

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2661/2009**

Date of Decision: 18.05.2012

INDERPAL SINGH

.... PETITIONER

Through: Mr.Siddharth Bambha, Advocate.

Versus

THE STATE & ANR.

.....RESPONDENTS

Through: Ms.Fizani Husain, APP for R-1.
Mr. Sunil Ahuja, Advocate for
R-2.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J.

1. The petitioner filed this petition under Section 482 CrPC seeking assailing the order dated 15.12.2008 of the SDM, Karol Bagh, New Delhi under Section 145 CrPC.

2. The facts necessitating the disposal of the present petition are that a *Kallandra* under Section 145 CrPC was presented by the SHO, DBG Road to SDM on 23.5.2000 alleging the apprehension of breach of peace in respect of property bearing No. F-22, DBG Market, Karol Bagh regarding which both, the petitioner as well as the respondent No. 2 Sanjeev Hans were claiming to be in possession based on certain

documents. Both the parties were leveling allegations against each other. The respondent No. 2 Sanjeev Hans assailed the said *Kallandra* by filing CrI.M.(M). 2490/2000 in this court, wherein the following order came to be passed:

“The only grievance of the petitioner at this stage when the kalandra has been sent by the SHO to the SDM for conducting of the proceedings under Section 145 CrPC is that the SHO has requested the SDM to return the findings as to the ownership and possession of the property over which different claimants are staking their claim. Since scope of Section 145, CrPC is limited to possession of the suit property, the observation made by the SHO in the Kalandra requesting the SDM to decide the ownership will be of no relevance so far as the proceedings under Section 145, CrPC , being undertaken by the SDM are concerned. SDM shall only confine his findings over the possession of the premises”.

3. Subsequent to aforesaid order of this court, the SDM conducted enquiry and passed an order dated 20.2.2008. In the enquiry that was conducted by the SDM, both the parties filed different sets of documents claiming themselves having purchased the said property from its landlord J.K.Dutta. The respondent No. 2 Sanjeev Hans had also brought to the notice of the SDM that he had also filed a suit for specific performance etc. against Mr.Dutta vide Civil Suit No. 267/2003.

4. The main plea that was set up by the respondent No. 2 Sanjeev Hans was that he had made payment of some money by way of two receipts to Mr. Dutta, one of which was of 29.12.1996 and the later was not executing the sale deed and that led him to file the aforesaid civil suit.

5. On the other hand, the set of documents which were filed by the petitioner herein comprised of Agreement to Sell, Indemnity Bond, Undertaking, GPA, SPA dated 10.1.1997. The SDM observed that both the parties have paid certain amount of money at different periods of time for buying the property in question from Mr.Dutta. He noticed that however, from the documents which were filed by the petitioner herein, actual physical possession of two rooms of the First Floor were given by Mr. Dutta to the petitioner's father. It was also the case of the petitioner that the respondent Sanjeev Hans has dispossessed them in the year 2000 i.e. sometimes before the filing of *Kallandra*. On account of all this uncertainty, the SDM ordered the property to remain sealed till the competent court decides the rights of the parties.

6. The aforesaid order dated 20.2.2008 was taken in appeal by the respondent Sanjeev Hans before the ASJ, who vide order dated 29.9.2008 remanded the matter back to the SDM to record a finding of possession of the premises and to restore the possession of the premises to the respondent Sanjeev Hans. The learned ASJ observed that the SDM has neither followed the procedure laid down under Section 146 CrPC nor he acted in accordance with the provisions of Section 145(4) CrPC. Consequently, he set aside the order dated 20.2.2008 of SDM and remanded the case to SDM with the direction to record his findings in accordance with law and in the meanwhile, to restore the possession to the respondent Sanjeev Hans (petitioner therein).

7. In the remand proceedings, the learned SDM vide impugned order dated 15.12.2008 restored the possession of the premises to the respondent Sanjeev Hans. The learned SDM having taken note of the direction of the remand order passed by the ASJ, ordered the restoration of the premises to the respondent Sanjeev Hans and reasoned as under:

“Heard the case in detail and considered all relevant documents and under the circumstances my findings are that the possession of the premises in dispute was already with the petitioner Sh. Sanjeev Hans much prior to order passed by the then SDM (Karol Bagh) dated 20.2.2008 as per record. I hold accordingly”.

8. It is this order of the SDM which has been assailed in the present petition. The main ground that has been taken by the petitioner is that the learned SDM, without conducting enquiry or recording any evidence as regard to the possession and without doing anything further after remand, just recorded a finding that the respondent Sanjeev Hans was in possession prior to the passing of the order by the then SDM on 20.2.2008. It was the contention of the learned counsel for petitioner that the possession was required to be determined not at the time of the passing of the order under Section 145 CrPC, which in this case was 20.2.2008, but before initiation of proceedings under Section 145 CrPC. It was submitted by the petitioner that immediately before the initiation of proceedings by *Kallandra*, he was in possession of the premises and the possession thereof was taken forcibly by the respondent Sanjeev Hans. In other words, his submission was that since he was in possession of the premises and not the respondent Sanjeev Hans before initiation of the proceedings under Section 145 CrPC, the order of the SDM dated 15.12.2008 was erroneous.

