

Chandu Naik & Ors vs Sita Ram B. Naik & Anr on 6 December, 1977

Equivalent citations: 1978 AIR 333, 1978 SCR (2) 353, AIR 1978 SUPREME COURT 333, (1978) 1 SCC 210, (1978) 2 SCR 353, 1978 UJ (SC) 27, 1978 CRI APP R (SC) 33, 1978 SCC(CRI) 100, 1978 SIMLC 217, 1978 MADLJ(CRI) 126, 1978 SC CRI R 60

Author: N.L. Untwalia

Bench: N.L. Untwalia, V.R. Krishnaiyer

PETITIONER:
CHANDU NAIK & ORS.

Vs.

RESPONDENT:
SITA RAM B. NAIK & ANR.

DATE OF JUDGMENT 06/12/1977

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
KRISHNAIYER, V.R.

CITATION:
1978 AIR 333 1978 SCR (2) 353
1978 SCC (1) 210
CITATOR INFO :
R 1980 SC 242 (1,6)

ACT:
Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975, whether a bar to the proceedings u/s. 145 of the Criminal Procedure Code. Criminal Procedure Code (Act II of 1974), 1973, s. 145, Scope of-Guidelines to be followed by the Magistrate.

HEADNOTE:
On an application filed by respondent No. 1 on 29th July 1975 alleging that the appellants have forcibly dispossessed him from a hotel known as "Suresh Maharashtra Tea & Cold Drinks & Eating House" owned by him on the

disputed land, the Magistrate passed a preliminary order u/s. 145(1) of the Cr. P. C. and attached the disputed property u/s. 146(1) of the Code. The appellants put in their written statements on 2-8-1975 and the case was being heard from time to time. On 11-11-1975, the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975 was brought into force in the area where the disputed property is situated. The Act was passed to prohibit unauthorised occupation of vacant lands in the urban areas of the State, of Maharashtra and to provide for summary eviction of persons from such lands. Section 8 of the Act provides for a bar of jurisdiction by courts. Since the hotel was constructed on a piece of vacant land in an "urban area" within the meaning of the Act, the Magistrate passed an order on 21-1-77 taking the view that in view of s. 8 of the Act, he ceased to have jurisdiction to proceed with the case inasmuch as he will have to order eviction of the appellants from the disputed property if the case of the respondent was found to be true. The appellants filed a revision in the Bombay High Court against the said order, but failed.

Allowing the appeal by special leave and directing the Magistrate to dispose of the proceedings as per the guidelines indicated, the court.

HELD : 1. In the context of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975, the bar in s. 8 is not attracted to any suit or proceeding in respect of the eviction of any person from any vacant land started in relation to a dispute of possession between the private persons. The bar is attracted if the suit or proceeding concerns the eviction of any person from any vacant land by the competent authority. No suit or proceeding for eviction can be entertained by any court if the competent authority is entitled to evict the person u/s. 4. He will be entitled to evict any person if he is in unauthorised occupation of vacant land but not in the case of disputes between two private persons either of them claiming to be in authorised occupation. For deciding such a dispute, the competent authority does not come into the picture. [355 E-F]

2. In substance and effect a proceeding u/s 145 of the Code is not for the purpose of evicting any person from any land but is primarily concerned with the prevention of the breach of the peace by declaring the party found in possession to be entitled to remain in possession until evicted therefrom in due course of law. [355 G]

3. Restoration of possession to the party forcibly and wrongfully dispossessed attracting the proviso to sub-section (4) is in substance and in effect, putting back the party to possession for deciding his possession on the date of the preliminary order made under sub-section (1). Although the party who forcibly and wrongfully dispossessed the other party attracting the application of the proviso to

sub-section (4) of section 145 of the Code, has to be factually and physically evicted from the property, by a legal fiction it is only for the purpose of treating him in possession on the date of the preliminary order. [156 B-C] 354

4. In the instant case; the proceeding in question did not abate and it has to be disposed of by the Magistrate in accordance with the provisions of law contained in Sections 145 and 146 of the Code. If the proceeding has so abated, attachment order passed by the Magistrate on the 29th July 1975 could not survive and the Magistrate could not allow it to continue. The Courts below have committed an error of law in applying the bar of s. 8 to the present proceedings. The Courts below were wrong in the view that the proceedings abated and the Magistrate had no jurisdiction to dispose it of in accordance with the law in face of s. 8 of the 1975 Act. [356 E-H, 357 A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 308 of 1977.

Appeal by Special Leave from the Judgment and Order dated 23rd/25th of March 1977 of the Bombay High Court in Criminal Revision Application No. 54 of 1977.

P. H. Parekh for the appellants.

Janendra Lal for respondent No. 1.

M. N. Shroff for respondent No. 2.

The Judgment of the Court was delivered by UNTWALIA, J. This is an appeal by special leave arising out of a proceeding under section 145 of the Code of Criminal Procedure, 1973-hereinafter called the Code, initiated at the instance of respondent no. 1 (for brevity, hereinafter the respondent). The said respondent filed an application on the 29th July, 1975 against appellants 1 and 2 before the Magistrate alleging that there is a Hotel known as 'Suresh Maharashtra Tea & Cold Drinks & Eating House' on the disputed land which was owned by and in occupation of the respondent. The appellants forcibly dispossessed him from the Hotel on the 5th July 1975. The application under section 145 was filed initially against appellants 1 and 2. But at the instance of appellant number 3 he was also subsequently joined as a party, to the proceeding. The Magistrate passed a preliminary order under section 145 (1) of the Code on the 29th July, 1975 asking the parties to appear before him and put in their written statements. On the same date, however, he attached the disputed property under section 146(1) of the Code. The appellants put in their written statements on the 2nd August 1975. Thereafter the case was heard by the Magistrate from time to time. The Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975-hereinafter called the Act, came into force replacing an Ordinance promulgated

