IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 593 OF 2023

1. Ramdas Ramchandra Patil,
Age 49 years, Occu. Agri.,

2. Sakharam Ramchandra Patil,
Age 51 years, Occu. Agri.,
Both R/o. Kurhad, Taluka Pachora,
District Jalgaon .. Petitioners

Versus

1. The State of Maharashtra

2. The Tahsildar, Pachora
District Jalgaon

3. Rahul Pandurang Shimpi,
Age 30 years, Occu. Agri.,
R/o. Near Bus-stand, Pachora,
Taluka Pachora, District Jalgaon .. Respondents

Mr. Satej S. Jadhav, Advocate for Petiti oners;
Mr. S. M. Ganachari, A.P.P. for Respondents No.1 and 2;
Mr. Harshal P. Randhir, Advocate for Respondent No.3

CORAM : SACHIN S. DESHMUKH, J.
DATE : 09-09-2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith by consent of the parties.

2. The challenge is raised to the order rendered by the Executive Magistrate under Section 145 of the Code of Criminal Procedure (for short, “Cr.P.C.”). Respondent No.3 presented an application with an assertion that the present petitioners have

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taken possession of the land belonging to the respondent in an unauthorized manner. As such, a request has been made to allow the application.

3. Admittedly, the parties to the proceedings have approached Civil Court by presenting a civil suit, which is awaiting its adjudication. The learned counsel for the petitioners contends that the petitioners are the lawful owners of the subject land which having purchased it in the year 1995 from respondent No.3. Although the ownership and possession is transferred in favour of the petitioners through the registered sale deed and eventually petitioners' names were effected in the revenue record. Respondent No.3 attempted to create obstruction, as such, the civil suit is filed before the competent court.

4. During the pendency of the suit, respondent No.3 approached respondent No.2 Tahsildar, invoking Section 145 of the Cr.P.C. Respondent No.2 Tahsildar issued on order of injunction against the petitioners till the conclusion of the civil suit. Raising an exception to the same, the present petitioners have approached this Court, under Article 227 of the Constitution of India.

5. The petitioners contend that it was not open for respondent No.2 Executive Magistrate to entertain an application when the question of possession is subject matter of the substantive civil

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suit. It is further contention of the learned counsel for the petitioners that Executive Magistrate has committed an overreach while entertaining the application and rendering the order under challenge. In support of the same, a reliance has been placed upon case of ***Ram Sumer Puri Mahant versus State of U.P. and others, (1985) 1 SCC 427***.

6. Per contra, learned A.P.P. for the State and Mr. Randhir, learned counsel for respondent No.3 contending the order rendered by respondent No.2/Tahsildar, submitting that the order is in accordance with Section 145 of the Cr.P.C. in the process, report from the concerned police station, was called, satisfies the requirement of Section 145 of the Cr.P.C. as such, warrants no interference.

7. Having heard the learned counsel for the litigating sides, it is a matter of record that the litigating parties are before the civil court, awaiting its adjudication. Essentially the issue of possession needs to be conclusively determined by the competent Civil Court having jurisdiction to that effect. Although it was brought to the notice by respondent No.2, it was not open for respondent No.2 to try and entertain an application under Section 145 of the Cr.P.C. in relation to the issue of possession.

8. Respondent No.2 has thus committed overreach while issuing order of injunction/forbearance. The issue of possession is

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essentially subject matter of the civil court. As such, it was not open for the Executive Magistrate to get into the issue of the possession and eventually pass an order of injunction. When the civil litigation is pending in relation to the subject property wherein the question of possession is involved, there was no justification for initiating the proceeding to take recourse to Section 145 of the Code.

9. Admittedly, when the civil court is seized with the adjudication of the entitlement of the litigating parties for possession including the order of injunction, it was not open for respondent No.2 to entertain the proceeding under section 145 of the Cr.P.C., to avoid multiplicity of the litigation.

10. The respondent authorities must strictly confine themselves to their limited statutory role and cannot substitute Civil Court in the matter of ownership and consequential reliefs. The executive authorities ought not to transgress judicial boundaries and respect the primacy of Civil Court in matter of ownership and consequential reliefs.

11. The Magistrate's jurisdiction under Section 145 of the Cr.P.C. is preventive jurisdiction and not adjudicatory, but to meet the urgency of the situation. Equally, the litigating party cannot be allowed to use the provisions of Section 145 for ulterior motives or as a substitute for civil remedies. The jurisdiction and power of

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the civil court cannot in any manner be hampered.

12. The necessary reference can be made to the verdict of Apex Court ***Ram Sumer Puri Mahant*** (supra), wherein it is held that when a civil litigation is pending for thee subject property, wherein the question of possession is involved, there was no reason for entertaining a parallel criminal proceeding under Section 145 of the Cr.P.C.

13. Thus, where a suit is field for possession or declaration, proceedings under Section 145 would not lie before the Magistrate. When a suit for possession or declaration in respect of the property and where relief can be granted by Civil Court, in such case, the proceedings under Section 145 cannot be entertained. Since the Civil Court has exclusive jurisdiction and its findings are binding upon the Magistrate.

14. At this juncture, it is necessary to refer the verdict of the Honourable Apex Court, in the case of ***M. Siddiq (Dead) through Legal Representatives (Ram Janmabhumi Temple Case) versus Mahant Suresh Das and others, (2020) 1 SCC 1,*** which reads as under;

> *"299. Where a suit is instituted for possession or for declaration of title before a competent civil court, the proceedings under Section 145 should not continue."*
>
> *"300 ... ...* It is only in cases where civil suit is for

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> possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate"

15. Thus, the Executive Magistrate has acted beyond jurisdiction while granting relief of restoring possession and injunction. Resultantly, this Court is of considered opinion that respondent No.2 has committed overreach while entertaining the application and eventually rendering the order under challenge. Hence, the unsustainability of the order rendered by the Tahsildar is apparent. Consequently, the same is hereby quashed and set aside. Hence, the order:-

ORDER

i) The criminal writ petition is allowed.

ii) The order dated 08.03.2023 rendered by respondent No.2 – Tahsildar Pachora, District Jalgaon, in Kra.Cri.Code-145/129/2021, is quashed and set aside.

iii) Rule is made absolute in above terms.

[SACHIN S. DESHMUKH, J.]

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