9. I have heard learned counsel for the petitioner and also for the respondent and perused the entire records including all the orders.

10. There cannot be any dispute with regard to the proposition that the relevant time for determination of the possession of the premises, which was alleged to be the cause of breach of peace, was prior to initiation of proceedings under Section 145 CrPC. If one party was alleging dispossession by the other, as in this case the petitioner was alleging having been dispossessed by the respondent Sanjeev Hans, then, the procedure that was to be followed by the SDM was under Section 145 (4) CrPC, which reads thus:

“145. Procedure where dispute concerning land or water is likely to cause breach of peace.

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(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 and which of the parties was, at the date of the order made by him under subsection (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 subsection (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)”.

11. The plea of dispossession of the petitioner could not have been outrightly ignored or taken lightly by the SDM since it was also so stated by the police in the *Kallandra*. The SDM in his previous order dated 20.2.2008 had also taken specific note of the assertion of the petitioner having been dispossessed by the respondent Sanjeev Hans in the year

2000. This was also specifically so noted by the ASJ in his remand order dated 29.9.2008 that the procedure prescribed under Section 145(4) CrPC was not followed by the SDM. Further, the finding of possession that was required to be recorded by the SDM was not on the date of his previous order dated 20.2.2008, but prior to the initiation of the proceedings under Section 145 CrPC.

12. In any case, if the SDM for any reason considered the case to be one of an emergency or found himself unable to satisfy that which of the party was in the possession of the disputed property, then as per Section 146(1) CrPC, he was empowered to attach such property until a competent court determines the right of the property thereto with regard to the person entitled to the possession thereof. In that eventuality, he was also empowered to appoint a receiver or make such arrangement as he may consider appropriate for looking after the property. In the instant case, the SDM in his previous order of 20.2.2008 had ordered the property to remain sealed till the competent court decides the issue. That order of the SDM was set aside and the matter was remanded back to him by the ASJ vide his order dated 29.09.2008. Even after the remand, the SDM neither followed the procedure under Section 145(4) CrPC as noted above, nor that of Section 146 CrPC. This was despite that the ASJ had specifically so observed the order of the SDM dated 20.2.2008 to be faulting on these counts. The SDM vide impugned order has straight proceeded to restore the possession to the respondent Sanjeev Hans taking it as a direction and the decision of the ASJ. As is noted above, the direction of restoration of the possession to the respondent though

was there, but at the same time, direction was also to record a finding as regard to the possession of the premises. Thus the possession that was ordered to be restored to respondent, Sanjeev Hans was nothing but interim.

13. This small controversy has been hanging for about 12 years now. In the mean, the respondent Sanjeev Hans had filed a suit for specific performance against the landlord Mr.Dutta and obtained ex parte decree of specific performance against him in respect of the said premises. On the other hand, the petitioner on his part has also filed a suit being Suit No.480/2005 for declaration and possession etc. against the present respondent as also the landlord and said suit is also pending decision in this court. Undisputedly, there has not been any occasion of breach of peace or even apprehension thereof since the time of initiation of proceedings under Section 145 CrPC. The purpose of Section 145 CrPC is only to secure the possession till the time, the same is determined by a court of competent jurisdiction. In the present case, though the respondent herein has already obtained an ex parte decree of specific performance against the landlord, but the suit filed by the petitioner herein in respect of the same premises against the respondent and the landlord cannot be lost sight of. It is the ultimate decision of the court of competent jurisdiction, which will determine the rights of the warring parties qua the disputed premises. In the given changed circumstances of the parties having had recourse to the civil suits, no useful purpose would be served in continuing with the proceedings under Section 145 CrPC and to remand the matter back to the SDM after a lapse of 12 years. In the given factual situation, without approving the interim possession of the

respondent Sanjeev Hans to be lawful or that the petitioner was dispossessed by him as alleged, the ends of justice would be met in securing the possession of the premises till the matter was finally determined by the Civil Court. In the entire facts scenario, the respondent Sanjeev Hans, who has been given the possession of the premises by the SDM in pursuance of the directions of the ASJ, can continue to remain in possession, subject to his furnishing an undertaking in the case Suit No.480/2005 that he shall not create any third party interest of any kind whatsoever in the said premises and shall deliver the possession of the premises to the person as held to be entitled by the Civil Court. He shall furnish such an undertaking within four weeks from today. In the event he fails to do so, the possession shall be got delivered to the petitioner by the SHO, on his furnishing similar undertaking in said civil suit No. 480/2005.

14. The petition stands disposed of with above directions.

M.L. MEHTA, J.

MAY 18, 2012

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