

**THE HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P.49 of 2017

Sri Goutam Ghosh @ Radhu,
son of late Manmohan Ghosh,
resident of Thakurpalli Road, Krishnanagar,
P.O. Agartala, P.S. West Agartala, District : West Tripura

.....**Petitioner**

- V E R S U S -

The State of Tripura,

(represented by the Secretary, Home,
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District : West Tripura)

.....**Respondent**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. P.K. Biswas, Sr. Advocate
Mr. P. Majumder, Advocate

For the respondents : Mr. B. Choudhury, PP

Date of hearing : **10.05.2018**

Date of delivery of Judgment & Order : **29.06.2018**

Whether fit for reporting : **YES**

Judgment and Order

This is a petition under Section 401 read with Section 397 of the Cr.P.C. challenging the legality of the order dated 29.07.2017 delivered in Case No.01 of 2017 by the District Magistrate, West Tripura District, Agartala. The said order dated 29.07.2017 has been passed in a proceeding drawn under Section 145 of the Code of

Criminal Procedure, 1973 in short, Cr.P.C. For purpose of reference, Section 145 of the Cr.P.C. is extracted hereunder :

"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 this 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 any 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 subsection (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."

[Emphasis added]

2. The main-stay of the challenge is the jurisdiction of the Executive Magistrate while exercising the power under Section 145 of the Cr.P.C. The facts which would be essential for appreciating the challenge may briefly be noted so that the appropriate reference may be made. In the course of inquiry, one Deputy Collector, Sadar came to Thakurpalli Road to ascertain the possession of the land appertaining to Khatian No.613 (corresponding to old Khatian No.2217), Touji No.2817, Dag No.6043 (old), 1995. The petitioner asserted his possession to the said Deputy Collector and stated that he was possessing the said land through his tenants and he had been collecting the rent regularly from them. The said Deputy Collector informed the petitioner that under direction of the District Magistrate, West Tripura Agartala, he had been conducting the said inquiry. When the petitioner asked him to give the official order in this regard, the Deputy Collector had failed to supply copy of the order to the

petitioner. On 30.06.2017 the petitioner had submitted a representation to the District Magistrate clearly stating the fact that he is in possession of the land through his tenants. It has been also asserted that he has been regularly collecting the rents from the tenants. In his representation, the petitioner has stated that one Anjali Debbarma who was unmarried, was the owner and possessor of the land. Anjali Debbarma executed a will on 22.04.2010 bequeathing the property to the petitioner. From 02.06.2016, the petitioner is exclusively holding the possession by virtue of the said will. At the time of death of said Anjali Debbarma, the tenants who were possessing the tenements continued to pay rent to the petitioner having knowledge of the said will. He has further submitted that the so called allegations made by some inhabitants of that area are absolutely false and ill-motivated. After the said representation [Annexure-1 to the writ petition] was submitted, the petitioner was formally served with a notice under No.F.18(3)-DM/W/JDL/2016/1521 dated 14.07.2017 [Annexure-2 to the writ petition] issued by the District Magistrate, West Tripura, Agartala stating that a case being Case No.1-2017 has been registered under Section 145 of the Cr.P.C. as a dispute regarding unclaimed landed property of Nanda Lal Debbarma and others has been complained of. By the said notice, the petitioner was directed to appear before the District Magistrate, West Tripura, Agartala on 21.07.2017 at 3.30 pm for hearing.

Since the said notice provides the very foundation of the proceeding, the entire notice is extracted hereunder :

**IN THE COURT OF
THE DISTRICT MAGISTRATE
WEST TRIPURA DISTRICT
AGARTALA**

No.F.18(3)-DM/W/JDL/2016/1521

Dated,14.07.2017

Case No.1/2017 U/S 145 of Cr.P.C.

In the matter of :

**Dispute about unclaimed landed property of Lt. Nanda Lal Debbarma, S/O-
Ltd. Pyari Mohan Debbarma & Others at Krishnanagar Thakurpally Road,
Agartala, West Tripura.**

HEARING NOTICE

Whereas, a case has been registered in my court u/s 145 of the Cr.P.C. in connection with the dispute regarding unclaimed landed property of Lt. Nanda Lal Debbarma, S/O-Lt. Pyari Mohan Debbarma & Others at Krishnanagar Thakurpally Road, Agartala, West Tripura;

You are hereby directed to appear before me in my court in person or your authorized representative on 21.07.2017 at 3:30 PM for hearing in this regard.

