

Sumer Singh Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-14-1991

Reported in : 1991(1)WLN226

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Revision Petition No. 152 of 1990

Appellant : Sumer Singh

Respondent : The State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

B.R. Arora, J.

1. This revision-petition is directed against the order dated August 22, 1990, passed by the Special Judge, Essential Commodities Act cum Additional Sessions Judge, Jodhpur and the consequential order dated September 18, 1990, passed by the Sub-Divisional Magistrate, Jodhpur.

2. Kana Ram and others filed an application under Section 145, Cr. P.C. against Sumer Singh and others on August 4, 1980, praying therein that in village Dugar, KHASRA Nos. 363 and 414/9, measuring 276 Bighas and 9 Biswas are situated which are AAGORE land and the non-appellants Sumer Singh and party are

forcibly trying to take possessions and cultivate that land. On July 31, 1980, they collected themselves and tried to cultivate the aforesaid land. When they were asked not to do so then they refused to acced to the request of the applicant/complainant-party. It was, therefore, prayed that there is apprehension of breach of peace with respect to the learned bearing Khasra Nos. 363 and 414/9 hence proper action may be taken. The application for attachment of the land in question was also made. The learned Sub-Divisional Magistrate, Jodhpur, by his order dated August 3, 1980, passed a preliminary order and, also, passed an order under Section 146(1) Cr. P.C. and attached the land bearing Khasra No. 263, measuring 207 Bighas 6 Biswa and Khasra No. 414/9 and appointed the Station House Officer, Police Station, Balesar as the Receiver with respect to this land. Notices to the other party were, also, issued. After the service of the notices on the other party Sumer Singh and others appear before the Executive Magistrate and moved an application under Section 146 Cr. P.C. on September 18, 1981, and prayed that the land in question is in their possession. It was alleged in that application that an ex-parte order was obtained by the applicant while there is no apprehension of breach of peace and the land is not the AAGORE land and the same belongs to them and they are suffering unnecessarily the losses on account of the attachment of the land in dispute and they have been deprived of their right to cultivate the land. On this application, the learned Sub-Divisional Magistrate, by his order dated October 22, 1981, after hearing the arguments of both the parties, ordered for withdrawal of the attachment order. Dissatisfied with this order, dated October 22, 1981, ordering for the withdrawal of the attachment, Kana Ram and other preferred a revision petition before the learned Sessions Judge, Jodhpur, which was ultimately decided by the learned Additional Sessions Judge No. 1, Jodhpur. The revision-petition filed by Kana Ram and others was allowed and the case was remanded to the learned Sub-Divisional Magistrate to decide the matter after giving an opportunity of hearing to both the parties. The learned Sub-Divisional Magistrate thereafter, by his order dated October 31, 1984, again, allowed the application dated September 21, 1981 filed by Sumer Singh and party by holding that as the attachment was already withdrawn and the land is in possession of Sumer Singh and party, therefore, there is no question of any apprehension of breach of peace and for re-attachment of the property.

Dissatisfied with this order dated October 31, 1984, withdrawing the attachment order, Kana Ram and party preferred a revision-petition before the learned Sessions Judge, Jodhpur, which was ultimately decided by the Special Judge, Essential Commodities Act-cum-additional Sessions Judge, Jodhpur, by his order dated August 22, 1990. The learned Additional Sessions Judge, Jodhpur, allowed the revision petition filed by Kana Ram and other, set-aside the order dated October 31, 1984 and directed the learned Sub-Divisional Magistrate to re-attach the property in dispute and to proceed in accordance with law. The learned Sub-Divisional Magistrate, in consequence of the order dated August 22, 1990, by his order dated September 18, 1990, attached the property in dispute. It is against these orders that the present revision-petition has been filed by Sumar Singh and others.

3. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

4. It is contended on behalf of the petitioner that a revenue suit was decided in favour of the petitioner and when the rights of the parties have already been decided then the proceedings under Section 145 Cr. P.C. are not maintainable. It was further argued that while remanding the case to the learned Sub-Divisional Magistrate, the learned Additional Sessions Judge has observed that the land may be re-attached and the learned Sub-Divisional Magistrate may proceed in accordance with law. Such type of direction cannot be given by the revisional Court while remanding the case. It was, also, argued that the learned Sub-Divisional Magistrate has twice held that there is no apprehension of breach of peace and the petitioner is in possession of the land in question and all, the proceedings decided in their favour and therefore, the revisional Court should not have remanded the case. Lastly, it was argued that none of the conditions envisaged in Section 146 of the Code of Criminal Procedure was present and, therefore, the order of attachment was wholly uncalled-for. The learned Counsel for the respondents, on the other hand, has supported the order passed by the learned Additional Sessions Judge and has submitted that no revenue suit was ever filed by any of the parties, rather an application was filed which was though decided in favour of the petitioner but in appeal the order August 29, 1979 was

passed in favour of the petitioner, was set-aside and against that order an appeal was filed by the petitioner, in which though the stay has been granted but those proceedings are initiated by way of filing an application on the administrative side and no regular suit was neither filed by any of the parties nor is pending, but as already submitted, the question of possession over the land in dispute is pending and has not yet been decided and so far as the directions given by the learned lower Court are concerned, that can be given by the lower Court in view of the powers vested in it.

5. I have considered the rival submissions made by the counsel for the parties.

6. Now, so far as the pendency of the revenue suit is concerned, suffice it to say that no revenue suit was filed by either of the parties and the order dated June 29, 1979 was passed by the learned Sub-Divisional Magistrate on an application filed by the petitioner and by that order, no rights of the parties were determined. Even that order was set-aside by the Assistant Collector, Jodhpur on August 13, 1982 and against that order an appeal was filed, which is pending adjudication. The learned Counsel for the petitioner has not been able to show this Court about the pendency of any revenue suit with respect to this land in question.

7. The second question raised by the learned Counsel for the petitioner is that the learned Additional Sessions Judge, while remanding the case, has directed the learned Sub-Divisional Magistrate to re-attach the property in question, for which he was not authorised. Though in the operative portion of the order, the learned Additional Sessions Judge has directed the learned Sub-Divisional Magistrate to re-attach the property in dispute but that was only the consequential order as the learned Additional Sessions Judge has set-aside the order dated October 31, 1984 passed by the learned Sub-Divisional Magistrate on the ground that while withdrawing the attachment the learned Sub-Divisional Magistrate has not taken into consideration whether there is any breach of peace or not and has withdrawn the order merely on the ground that after November 19, 1981, the possession over the land in dispute was with Sumer Singh and party and nothing has happened which has resulted in the breach of peace. The learned Additional Sessions Judge, therefore, set-aside this order. The natural consequence of setting-aside

the order dated October 22, 1981 means the restoration of the order dated August 5, 1980, by which the learned Sub-Divisional Magistrate ordered for the attachment of the property. Even if this direction would not have been given, the consequence of setting-aside the order dated October 31, 1984 means the restoration of the position existing on or before October 22, 1981. The learned Additional Sessions Judge has, thus, by this order merely restored the order dated August 5, 1980 as well as the position as existed on or before October 22, 1981. He himself has not passed any order regarding attachment of the property. The contention raised by the learned Counsel for the petitioner on this point is thus, devoid of any force. If after remand of the case the learned Sub-Divisional Magistrate thought it proper that on the relevant date if there was no apprehension of breach of peace then he, after hearing both the parties, can pass an appropriate order, even he can pass an order for withdrawal of the attachment order, but as the orders dated October 22, 1981 and October 31, 1984 were set-aside, the necessary consequence of it is that the order dated August 5, 1980 has been restored.

8. The next question raised by the learned Counsel for the petitioner is that the petitioner was in possession of the land in question and there was no apprehension of breach of peace and the land should not have been attached. The case has been remanded by the learned Additional Sessions Judge for determination to the Court of the Sub-Divisional Magistrate and the petitioner may raise these objections before the learned Sub-Divisional Magistrate and he will hear and decide this objection in accordance with law. Whether any condition envisaged under Section 146, Cr. P.C. is applicable in the present case or not, that question will, also, be decided by the learned Sub-Divisional Magistrate. So far as the question that the learned Sub-Divisional Magistrate has twice given his findings that there was no apprehension of breach of peace, suffice it to say that order, passed by the learned Sub-Divisional Magistrate is no longer in existence and the learned Sub-Divisional Magistrate has to decide the matter afresh.

9. In the result, the revision petition filed by the petitioner has got no force and is hereby dismissed.

