

**In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow**

Neutral Citation No. – 2025:AHC-LKO:44537

A.F.R.

Court No. - 15

Case :- APPLICATION U/S 482 No. - 5838 of 2025

Applicant :- Syed Raza Abbas

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of
Home Lko. And Another

Counsel for Applicant :- Rakesh Kumar, Agendra Sinha

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Agendra Sinha, the learned counsel for the applicant and Sri. Rajesh Kumar Singh the learned AGA-I for the State.
2. By means of the instant application filed under Section 528 BNSS, the petitioner has challenged the validity of an order dated 07.09.2015 passed by the Addl. City Magistrate, Lucknow in Miscellaneous Case No.03 of 2015, which was instituted on the basis of the applicant's application under Section 145 Cr.P.C.
3. It is recorded in the impugned order dated 07.09.2015 that the Kothari in dispute is in possession of the opposite party No.2, there was no breach of peace and the matter related to title dispute which is pending adjudication before the Civil Court. The title can be decided by the Competent Court and the parties should seek relief from the Competent Court only. The Addl. City Magistrate accordingly closed the proceedings.
4. The applicant had challenged the aforesaid order dated 07.09.2015 by filing Criminal Revision no.441 of 2015, which has been dismissed by means of an order dated 22.10.2024 passed by the Learned Addl. District and Session Judge/Spl. Judge, P.C. Act, Court No.7,

Lucknow, holding that there is no legal error in the order dated 07.09.2015 passed by the Addl. City Magistrate. The validity of the revisional order has also been challenged by the applicant.

5. Assailing validity of the aforesaid orders, Sri. Agendra Sinha, the learned counsel for the applicant, submitted that the applicant was dispossessed from the Kothari in question in an illegal manner in the night of 25/25.04.2002 and in these circumstances, the Magistrate ought to have restored possession of the property to the petitioner in exercise of the proviso appended to the sub-Section 4 of Section 145 of Cr.P.C.
6. Although a copy of the application under Section 145 Cr.P.C. on which the proceedings were instituted, has not been annexed with the application under Section 482 Cr.P.C., it appears that the applicant claims that he is the owner and is in possession of House No.403/238-239, Katra Bizenbeg, P.S.- Sahadatganj, Lucknow which consists of several houses under occupation of different tenants and only some portion of the property is in possession of the applicant. Husband of the opposite party No.2 had forcibly taken possession of a Kothari (store room) in the night of 25/26.04.2002 by breaking the lock of the applicant. An FIR in this regard has been lodged on 28.04.2002 and the criminal case instituted thereon is still pending.
7. Pursuant to a police report dated 04.05.2002, proceedings under Section 145 Cr.P.C. were instituted and registered as Case No.71 of 2002. The Tehsildar had submitted a report dated 11.09.2003 in the aforesaid case stating that the applicant was in possession of the disputed premises prior to his unlawful dispossession. The Addl. City Magistrate passed an order dated 26.03.2003 directing restoration of possession of the applicant, subject to any order passed by the competent civil court. However, the order dated 26.09.2003 was set-aside by means of an order dated 29.11.2003 passed by the Addl. District Judge, Lucknow in Crl. Revision No.208 of 2003 on the ground that the Magistrate had not held an inquiry contemplated by Section 145 (4) Cr.P.C. and had not taken any evidence. The matter

was remanded to the Magistrate who had decided afresh in accordance with the law.

