near the subject of dispute."

2. The contesting parties were asked to the Court in person or through pleaders on 20th December, 1963, and put in their written-statement in support of their respective claims with respect to the actual possession of the premises in dispute. They were also directed to put in documents or affidavits in support thereof. The premises in dispute were attached under the said order of the Court dated 11th December, 1963. The trial Magistrate after examining the evidence of both the parties came to the conclusion that on the relevant date Banwari Lal and others, the first party, were in possession of the premises in dispute and they were, therefore, allowed to remain in possession. Against the said order dated 1st September, 1964 Hari Ram and others, party No. 2 filed a revision petition before the Additional Sessions Judge, Delhi, and he recommended to this Court that the proceedings taken between the parties under section 145, Criminal Procedure, Code, be quashed after setting aside the order of the trial Court dated 1st September, 1964. The basis of the decision of the learned Additional Sessions Judge is that since no one in the affidavits filed ever asserted that a dispute likely to cause a breach of the peace had existed between the parties concerning the property in dispute, the necessary condition for passing of an order under section 145, Criminal Procedure Code, was absent. He further held that in the judgment the trial Court had nowhere decided that a danger of a breach of the peace existed and, therefore, the order suffered from an infirmity which rendered it liable to be quashed. Mr. Safer appearing for party No. 2 has strenuously supported the recommendation of the learned Additional Sessions Judge and has urged the following points :

- (1) The trial Magistrate was bound to find before passing the final order under section 145, Criminal Procedure Code, that there was likelihood of a breach of the peace and in the absence of that finding the trial Magistrate's order could not stand.
- (2) Some of the affidavits filed, such as affidavit by Jagat Ram dated 21st July, 1964, had categorically asserted "that no breach of peace exists with regard to the property in dispute" and consequently in view of sub-section (5) of section 145, Criminal Procedure Code, the trial Magistrate was bound to record a finding about the existence or non-existence of a dispute likely to cause a breach of the peace and not having done so the learned Additional Sessions Judge was right in making the recommendation.

3. There appears to be no force in the first contention of Mr. Safer. Of course, Magistrate can under sub-section (1) of Section 145, Criminal Procedure Code, assume jurisdiction only if he is satisfied that at the time of passing the preliminary order a dispute likely to cause a breach of the peace exists concerning any land etc. Once that is done the Magistrate is thereafter expected to call upon the parties concerned in such dispute to attend his Court in person or by pleader and put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. The enquiry, therefore, after the initial satisfaction of the Magistrate and after the assumption of jurisdiction by him, has to be directed only as respects the fact of actual possession. At that time he has not to record a finding again about the existence of a dispute likely to cause a breach of the peace. This view is supported by a decision of Shamsheer Bahadur

J. in *Misri Singh v. Pala Singh*¹, In *Ranada Ranjan Bhattachari v. Bharat Chandra Shaha*², the same question was discussed and the learned Judges decided :

"Under section 145, the Magistrate has jurisdiction to take proceedings if he is satisfied from the Police report or other information that a dispute likely to cause a breach of the peace exists. Then it is open to either of the parties under sub-section (5) of section 145 to show that no such dispute exists or has existed. If a party succeeds in doing that the Magistrate must cancel his order, but subject to that cancellation the order of the Magistrate under sub-section (1) shall be final. The effect of this is that unless a party is in a position to show to the Magistrate that there is no likelihood of a breach of the peace the Magistrate's order under sub-section (1) stands. Therefore it follows that the mere absence of a finding by the Magistrate that there is likelihood of a breach of the peace does not go to the root of his jurisdiction and is not in itself sufficient for our interference with his order. Here all that has happened is that both parties denied that there was likelihood of a breach of the peace."

4. This takes me to the second contention of Mr. Safeer. The argument is that under sub-section (5) "party so required" to attend which expression when read with section 145 (1) means the "parties concerned", or any other person interested were entitled to show that no such dispute as is contemplated by section 145 (1) Criminal Procedure Code, existed and on such a question being raised the Magistrate was bound to record a finding and then cancel or affirm his preliminary order. Mr. Jain objected to this plea being permitted because, according to him, the party of Hari Ram did not allege that there was no likelihood of breach of peace. Mr. Safeer sought to overcome this difficulty by relying on the affidavits of Jagat Ram dated 21st July, 1964, and many others, who, according to Mr. Safeer, were not parties required to attend but other persons interested. They did say in their affidavits that "no breach of peace exists.....". The written statement filed by Hari Ram and others, party No. 2, however, bears out what Mr. Jain says. Banwari Lal in his affidavit dated 19th May, 1964, however, categorically stated "that no breach of peace exists with regard to the property in dispute." In these circumstances, Hari Ram and others cannot be heard to say that they had raised an issue regarding the existence or non-existence of a breach of the peace requiring adjudication by the Magistrate under sub-section (5) of section 145, Criminal Procedure Code. This takes me to the question whether Jagat Ram or others were "parties concerned" or "other person interested", within the meaning of Section 145 (5) and did they raise the question in that capacity. Nothing is clear from the record as to who were the persons actually required by the Magistrate to attend and consequently who were the parties concerned. There was some controversy at the bar also as to the meaning of the expression "parties concerned" in section 145, Criminal Procedure Code. I am in agreement with the view expressed by a Full Bench of the Calcutta High Court in *Krishna Kamini v. Abdul Jabbar*³ that the words "parties concerned in such dispute" are intended to indicate all persons claiming to be in possession at the time of the initial order under sub-section (1) of section 145, Criminal Procedure Code. Mr. Safeer, however, says that Jagat Ram and others were not parties

concerned but were other persons interested and, therefore, entitled to an adjudication at the hands of the trial Magistrate as to the existence of a dispute contemplated by Section 145 (1), Criminal Procedure Code.

It appears that these affidavits were filed in support of the respective claims of the parties and Jagat Ram and others never pressed that they were "other persons interested" and never asked the Magistrate to adjudicate upon the position in accordance with Section 145(5), Criminal Procedure Code. In the circumstances, I do not feel called upon to permit this question to be argued at this stage for the first time. In any case, that may be the grievance of Jagat Ram and others but not of Hari Ram and others, Party No. 2.

5. Mr. Safer also raised the question that the finding as to possession by the trial Magistrate was not supported by any evidence. One of the contentions is that the trial Magistrate misread the written-statement filed by Hari Ram and others as to the possession. The trial Magistrate has also relied on the police report, the report of Shri R. B. L. Mathur Magistrate dated 22nd November, 1963, as a result of spot enquiries, and the resolution dated 6th October, 1963. Perusal of these documents shows that the Magistrate was right in the conclusion to which he arrived as to possession. In these circumstances I think the order of the trial Magistrate was right and I, therefore, decline to accept the recommendation of the learned Additional Sessions Judge. The petition is, therefore, disposed of accordingly.

Petition dismissed.

Cases Referred.

1196466 Pun LR 963

225 Cal WN 215 : (AIR 1921 Cal 631)

3(1903) ILR 30 Cal 155 (FB)