

Mahant Mohar Sharan Ji Maharaj Shisya ... vs State Of U.P. And 2 Others on 28 March, 2025

Author: Saurabh Srivastava

Bench: Saurabh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on 11.3.2025

Delivered on 28.3.2025

Neutral Citation No. - 2025:AHC:44040

Court No. - 74

Case :- MATTERS UNDER ARTICLE 227 No. - 15742 of 2024

Petitioner :- Mahant Mohar Sharan Ji Maharaj Shisya Shri Garvili Sharan Ji Maharaj

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ajay Kumar Sharma, Atul Sharma

Counsel for Respondent :- G.A., Manoj Kumar Srivastava, Ram Bilas Yadav

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Atul Sharma along with Sri Ajay Kumar Sharma, learned counsel for petitioner, Sri Manoj Kumar Srivastava, learned counsel for respondent no. 2 and learned AGA for State.

Prayer

2. Present petition has been preferred with the prayer to issue an order or direction in appropriate nature setting aside the impugned order dated 04.03.2024 and 26.09.2024 passed by authority concerned respectively in Case no. 26 of 2009-2010 (Mahant Ji Lalita Sharan vs. Radha Charan Das) under Section 145/146 Cr.P.C. and in Criminal Revision no. 154/2024 (Mahant Mohar Sharan Das Ji vs. State of U.P. and others).

Facts of the Case

3. Learned counsel for petitioner submitted that petitioner is Mahant of Van Vihar Ashram, Vrindavan Mathura situated at Khasra no. 199 (199 Ka) and respondent no. 2 is Mahant of Topi Kunj Ashram, Vrindavan, Mathura which is existing on khasra no. 197. On dated 20.06.2005, the concerned Station House Officer, Vrindavan, Mathura with the collusion of contesting respondent no. 2 submitted a false report in the court of respondent no. 3/City Magistrate, Mathura alleging that there is apprehension of breach of peace amongst Lalita Sharan on one hand and Radha Charan (predecessor of petitioner) on other hand with respect to Khasra no. 199 hence report under Section 145 Cr.P.C. is submitted for attachment of the same. Vide order dated 27.06.2005 respondent no. 3, passed preliminary order under Section 145/146 Cr.P.C. On dated 07.07.2005, respondent no. 3 after considering the objection raised by the counsel for the predecessor of the petitioner as well as correct situation and fact of the case, stayed the operation of order dated 27.06.2005 passed under Section 146(1) Cr.P.C. A perusal of order dated 07.07.2005 would show that respondent no. 3, categorically held that from the police report, the possibility is that over the land in dispute the second party (predecessor of petitioner) was in possession. Against order dated 07.07.2005, respondent no. 2 filed Criminal Revision before learned Session Judge, Mathura which was dismissed vide order dated 05.12.2005. Against order dated 05.12.2005, respondent no. 2 filed application u/s 482 of Cr.P.C. no. 130 of 2006 before this Court which was dismissed vide order dated 13.02.2017.

4. It is next submitted that after the order dated 07.07.2005, proceedings under Section 145 Cr.P.C. came to an end and no further similar application for proceedings under Section 145(1) Cr.P.C is maintainable at the behest of respondent no. 2. By concealing the earlier order passed so far, respondent no. 2 again on dated 23.12.2005 and 15.12.2006 filed fresh applications for attachment of the property in dispute. After expiry of about one and half year from last application dated 15.12.2006, the Station House Officer, Vrindavan, Mathura submitted a false and illegal report dated 06.06.2008 before the court of respondent no. 3. On dated 10.06.2008, respondent no. 3 passed the order by which earlier order dated 07.07.2005 was set aside and the concerned police was directed for compliance of order dated 27.06.2005. The order dated 10.06.2008 amounts to review of the earlier orders which is beyond the jurisdiction. It is clear that respondent no. 3, acted beyond jurisdiction in passing the order dated 10.06.2008 which resulted into revival of order dated 27.06.2005 which had already become redundant due to subsequent orders dated 05.12.2005 and 05.01.2006. By order of respondent no. 3, the property was attached on dated 11.06.2008 and order dated 27.06.2005 has been enforced. However, in the attachment memo, it is clearly mentioned that possession of the property has been taken from possession of Mahant Govind Sharan (predecessor of petitioner).

