

Before A. Koshal, J.

AMRA & OTHERS,—Petitioners.

versus

THE HARYANA STATE & OTHERS,—Respondents.

Criminal Revision No. 292 of 1974.

April 8, 1974.

Code of Criminal Procedure (Act V of 1898)—Section 145—Persons in peaceful possession of land for years as tenants, though their tenancies terminated by the land-lords—Civil Courts passing decrees against the land-lords not to interfere in the possession of the tenants—Proceedings under section 145 undertaken—Magistrate attaching the land—Such attachment—Whether justified.

Held, that when some persons are in peaceful possession of land as tenants for years, although their tenancies have been terminated by the land-lords, they have a right to remain in possession till ousted from the land in due course of law. If they are sought to be ousted forcibly, they are entitled to the protection of law whether the ouster is intended by the land-lords or their subsequent lessees. The attachment of the land by the Magistrate in proceedings under section 145 Code of Criminal Procedure, 1889, which deprives the tenants of their possession cannot be considered justifiable. Even if the magistrate finds an apprehension of breach of peace to exist, in order to prevent such a breach, action should be taken against aggressors and not against those who are in peaceful and established possession of the land in dispute, especially when decrees restraining the land-lords from interfering with their possession have been passed by the Civil Courts. Depriving the persons in peaceful possession of the land, by ordering its attachment is akin to punishing them for what was an intended act of aggression on the part of their adversaries. It is the function of the Magistrate to see that the possession of the party which has been successful in the Civil Courts is maintained.

Petition for revision of the order of Shri V. K. Jain, Additional Sessions Judge, Karnal, dated the March, 14, 1974 affirming that of Shri S. C. Dhosiwal, Sub Divisional Magistrate, Kaithal, dated 6th August, 1973 holding that it is essential that in the interest of public peace and tranquility the land mentioned below be attached under section 145 Cr. P.C. and made over to Tehsildar Guhla, as supratdar of the same till the final decision of this police complaint and ordering that notice to both the parties be issued for August 27, 1973 to appear before him and put in their evidence by way of

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affidavits and other documents if any, in support of their respective claims for the possession over the said land.

Measuring 392 acres situate at village Ishaq, Tehsil Guhla.

Proceedings : Under section 145 Cr. P.C.

Kuldip Singh, Advocate, for the petitioner's.

R. P. Dhiya, Advocate for Advocate General, Haryana, for respondent No. 1.

Baldev Kapur, Advocate, for respondents 3, 4, 6 to 24, 26 to 30, 32 to 35, 37 to 39, 41 to 43, 45, 49, 51, 52 and 54.

JUDGMENT

Koshal, J. The facts giving rise to this petition under section 561-A of the Code of Criminal Procedure, which seeks a revision of the orders of the two Courts below, are admitted on all hands and may be stated thus:

In the year 1957, the Gram Panchayat of village Ishak leased out various parcels of land owned by it to 40 persons, including the five petitioners, and since then the lessees have been in possession of their respective parcels. On the 27th of March, 1973, the Gram Panchayat leased out the said parcels of land to respondents Nos. 2 to 54, who then made up their mind to oust the lessees in possession by force. The petitioners and others, who had obtained land on lease in the year 1957, filed separate suits for permanent injunction restraining the Gram Panchayat from interfering with their possession except in due course of law. All those suits were decreed on 23rd of April, 1973, because the plea taken by the Gram Panchayat therein was that it had no intention at all of using force to oust the lessees, in possession, including the petitioners.

On 6th of August, 1973, proceedings under section 145 of the Code of Criminal Procedure were started by the police against the forty persons mentioned above in the Court of the Sub-Divisional Magistrate, Kaithal, who, on the same date, passed an order, the relevant part of which may be reproduced below for facility of reference :—

“From a perusal of the police report, I am satisfied that there is a dispute between the above two parties with regard to

possession of Panchayat land comprised in Rectangle No.
60 * * * * *
* * * * *

measuring 392 acres situate in village Ishak, Tehsil Guhla and there is a likelihood of a breach of peace between the above two parties on that account. It is, therefore, essential that in the interest of public peace and tranquility, the said land be attached under section 145, Criminal Procedure Code, and made over to the Tehsildar, Guhla, as Spurdar of the same till the final decision of this police complaint * * * * *

A copy of this order be also pasted in the village Chaupal/Panchayat ghar, and also in the thoroughfare in the village."

(4) This order was challenged before the Additional Sessions Judge, Karnal, by the petitioners on the revisional side but was maintained, and that is why the present petition has been filed in this Court.

