

INTHE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 67/2023

MOHAMMAD AKBAR SHEIKH

...Appellant(s)/Petitioner(s)

Through: Mr. T. A. Lone, Advocate

Vs.

MST JANA AND ORS

...Respondent(s)

Through: Mr. Sheikh Manzoor, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER

30.12.2024

1. As petitioner is aggrieved of order dated 20.10.2022, issued by Additional District Magistrate, Kupwara, it would be apt to reproduce it hereunder:

“...In view of the report of Tehsildar, parties were called and heard at length and the behavior of parties prime facia depicts that the parties may create law and order problem on spot.

I am of considered opinion and have drawn personal satisfaction as Additional District Magistrate, Kupwara to the extent that there is every apprehension of breach of peace between the parties concerning disputed land, as such the disputed property is hereby attached till further orders. In view of powers under section 145 (1) CrPC, TehsildarTrehgam/Executive Magistrate (First Class) is directed to take the possession of property and hand over the same to some respectable persons of the locality till further orders and direct the parties to present their claim before this office on 28.10.2022, so that enquiry is conducted in the matter in terms of provisions of section 145 CrPC.”

2. Petitioner's submission is that order impugned has not been passed in conformity with the procedure to be adopted as per Section 145 of Cr.P.C. Additional District Magistrate, Kupwara, while dealing with application and acting upon the report of Tehsildar, Trehgam, has recorded that he is of the opinion and has drawn personal satisfaction to the extent that there is every apprehension of breach of peace

between the parties concerning disputed land and has directed, while exercising powers under Section 145(1) of Cr.P.C., the Tehsildar, Trehgam, Executive Magistrate 1st Class to take the possession of the property and hand over the same to the respectable person.

3. First part of the order impugned reveals that Tehsildar, Trehgam, has reported that in view of the nature of the dispute and to maintain the law and order on spot, the land in question had been handed over to Lumberdar and Sarpanch as there was every apprehension of breach of peace between the parties. Tehsildar, Trehgam recommended that attachment of said piece of land under Section 145 may be ordered and his action, whereby he handed over the land to Lumberdar and Sarpanch, may be confirmed.
4. Before passing the order impugned, Additional District Magistrate, Kupwara had forwarded the petition to Tehsildar, Trehgam for necessary action and it was in response thereof that Tehsildar Trehgam handed over the possession of the land to Lumberdar and Sarpanch concerned and had also sought confirmation of the action taken by him.
5. What was required to be done once the petition was filed before the Additional District Magistrate, was to follow the procedure as provided under Section 145 of Cr.P.C., which reads as under:

“Whether on Executive Magistrate is satisfy from the report of a police officer or upon the 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 ground of his being 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 facts of actual possession of the subject of dispute.”

6. As is clear from the provisions contained in Section 145 (1) of Cr.P.C., Executive Magistrate must record satisfaction that a dispute likely to cause breach of peace exists concerning any land or water or boundaries thereof within local jurisdiction and then he shall make an order in writing in which he would record the grounds of his being satisfied and after recording the same should require the parties concerned in such dispute to attend the court in person or by pleader on a specified date

and time and to put written statements of their respective claims in respect of the fact of actual possession of the subject dispute. So, subsection 1 of Section 145 of Cr.P.C. provides the procedure which is to be adopted by the Magistrate concerned.

7. Order impugned would reveal that it has not been passed in conformity with Section 145(1) Cr.P.C. The property in question as would appear from the first part of the order impugned had been handed over to Lumberdar and Sarpanch by Tehsildar, Trehgam, who has also reported that nature of the dispute is such that the land had been handed over to Lumberdar and Sarpanch to maintain law and order. He has also recorded that there is every apprehension of breach of peace between the parties concerned. And in the last part of the order, the Additional District Magistrate, Kupwara, had observed that he is of the opinion and has drawn personal satisfaction as Additional District Magistrate, Kupwara to the extent that there is every apprehension of breach of peace between the parties concerning disputed land and had directed attachment of the property till further orders.
8. Order of attachment could be passed under Section 146 of Cr.P.C. and not under Section 145 (1) of Cr. P. C. Section 146 reads as under:

“146. Power to attach subject of dispute and to appoint receiver:

(1) If the Magistrate at any time after making the order under sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation so such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any civil court, the Magistrate-

- (a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.”

9. It appears from the reading of order impugned while taking into notice of the provisions contained in Section 145(1) and 146(1) Cr.P.C. that it has been passed in breach of both the provisions of law, therefore, such order cannot sustain. Order impugned is, accordingly, **set aside**.
10. The matter is remanded back to Additional District Magistrate, Kupwara, who shall, after carefully going through the provisions as contained under Section 145 and 146 of Cr.P.C., proceed in the matter in accordance with law.
11. Petition is **disposed of** along with the connected Crl M(s).
12. Parties to cause their appearance before Additional District Magistrate, Kupwara on 18.03.2025.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
30.12.2024
“Imtiyaz”