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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE  
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA**

**ON THE 26<sup>th</sup> OF APRIL, 2024**

**CRIMINAL REVISION No. 735 of 2023**

**BETWEEN:-**

**MANAN BUCH S/O SHRI DINESH BHAI VIJAY LAL BUCH,  
AGED ABOUT 46 YEARS, OCCUPATION: INDUSTRIALIST  
11 SHYAM BAUG SOCIETY GADAPURA ROAD,  
GADAPURA, VADODARA (GUJARAT)**

**.....PETITIONER**

***(BY SHRI V.K. JAIN, LEARNED SENIOR COUNSEL WITH SHRI ABHISHEK  
TUGNAWAT, LEARNED COUNSEL)***

**AND**

- 1. CHANDAR SINGH SOLANKI S/O LATE SHRI BAPU  
SINGH SOLANKI 269 GRAM BADODIYA KHAN  
TESHIL SANWER DISTRICT INDORE (MADHYA  
PRADESH)**
- 2. STATE OF MADHYA PRADESH THROUGH P.S.  
SANWER DIST. INDORE THE STATE OF MADHYA  
PRADESH THROUGH P.S. SANWER INDORE  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***(SHRI SHASHWAT SETH, LEARNED COUNSEL FOR THE RESPONDENT  
NO.1)***

.....  
*This revision coming on for admission this day, the court passed the  
following:*

**ORDER**

The present Criminal Revision is filed under Section 397 r/w Section 401 of the Code of Criminal Procedure, 1973 being aggrieved by the order dated 06/02/2023 passed by Additional Sessions Judge, Chain Court, Sanwer, Dist. Indore in Criminal Revision No.11/2022 whereby the revision filed by the

respondent has been allowed and the order passed by Sub-Divisional Magistrate under Section 145 Cr.P.C. has been set aside.

2. Facts of the case are that on 15.11.2021 the police of police station Sanwer filed a complaint (Istgasa) No. 6/2021 against the petitioner herein as Party No. 1 and Respondent No.1 herein as Party No. 2, stating that Petitioner and Respondent No.1 are claiming their domain (title and possession) over the company Bacchus Industries Pvt. Ltd. which was earlier having the name Piyush Alcohols Pvt. Ltd. As both parties were disputing regarding domain over the company, there was every likelihood of breach of peace.

3. The Sub-Divisional Magistrate, Sanwer finding a dispute likely to cause a breach of the peace exists, concerning the domain over the company within his local jurisdiction, accordingly he passed an preliminary order under sub- section 1 of section 145 of the Code of Criminal Procedure in Case No. 07/2021.

4. After hearing both the parties the Sub-Divisional Magistrate passed final order declaring that the land situated on Survey No.523/1, area 0.465 hectare of Gram Badodia Khan is in the possession of Piyush Alcohol Pvt. Ltd. changed name Bacchus Industries Pvt. Ltd. and party No.2 was directed not to interfere with the possession of the disputed land. The respondent/party No.2 being aggrieved by the said order filed a revision before Additional Sessions Judge, Chain Court, Sanwer which has been allowed by the impugned order dated 06.02.2023 setting aside the order passed by Sub-Divisional Magistrate under Section 145 Cr.P.C.

5. The case of the respondent No.1 is that he is the promoter, director & share holder of Bacchus Industries Pvt. Ltd. the earlier name of which was Piyush Alcohols Pvt. Ltd. Further alleging that he is owner of the land upon

which Piyush Alcohols Pvt. Ltd. is situated, he had sold the disputed land to Piyush Alcohols Pvt. Ltd. vide registered sale deed dated 10.10.2011.

6. The respondent No. 1 further stated in his reply that certain persons were hatching conspiracy against him and his wife and got the shares of the company transferred in their name and are claiming themselves to be the shareholders and directors of the company, therefore, for challenging the transfer of names in the shares he files an application bearing No. 1/2022 the National Company Law Tribunal (NCLT) Indore Bench which is pending.

7. The respondent also submitted in his reply before the SDM that till the disposal of his Petition before the NCLT the proceedings under section 145 Cr.P.C may be kept pending and the Petitioner (Party No. 1) may be directed not to interfere in any manner in the factory of the company and should not do any production work in the factory because the license for the production was also in his name. The request of Respondent No. 1 in his reply was that status-quo may be maintained in the factory of the company till the disposal petition before the NCLT.