5. Against the order dated 10.06.2008, petitioner preferred Criminal Revision no. 412 of 2008 before the Court of learned Session Judge, Mathura which has been allowed vide order dated 04.07.2009 and order dated 10.06.2008 was set aside. Against the order dated 04.07.2009, passed by learned Session Judge, Mathura, respondent no. 2 filed Criminal Misc. Writ Petition no. 13633 of 2009 and in the said petition vide order dated 08.09.2009 passed by this Court, it was directed to maintain status quo. Due to order dated 08.09.2009 passed by this Court, the concerned police refused to release the property in favour of Mahant Govind Sharan (predecessor of petitioner) from whose possession the property was actually attached on dated 11.06.2008. Ultimately, the Writ Petition no. 13633 of 2009 was dismissed in default vide order dated 23.08.2011 passed by this Court.

6. It is further submitted that on dated 25.08.2011, respondent no. 2 filed application for recalling the order dated 23.08.2011 passed by this Court. On dated 02.09.2011, respondent no. 3, directed the withdrawal/recall of attachment order dated 27.06.2005 and 10.06.2008 passed by the concerned City Magistrate and further fixed the date for hearing under Section 145 Cr.P.C. In pursuance of order dated 02.09.2011, the concerned S.S.I, submitted a report dated 07.09.2011 for handing over the possession of property to Mahant Govind Sharan (predecessor of petitioner). Against order dated 02.09.2011, respondent no. 2 filed Revision no. 419 of 2011 before learned Sessions Judge, Mathura which was dismissed vide order dated 14.09.2011. Vide order dated 02.01.2012 passed by this Court, the order dated 23.08.2011 whereby Criminal Misc. Writ Petition no. 13633 of 2009 was dismissed for want of prosecution. Vide order dated 25.07.2012, respondent no. 3 dismissed the application dated 24.09.2011, 30.09.2011 and 19.11.2011 and further closed the proceedings under Section 145 Cr.P.C. Against the order dated 25.07.2012, respondent no. 2 filed Revision no. 384 of 2012 which was partly allowed by learned Sessions Judge vide order dated 25.07.2013. By the said order, learned Sessions Judge, partly allowed the revision and direction was issued to respondent no. 3 to decide the case in the light of observation given in the judgment. Against the order dated 25.07.2013, predecessor of petitioner filed Criminal Misc. Writ Petition no. 15890 of 2013 before this Court. Vide order dated 07.08.2013 passed by this Court, operation of order dated 25.07.2013 was stayed till next date of listing. In the said writ petition on behalf of petitioner a substitution application on the death of Govind Sharan Ji Maharaj was filed which was allowed and one Banwari Sharan was substituted in the writ petition as heir of Govind Sharan vide order dated 06.09.2018. After the death of Banwari Sharan a substitution application was moved by the present petitioner Mahant Mohar Sharan as heir of late Banwari Sharan. In the said substitution application, counter affidavit was filed on behalf of respondent no. 2 and rejoinder was filed on behalf of proposed heir of petitioner. On dated 17.05.2023, while hearing the said petition no. 15890 of 2013, this Court orally allowed the substitution application and as such allowed the petitioner's counsel Atul Sharma for placing argument on behalf of petitioner. The petition has been finally adjudicated by this Court after hearing the parties and vide order dated 12.10.2023 matter has been remitted back to respondent no. 3 to adjudicate the question of possession. It was also directed that till final decision, respondents were restrained from interference in the possession of the petitioner over property in dispute and the aforesaid petition was disposed of. After the order dated 12.10.2023 respondent no. 3 passed the impugned order dated 04.03.2024, whereby learned Magistrate was pleased to reject the application for substitution of present petitioner Mahant Mohar Sharan and allowed the objection of opposite party no. 2 and directed the property in question be handed over

to respondent no. 2. In pursuance of order dated 04.03.2024 passed by respondent no. 3, the possession of entire property was handed over to respondent no. 2 on dated 12.03.2024. Challenging the order dated 04.03.2024, petitioner filed a Revision no. 154 of 2024 before learned Session Judge, Mathura but the same revision was also dismissed vide order dated 28.09.2024 passed by learned Additional Session Judge, Mathura. The present petition has been filed against the order dated 04.03.2024 and 28.09.2024 passed by learned City Magistrate, Mathura and learned Additional Session Judge, Mathura respectively.

