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Court : Delhi

Decided On : Nov-07-1997

Reported in : 1998IAD(Delhi)362; 75(1998)DLT93; 1999(48)DRJ287

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 387 of 1990

Appellant : Shabar Singh

Respondent : State and ors.

Advocate for Pet/Ap. : Mukta Gupta and; M.L. Lonial, Advs

Judgement :

Jaspal Singh, J.

(1) It appears that on 19th December, 1978 the present petitioner filed a civil suit for permanent injunction against the respondents claiming himself to be in possession of plot No.41 measuring 650 square yards in the Laldora in Village Shaipur within the jurisdiction of Police Station Shalimar Garden. The petitioner claimed therein to be in possession of the said plot of land. He obtained an ex parte injunction order against the respondents and later on the suit was decreed in his favour. This was on 30th September, 1989. However, after the decree a

Kalandara was filed. To be precise, this was on 11th December, 1989. It was alleged therein that the present petitioner had taken forcible possession of the plot in question and that there was imminent apprehension of breach of peace. Consequent thereupon orders were passed by the learned Sub-Divisional Magistrate under Sub-section (1) of Section 145 and Sub-section (1) of Section 146 of the Code of Criminal Procedure. Consequent upon these orders the property was sealed. Aggrieved by the orders the petitioner moved the present petition and on 18th August, 1994 the proceedings before the Sub-Divisional Magistrate were stayed.

(2) The learned Counsel for the petitioner has submitted that the police authorities have joined hands with the respondents and that despite the decree passed by the Civil Court adjudicating the petitioner to be in possession of the plot in question and directing the respondents by way of permanent injunction not to interfere with the petitioner's possession the Kalandara had been filed and the Sub-Divisional Magistrate, ignoring the decree of the Civil Court had proceeded to pass order sealing the property.

(3) As per the learned Counsel for the petitioner the Sub-Divisional Magistrate ought to have dropped the proceedings forthwith in view of the decree passed by the Civil Court and in view also of the fact that the petitioner had been declared to be in possession of the suit property, not only in the civil suit but also in the judgment passed by a Criminal Court against respondent No.3 in Fir No.79 of 1979 pertaining to Police Station, Adarsh Nagar.

(4) I do feel that the proceedings under Section 145 of the Code of Criminal Procedure have lingered on for long but then this is partly on account of the order of this Court of 18th August, 1994 as referred to above.

(5) The Learned Counsel for the parties agree that let direction be given to the learned Sub-Divisional Magistrate to conclude the proceedings within three months from the date this order is communicated. They assure me that they shall extend all possible assistance to the learned Sub-Divisional Magistrate in concluding the proceedings within the time frame. Consequently, the order of 18th August, 1994 staying the proceedings before the learned Sub-Divisional

Magistrate is vacated. Let the parties appear before the learned Sub-Divisional Magistrate on 24th November, 1997. I may clarify that this order is not to be taken to mean that the petitioner is admitting the jurisdiction of the Sub-Divisional Magistrate to proceed with the matter. Rather the contention of the petitioner is that in view of the decree passed by the Civil Court the learned Sub-Divisional Magistrate had no jurisdiction to pass the impugned orders under Sections 145 and 146 of the Code of Criminal Procedure. The learned Sub-Divisional Magistrate shall determine this question too.

(6) In view of the order passed by me above I feel that no further orders need be passed on the petition which stands disposed of. However, the contempt petition moved by the petitioner shall remain pending. The proceedings on the contempt petition are adjourned sine die and may be got revived after the expiry of the period of three months. The order be communicated to the learned Sub-Divisional Magistrate concerned forthwith. dusty also.

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