8. The Petitioner submitted his reply before the Court of S.D.M. stating that he is the director and authorized representative of Bacchus Industries Pvt. Ltd. It is the Bacchus Industries Pvt. Ltd. who is in possession of the land bearing Survey no. 523/1 area 0.465 hectares and the construction thereon. Bacchus Industries Pvt. Ltd. is in the actual physical possession of the disputed property.

9. After recording the evidence and after hearing the parties, the Court of SDM Sanwer held that as per Sale Deed dated 10.10.2011 the company viz. Piyush Alcohols Pvt. Ltd purchased the land through authorized signatory

Kunwar Hira Singh & Kuwar Chandar Singh which is recorded in the name of Piyush Alcohols Pvt. Ltd. in the revenue records. The SDM also observed in the order that as per enquiry report dated 17.02.2022 given by Tehsildar Sanwer, a Board of Piyusa Alcohols Pvt. Ltd. is affixed on the factory and as per the statements of the villagers Chandar Singh S/o Bapu Singh Director is in possession of the said land as well as of the construction raised thereon.

10. Counsel for the applicant submitted that the Revisional Court erred while setting aside the order of Sub-Divisional Magistrate holding that the applicant/party No.1 is in possession of the disputed land and party No.2 was directed not to interfere with their possession only on the ground of sale deed purchased from Bapusingh which was sold to Piyush Alcohol Pvt. Ltd. from Bapusingh and the respondent is only a Director of the company and, therefore, on the basis of sale deed, he could not have been treated to be owner of the property. The property was purchased by respondent/party No.2 in the capacity of Director of the company and not in personal capacity. The company is a Juristic Legal entity and the respondent was acting as Director of the company at the relevant time. By the aforesaid documents, he would not become owner of the property. He further argued that the revisional Court erred in relying on the enquiry report dated 17.02.2022 in which it was found that on the disputed land, there is a board of Ayush Alcohol Pvt. Ltd. and relying on a report of panch witnesses that there is possession of non-applicant Chandar Singh on the disputed land. It is urged that he had already resigned from the Director of the company on 29.09.2020 and after the change the name of the company i.e. Bacchus Industries Pvt. Ltd. the applicant had become Additional Director of the said company from the date of appointment i.e.05.07.2021. The matter relating to dispute of directorship of the company is pending before

NCLT.

11. Per contra, learned counsel for the respondent supported the impugned order and submitted that the Sub-Divisional Magistrate had passed the order under Section 145 exceeding its jurisdiction. He could not have gone into the dispute of directorship of the company which was admittedly pending before NCLT. As per the provisions of Section 145, he has to only see the factum of possession of a party of a particular day. The revisional Court relied on the enquiry report of Tehsildar dated 17/02/2022 where the possession of the respondent in the name of Piyush Alcohol Pvt. Ltd. has been found and the panchnama witnesses have clearly deposed that the non-applicant Chandar Singh was in actual possession of the land in question and, therefore, rightly set aside the order of SDM. In support of his submissions, he has placed reliance on the judgment passed in the case of *Shanti Kumar Panda vs. Shakuntala Devi (2004) 1 SCC 438*.

12. I have heard learned counsel for the parties and perused the record.

13. Before adverting to the rival submissions, it is apposite to refer the provisions of Section 145 of Cr.P.C.

**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.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near 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 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).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under Sub-Section (1) shall be final.

(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).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives

of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

14. Considering the aforesaid provisions, in the case of *Chandu Naik and others vs. Sitaram B. Naik and another (1978) SCC 210*, the Apex Court held that in substance and in effect a proceeding under Section 145 of the CRPC is not for the purpose of evicting any person from any land but is primarily concerned with the prevention of the breach of peace by declaring the person found in possession to be entitled to remain in possession until evicted therefrom in due course of law. Section 145(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 property on the date of the order under sub-section (1). Restoration of possession to the party wrongfully dispossessed attracting the proviso to sub-section (4) is in substance and in effect, putting back the party in 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 has to be factually and physically evicted from the property, by a legal fiction it is only for the purpose of treating the latter party in possession on the date of the preliminary order.