earlier. The Act was deemed to have come into force, in the area where the disputed property is situated on the 11th November 1975. It seems the Hotel was constructed and is situated on a piece of "vacant land" in an "urban area" within the meaning of the Act. The Act was passed to prohibit unauthorised occupation of vacant lands in the urban areas of the State of Maharashtra and to provide for summary eviction of persons from such lands. The Competent Authority under the Act was empowered under section 4 to evict persons from unauthorised

occupation of vacant lands. Section 8 of the Act which provides for a bar of- jurisdiction of courts reads as follows -

"No Court shall have jurisdiction to entertain any suit, prosecution or other proceedings in respect of the eviction of any person from any vacant land under this Act or in respect of any order made or to be made or any action taken or to be taken by the Competent Authority in exercise of the powers conferred by or under this Act or to grant any stay or injunction in respect of such order or action. If any such suit or other proceedings in respect of eviction of any person from any vacant land is pending on the appointed date in any Court, it shall abate; and it shall be lawful for the Competent Authority to evict such person from unauthorised occupation of the vacant land under the provisions of this Act and to remove and forfeit any property from such land as provided in this Act."

The Magistrate in his order dated the 21st January 1977 passed in the proceeding aforementioned took the view that in view of section 8 of the Act, he ceased to have jurisdiction to proceed with the case, in as much as he will have to order eviction of the appellants from the disputed property if the case of the respondent was found to be true. The appellant filed a revision in the Bombay High Court from the said order of the Magistrate but failed. The High Court agreed with the view taken by the Magistrate and dismissed the revision. Hence this appeal.

In our opinion the Courts below have committed an error of law in applying the bar of section 8 to the present proceeding. Firstly in the context of the Act 'the bar is not attracted to any suit or proceeding in respect of the eviction of any person from any vacant land started in relation to a dispute of possession between two private persons. The bar is attracted if the suit or proceeding concerns the eviction of any persons from any vacant land by the Competent Authority. In other words, no suit or proceeding for eviction can be entertained by any court if the Competent Authority is entitled to evict the person under section 4. He will be entitled to evict any person if he is in unauthorised occupation of vacant land, but not in the case of dispute between two private persons, either of them claiming to be in authorised occupation. For deciding such a dispute, the Competent Authority does not come into the picture. Secondly, in substance and in effect a proceeding under section 145 of the Code is, not for the purpose of evicting any person from any land but is primarily concerned with the prevention of the breach of the peace by declaring the party found in possession to be entitled to remain in possession until evicted therefrom in due course of law. The proviso to sub-section (4) of section 145 states :

"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 10-1114SCI/77 .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)."

Sub-section 6(a) treats the party dispossessed within the period provided for in the proviso to sub-section (4) as being in possession of the disputed land on the date of the order made under subsection. (1). Restoration of possession to the party forcibly and wrongfully dispossessed attracting the proviso to sub-section (4) is, in substance and in effect, putting back the party to possession for deciding his possession on the date of the preliminary order made under subsection (1). Although the party who forcibly and wrongfully dispossessed the other party attracting the application of the proviso to sub-section (4) of section 145 of the Code has to be factually and physically evicted from the property, by a legal fiction it is only for the purpose of treating him in possession on the date of the preliminary order. Hence the courts below were wrong in their view that the proceeding abated and the Magistrate had no jurisdiction to dispose it of in accordance with the law in face of section 8 of the, Act. If the proceeding had so abated the attachment order passed by the Magistrate on the 29th July, 1975 could not survive and the Magistrate could not allow it to continue as he has done in this case.

We, therefore, hold that the proceeding in question in this case did not abate and it has to be disposed of by the Magistrate in accordance with the provisions of law contained in sections 145 and 146 of the Code. For the guidance of the Magistrate, we think it expedient in the interest of justice to indicate briefly as to how the Magistrate is to proceed for disposing of the proceeding'. The Magistrate, in the first instance, will try to conclude the proceeding in accordance with the various provisions of section 145 of the Code. If he is able to declare the possession of either party on consideration of the evidence adduced or to be adduced before him he would do so. In, that even the other party will be forbidden from creating any disturbance of the possession [including the deemed possession, in case the application of the proviso to sub- section (4) is found necessary] of The party declared in possession. The Magistrate, then, will have to withdraw the attachment in accordance with the proviso to sub-section (1) of section 146, because, as per his order declaring a party in possession there would be no Ionizer any likelihood of the breach of the peace with regard to the subject of dis- pute. The party not found in possession by the Magistrate will have to seek the redress of his grievance, if any, elsewhere. If, however, the Magistrate decides that none of the parties was in possession of the disputed property on the date of the order made under sub-section (1) of section 145 or if he is unable to satisfy himself as to which of them was then 'in possession of the subject of dispute he need not lift the attachment until a competent court had determined the rights of the parties as provided for in section 146(1). In such a situation recourse, if necessary, may be taken to sub-section (2) of section 146 of the Code either by the Magistrate or a Civil Court, as the case may be.

For the reasons stated above, we allow this appeal, set aside the orders of the courts below, send back the case to the Magistrate and direct him to proposed to dispose it of in the light of this

judgment as expeditiously as possible, because considerable delay has already occurred.

S.R.

Appeal allowed