Submission on behalf of petitioner

7. Firstly it is submitted that at page no. 200 of the instant petition in the Court's order dated 12.10.2023, it has wrongly been mentioned that "This is not disputed that in compliance of order dated 11.06.2008, the attached property was handed over to Mahant Govind Sharan on dated 07.09.2011". After expiry of one and half year from last application dated 15.12.2006, the Station House Officer Vrindavan, Mathura submitted a false & illegal report dated 06.06.2008 in the court of respondent no. 3. The property was handed over to Govind Sharan Ji Maharaj on dated 07.09.2011 not in compliance of order dated 11.06.2008. In fact there is no order dated 11.06.2008. The possession of property was again handed over the predecessor of petitioner on dated 07.09.2011 in pursuance of order dated 02.09.2011. The co-ordinate Bench of this Court has taken a wrong view that possession of property was handed over to the Mahant Govind Sharan Ji Maharaj on dated 07.09.2011 for the first time. In fact when the property was attached by attachment memo dated 11.06.2008, the property was found to be in possession of Mahant Govind Sharan Ji Maharaj and the property was in fact attached from possession of Mahant Govind Sharan Ji Maharaj. It is apparent that property in question was in actual possession of Mahant Govind Sharan Ji Maharaj much prior to 07.09.2011. The finding to the contrary by co-ordinate Bench of this Court in order dated 12.10.2023 is apparently wrong and perverse being against the records of the case. Aforesaid finding of this Court in order dated 12.10.2023 has been followed and made basis of impugned subsequent order dated 04.03.2024 passed by learned City Magistrate, Mathura and order dated 26.09.2024 passed by learned Additional Session Judge, Mathura. Thus the entire finding by respondent no. 3 and revisional court are based on a finding of this Court which is apparently incorrect, against the record and hence perverse.

8. It is next submitted that property was attached by the concerned police from the possession of Mahant Govind Sharan (predecessor of petitioner) on dated 11.06.2008 first time in compliance of order dated 10.06.2008 and further handed over to petitioner on dated 07.09.2011 in pursuance of court's order. Thus, it cannot be said that petitioner came into possession first time on 07.09.2011. In fact petitioner was in possession of property much prior to attachment on dated 11.06.2008. Suffice to say that the report to the police regarding possession of property was submitted by concerned police officer, which clearly indicates that respondent no. 2 was not in possession even on dated 20.06.2005 on which date police submitted the report resulting into preliminary attachment order dated 27.06.2005. It is submitted that Mahant Govind Sharan remained in possession of property since prior to initiation of present proceeding in the year 2005. Petitioner remained in possession till the property was attached on dated 11.06.2018. Thereafter, on dated 07.09.2011, property again released in the possession of predecessor of petitioner. It is further submitted that

since after 07.09.2011, till 04.03.2024 the petitioner remained in possession. It is only for the first time that petitioner was dispossessed in pursuance to order dated 04.03.2024 passed by respondent no. 3.

9. It is further submitted that while deciding the case under Section 145/146 Cr.P.C. there are two main necessary ingredients:-

(a) Existence of a dispute likely to cause a breach of peace concerning the land and

(b) who was in possession on the date of passing of preliminary order under Section 145 Cr.P.C. and in case any party has been forcibly and wrongfully dispossessed within two months, next before the date of police report.

10. In the impugned orders there is no finding on both (a) and (b) points. The order of handing over possession of property in dispute is contrary to provision of sub-section 6 of Section 145 Cr.P.C. From the fact of present case, it is apparent and duly proved that prior to police report dated 20.06.2005, initiating the proceeding under Section 145 Cr.P.C., the petitioner and his ancestor were in possession of property in question till the order dated 04.03.2024 passed by respondent no. 3. Without recording finding on actual possession as contemplated under Section 145 Cr.P.C, present impugned orders cannot be allowed to stand and deserves to be set aside by this Court.