8. After remand, the Addl. City Magistrate-III, Lucknow passed an order dated 15.09.2004 dropping the proceedings under Section 145 Cr.P.C. on the ground that a civil suit regarding the same property was already pending adjudication. The applicant challenged the order dated 15.09.2004 by filing Crl. Revision No.247 of 2004, which was allowed by means of an order dated 14.12.2004 passed by the learned Addl. District Judge, Court No.-2, Lucknow and the matter was again remanded for being decided afresh after determining whether the property involved in the proceedings under Section 145 Cr.P.C. was identical to or distinct from the property which is a subject matter of the civil dispute.
9. The Magistrate once again dropped the proceedings under Section 145 Cr.P.C. vide order dated 18.07.2005 on the ground that a civil suit regarding the property in dispute is pending.
10. It has been pleaded in the application under Section 482 Cr.P.C. that two civil suits between the parties are pending adjudication before the civil court. Regular Suit No.50 of 2001 has been filed by the applicant praying for declaration and mandatory injunction and the other suit No.277 of 2004 was filed by the predecessor in interest of the opposite party No.2.
11. Sri Agendra Sinha, the learned counsel for the applicant submitted that the aforesaid suit filed by the applicant is based on title whereas the opposite party No.2 is claiming possessory rights only. Sri Sinha has submitted that where the petitioner has claimed illegal dispossession by use of force, the Magistrate is obliged to ensure that the possession of the person who has been illegally ousted, be restored irrespective of adjudication of rival claims to title of the property. He has relied upon a judgment of the Hon'ble Supreme Court in the case of **R.H. Bhutani v. Ms. Man. J. Desai**, AIR 1968 SC 144, in which the Hon'ble Supreme Court has held that a reading of Section 145 Cr.P.C. as a whole makes it clear that even if the respondent has taken

over possession of the property in dispute, if the incident took place within the prescribed period of two months, an aggrieved person would be deemed to be in possession on the date of the preliminary order and the Magistrate would be competent to pass the final order for restoration of the possession. However, this judgment does not deal with the effect of pendency of civil suit regarding the property in question before the Competent Civil Court.

12. The relevant part of Section 145 Cr.P.C. provides as follows: -

145. Procedure where dispute concerning land or water is likely to cause breach of peace.—(1) *Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.*

* * *

(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 any and which of the parties was, at the date of the order made by him under sub-section (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 sub-section (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).

* * *

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he

proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

* * *

13. A bare perusal of Section 145 (1) Cr.P.C. makes it manifest that the first essential condition for invoking the powers under the aforesaid provision is the existence of a dispute concerning any land likely to cause a breach of peace. If there is no likelihood of causing a breach of peace, the Magistrate would not be justified in exercising the power under Section 145 Cr.P.C.
14. The alleged illegal dispossession in the present case took place in the night of 25/26.04.2002. The police report was lodged on 04.05.2002. The case under Section 145 Cr.P.C. was instituted thereafter. Civil Suits have been filed by both the parties and during the intervening period of more than 23 years since the alleged illegal dispossession, there has not been any instance of breach of peace due to the alleged illegal dispossession of the applicant make in the year 2002.
15. In **Ram Sumer Puri Mahant v. State of U.P.**: (1985) 1 SCC 427, the Hon'ble Supreme Court held that parallel proceedings under Section 145 Cr.P.C. should not be permitted to continue when possession is being examined by the civil court. The Hon'ble Supreme Court further held that multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.
16. In **Ashok Kumar v. State of Uttarakhand**: (2013) 3 SCC 366, the Hon'ble Supreme Court held that the object of Section 145 Cr.P.C. is merely to maintain law and order and to prevent breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession.
17. In **Sri Siddeshwar Temple Trust Committee v. Sri Malingaraya Temple Charitable Trust**: (2020) 18 SCC 417, the Hon'ble Supreme Court has held that once a civil suit is pending between the parties and

an injunction has been granted therein, a parallel proceeding under Sections 145 and 146 Cr.P.C. cannot, in law, take place.

18. In the present case, the Magistrate has come to the conclusion that there was no breach of peace, the matter related to title dispute which is pending adjudication before the Civil Court and the question of title can be decided by the Competent Court and has closed the proceedings for the aforesaid reasons. This Court finds no error or illegality in the view taken by the learned Magistrate.
19. The application under Section 482 Cr.P.C. lacks merit and the same is dismissed.

(Subhash Vidyarthi J.)

Order Date: 25.07.2025
Amit K-