15. In the case of *Ramnaresh Singh vs. Shyam Singh (2011) 4 MP LJ 698* a Coordinate Bench has considered the scope of Section 145 and held that Section 145 Cr.P.C. only deals with factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the Civil Court. In the case of *Shanti Kumar Panda* (supra), the Court held as under:-

"...Under Sub-section (1) of Section 145, a preliminary order taking cognizance of the dispute having been passed, the Magistrate would under Sub-section (4) decide who was in possession of the disputed property on the date of the passing of the preliminary order. Consistently with such finding, a declaration by Magistrate in favour of such party would follow under Sub-section (6) entitling it to retain possession over such property until evicted there from in due course of law and until such eviction all disturbances in its possession shall be forbidden. If any party is found to have been forcibly or wrongfully dispossessed within two months next before the date on which the report of a police officer or other information setting the Magistrate in motion was received by him or between such date and the date of order under Sub-section (1), then the party dispossessed has to be fictionally treated as one in possession on the date of preliminary order under Sub-section(1). The declaration of entitlement to possession under proviso to Sub-section (4) read with Sub-section (6) shall be made in favour of such party and the party found to have been so dispossessed forcibly and wrongfully may also be restored into possession. The declaration having been made, it would be for the unsuccessful party to approach the competent Court and secure such order as would enable his entering into possession and evicting the party successful in proceedings u/s 145."

16. In the case of *Ramnaresh Singh* (supra), this Court after referring the judgment in the case of *Shanti Kumar Panda* (supra) held as under in para – 8:-

"8. Hence, an order made u/s 145, Cr.P.C., deals only with the factum of possession of the party as on a particular day. It confers No. title to remain in possession of the disputed property. Further, the order is subject to decision of the Civil



Court. The unsuccessful party, therefore, must get relief only in the Civil Court. He may move the Civil Court with a properly constituted suit. He may file a suit for declaration and prove a better right to possession. The Civil Court has jurisdiction to give a finding different from that which the Magistrate has reached. In proceeding u/s 145 Code of Criminal Procedure, it is the actual possession which is material. The Magistrate should hold an inquiry in to the actual possession over the property in dispute. Regarding possession over the property in dispute the Magistrate is supposed to consider evidence adduced by the parties and without considering whether the possession over the property is right or wrong, the question of actual possession contemplated cannot be decided on the basis of assumptions and surmises. From perusal of the record of the case, it appears that while passing the impugned order dated 28th February 2011, the learned Sub Divisional Magistrate has not properly considered the evidence produced from both the sides and concluded mainly on the basis of the report of demarcation of land by Superintendent of Settlement Bhind that the disputed land belongs to Ram Naresh Singh, Petitioner."

17. Thus, the scope of Section 145 Cr.P.C. is unequivocally clear that Magistrate has to deal only with the factum of possession of party as on a particular date. The Magistrate should hold an enquiry into the actual possession over the property in dispute.

18. In the present case, there is serious dispute regarding the directorship of the non-applicant and the applicant in respect of Piyush Alcohols Private Limited (changed name Bacchus Industries Private Limited). The aforesaid dispute regarding the resignation of respondent No.1 as Director and transfer of shares is pending before NCLT. The SDM could not have entered into the said arena of dispute of directorship of the company. He ought to have confined himself to only the factum of possession of the party on the relevant date and if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which a report of the

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. There is no such finding by the Magistrate that on the relevant date, the present applicant was in possession on the disputed land or he was dispossessed two months prior to the date of passing of order under Sub-Section 1. The Additional Sessions Judge has rightly held in para-12 that the SDM had exceeded its jurisdiction by entering into constitution of company, amalgamation or resignation of the Director. Thus, this Court does not find any error. However, once the Sessions Court has found that the SDM has not passed the order as per Section 145 Cr.P.C., he ought to have remanded the matter to the SDM to pass fresh order. The revisional Court after setting aside the order of SDM did not remand the matter. Therefore, the matter is remanded to the SDM to pass fresh order in accordance with the law after affording opportunity of hearing to both the parties. Till then the parties are directed to maintain status quo as exists today. The order is subject to final outcome of any order of Civil Court or NCLT.

19. With the aforesaid, revision is **disposed off**.

(VIJAY KUMAR SHUKLA)  
JUDGE