11. The nature and scope of Section 145 Cr.P.C. proceeding has been given in Hon'ble Supreme Court judgment passed in M Siddiq (Ram Janam Bhumi Temple) vs. Suresh Das which is reported in (2019) 18 SCR. 1 of said judgment. In view of said judgment impugned orders dated 04.03.2024 are unsustainable in the eye of law. Further in the light of Sub Section (6) of Section 145 Cr.P.C., it is submitted that it has come on record that property in question was attached on 11.06.2008 from possession of predecessor of petitioner. The finding of de facto possession of petitioner on 08.09.2011 is clearly wrong and contrary to the attachment order dated 11.06.2008. In fact petitioner was in de facto possession over the land in dispute on or before 11.06.2008. It is also well established that at the time of final disposal of proceeding, the property should be restored to the party from whose possession the property was actually attached by respondent no. 3. Since property in question was attached on 11.06.2008, the property should have been restored to the petitioner. The finding of both the courts that possession should be restored back to respondent is apparently wrong and unsustainable. There is absolutely no evidence on record that contesting respondent no. 2 was ever in possession over the land in dispute and respondent was dispossessed by petitioner before two months from date of preliminary order under Section 145/146 Cr.P.C. In view of fact that four civil suits are pending between the same parties with respect to same land in dispute in regard to possession and title, the proceeding under Section 145 Cr.P.C. were not maintainable.

Submission on behalf of respondent

12. Sri Manoj Kumar Srivastava, learned counsel for respondent no. 2 as well as learned AGA vehemently opposed the prayer sought through the instant petition and rebutted the stand taken up by learned counsel for petitioner by way of submitting that after considering each and every material

available on record, learned concerned court as well as learned revisional court passed the order impugned and as such the same are just and proper, since the entire adjudication whatsoever has been made by concerned City Magistrate as well as by learned Additional District and Sessions Judge, Court no. 10, Mathura in Criminal Revision no. 154 of 2024 is on the basis of judgment 12.10.2023 passed by co-ordinate Bench of this Court in Criminal Misc. Writ Petition no. 15890 of 2013.

Observation and conclusion

13. After hearing rival submissions extended by learned counsels for the parties and perusing the records, it transpires that vide order dated 12.10.2023 passed by co-ordinate Bench of this Court in Criminal Misc. Writ Petition no. 15890 of 2013, it has been categorically settled that the property was handed over to the petitioner i.e. Mahant Govind Saran Ji Maharaj on dated 07.09.2011 by the concerned Police authority. The co-ordinate Bench of this Court also mentioned under para 26 of the judgment dated 12.10.2023 that it is not disputed that Criminal Misc. Writ Petition no. 13633 of 2009 filed by Mahant Lalita Sharan was dismissed for want of prosecution on dated 23.08.2011 and later on though restored no fresh order of status quo was passed. The property was handed over to the instant petitioner meanwhile.

14. It is also clarified by co-ordinate Bench of this Court that now the question is whether handing over of the possession at that particular point of time makes any substantial difference as far as proceeding under Section 145 Cr.P.C. is concerned. As has been pointed out very clearly the court of learned Magistrate while exercising its jurisdiction under Section 145 Cr.P.C. is concerned only about the actual possession over the property on the date when the order under Section 145(1) Cr.P.C was issued. The subsequent possession of any of the party by turn of events or otherwise may not have any impact on the most important issue involved herein.

15. Precise query has been made before learned counsel for the petitioner that whether any modification application has been preferred for seeking modification of the order dated 12.10.2023? Or any challenge has been made to the order dated 12.10.2023? It is fairly submitted by learned senior counsel appearing on behalf of petitioner that no modification application or any challenge to the order date 12.10.2023 has been preferred at the behest of the petitioner, meaning thereby the matter of possession has already been clarified and still holding the field which has been determined by co-ordinate Bench of this Court while passing the order dated 12.10.2023 and as such this Court is having no occasion available but to rely upon judgment dated 12.10.2023 passed by co-ordinate Bench of this Court specifically for determining the issue of possession which was handed over by the concerned police in favour of the petitioner during proceeding initiated under Section 145(1) Cr.P.C and before that the possession was in favour of the respondent no. 2.

16. In view of the aforementioned facts and circumstances, present petition lacks merit and is hereby dismissed.

Order Date :- 28.3.2025 Shaswat (Saurabh Srivastava,J.)