(5) It is common ground between the parties that the petitioners have been in peaceful possession of the land in dispute for more than 15 years as tenants under Gram Panchayat. Even though their respective tenancies may have been terminated by the Gram Panchayat, they have a right to remain in possession till ousted from the land in due course of law. It follows that if they are sought to be ousted forcibly, they are entitled to the protection of law whether the ouster is intended by the Gram Panchayat, or by its lessees, or by other persons. The attachment of the land by the learned Magistrate, which deprived the petitioners of their possession, cannot be considered justifiable. It is true that an apprehension of breach of peace was found by the learned Magistrate to exist but then, in order to prevent such a breach, action should have been taken against the respondents, and not against the petitioners, who were in peaceful and established possession of the land in dispute, especially when decrees restraining the Gram Panchayat from interfering with their possession had been passed by the Civil Courts. The respondents derived their title from the Gram Panchayat and could have no better right in regard to the land in dispute than the Gram Panchayat itself had. If the Gram Panchayat

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was duty bound under the decrees not to interfere with the possession of the petitioners, so were the respondents; and if the latter sought to interfere with the possession of the petitioners in defiance of the decrees, the apprehension of the breach of peace arose because of what they intended and not because of any threatened action on the part of the petitioners. Depriving the petitioners of the land, therefore, by ordering its attachment, was akin to punishing them for what was an intended act of aggression on the part of their adversaries. It was the function of the learned Magistrate to see that the possession of the party which had been successful in the Civil Court was maintained. In this connection, reference may usefully be made to a couple of decided cases.

(6) In *Pitabas Podhan v. Krushna Podhan and 3 others*. (1), the petitioner apprehended disturbance of his possession which he had obtained under a decree of the Civil Court. He made an application to a Magistrate asking him to restrain his adversaries from interfering with his possession under section 144 of the Code of Criminal Procedure. The learned Magistrate, however, converted the proceeding into one under section 145 of the Code. Holding his order to be indefensible, G. K. Misra, J., observed :—

“In a case of this nature, where recent delivery of possession has been effected through Civil Court, it is the paramount duty of the Criminal Court to see that the possession of the successful party is maintained. If there is any apprehension of breach of the peace, the unsuccessful party should be bound down under section 107, Criminal Procedure Code.”

(7) In *Sajjan Singh, son of Jagan Nath Singh v. Sajjan Singh, son of Bhairu Singh and another*, (2), one Bhairu Singh left his village after handing over possession of his house to Sajjan Singh, son of Jagannath Singh. The son of Bhairu Singh who was also named Sajjan Singh started proceedings under section 145, Criminal Procedure Code, and succeeded in having a report made by the police in his favour to the Sub-Divisional Magistrate, Jodhpur, who ordered attachment of the house under the third proviso to section 145 (4) of the Code. Shortly afterwards, Sajjan Singh son of

(1) A.I.R. 1968 Orissa 239.

(2) U.J. (S.C.) (1970) 75.

Jagannath Singh obtained a temporary injunction from the Civil Court restraining Bhairu Singh's son from interfering with his possession of the house, and then applied to the Magistrate for stay of the proceedings which was issued with a direction that the Tehsildar concerned shall take over possession of the house as a Receiver. Sajjan Singh, son of Jagannath Singh went up in revision to the Sessions Court and then to the High Court but remained unsuccessful. The High Court held that the order of attachment of the house and the appointment of the Receiver were valid and that the temporary injunction issued by the Civil Court had no effect upon the proceedings before the Sub-Divisional Magistrate. Sajjan Singh, son of Jagannath Singh took an appeal to the Supreme Court which was dismissed but with the following observations :—

“In our opinion this case must go back to the Sub-Divisional Magistrate for decision of the proceedings before him. Those proceedings commenced as far back as 1967 and the question whether there is or there is not any apprehension of breach of peace will certainly have to be decided in the light of the happenings in the Civil Court. In the meantime, we do not see any reason to order the setting aside the order of the High Court. It will be open to the Sub-Divisional Magistrate to consider whether the Receiver should be continued or not, but in any event, he shall not disturb the possession of Sajjan Singh, son of Jagannath Singh so long as the temporary injunction is outstanding and pending the decision of the proceedings under section 145 of the Code of Criminal Procedure, with a view to handing over the possession to the other side.”

(8) For the reasons stated above, the petition succeeds and is accepted, and the order of the learned Sub-Divisional Magistrate, Kaithal, is set aside.

N.K.S.

Before B. R. Tuli & B. S. Dhillon, JJ.

GURDITTA SINGH AND ANOTHER,—Appellants.

versus

HARBANS SINGH (MINOR) UNDER THE GUARDIANSHIP OF HIS FATHER,—Respondent.

L.P.A. 213 of 1973.

April 9, 1974.

Redemption of Mortgages (Punjab) Act, 1913—Sections 4 and 12—Land under mortgage—Mortgagor's application for redemption