**Not illegible
(Dr. Milind Ramteke, IAS)
District Magistrate
West Tripura District, Agartala**

3. The petitioner has also applied for the report of the Sub-Divisional Magistrate, the report of the Officer-in-Charge, West Agartala police station and the complaint with all orders. The petitioner was supplied with a copy of the report dated 27.06.2017 submitted by the Sub-Divisional Magistrate, Sadar [Annexure-4 to the writ petition] and the copy of the report dated 30.06.2017 submitted by the Officer-in-Charge, West Agartala police station [Annexure-5 to the writ petition]. But the petitioner was not supplied the copy of the complaint based on which the said proceeding under Section 145 of the Cr.P.C. was initiated. The petitioner has asserted that he is the owner and possessor of the said land by virtue of the will. On 21.07.2017, the petitioner submitted a statement of facts [Annexure-6 to the writ petition] by asserting his claim over the said property. No hearing had taken place on 21.07.2017 or thereafter. According to the petitioner, suddenly on 29.07.2017, the District Magistrate, West

Tripura Agartala passed the final order [Annexure-7 to the writ petition]. So far the claim of the petitioner is concerned, the District Magistrate has observed in the said order 29.7.2017 as follows :

"As far as the claim of Sri Goutam Ghosh @ Radhu Ghosh over the said disputed landed property as owner and possessor of this landed property is concerned, it is not corroborated by any documentary evidences. It is to mention that Lt. Anjali Debbarma had sworn an unregistered Will Deed in favour of Sri Goutam Ghosh @ Radhu Ghosh before the Ld. Notary dated, 02.06.2016 for transfer of the instant landed property to Sri Gautam Ghosh @ Radhu Ghosh on the strength of which Sri Gautam Ghosh @ Radhu Ghosh is claiming to be the absolute owner of the legal possessor of the instant landed property. As per the prevailing law in the State of Tripura, i.e. section 187(1)(b) of the Tripura Land Revenue & Land Reforms Act, 1960 any landed property of a tribal person cannot be transferred to any non-tribal person unless there is prior permission from the Collector of the district. In this case it is crystal clear that the District Collector of West Tripura District has not given any such permission to Sri Gautam Ghosh @ Radhu Ghosh to acquire this landed property owned by a tribal family on the basis of the said unregistered Will Deed. Hence the claim of Sri Gautam Ghosh @ Radhu Ghosh that he is absolute owner and legal possessor of the instant Landed property is not valid in the eyes of Law and cannot be considered by this Court."

[Emphasis added]

A reading of the said order would demonstrate that certain observations has further been made in respect of the title or the right of the legal heir of Narayan Debbarma (since deceased) who is admittedly the predecessor in interest of Smt. Anjali Debbarma. The District Magistrate has observed that he had ordered an inquiry through Sub-Divisional Magistrate, Sadar and the Officer-in-Charge of West Agartala police station and he had received the inquiry reports. The Officer-in-Charge, West Agartala police station along with the report submitted a copy of the unregistered gift deed dated 22.04.2010 executed by Sri Narayan Debbarma for transfer of the land under reference in favour of his sister Smt. Anjali Debbarma.

4. There is no dispute that the landed property is recorded in the name of Nandalal Choudhury @ Nandalal Debbarma, Nanigopal

Debbarma and Narayan Debbarma, all sons of late Pyarimohan Debbarma in Khatian No.613. Nandalal Choudhury @ Nandalal Debbarma and Nanigopal Debbarma died long back and Narayan Debbarma "the last co-sharer" of that property died on 07.06.2010 as is evident from the death certificate issued by the Agartala Municipal Council under No.8306. Before the death of Late Narayan Debbarma, his wife Maya Barman died on 18.09.2009 as is evident from the death certificate issued by the TMC & Dr. BRAM Teaching Hospital, Hapania under No.119 dated 10.11.2009. It has transpired from the inquiry report that only legal heir i.e. son of late Narayan Debbarma and late Maya Barman, namely Dr. Subhabrata Debbarma got missing from Rajamundri Medical College, Andhra Pradesh from and on 01.01.2004 while he was pursuing his MD course after passing MBBS. His whereabouts are still unknown.

5. It has been also observed by the District Magistrate in the said order that before his death, late Narayan Debbarma had executed an unregistered Gift Deed on 24.04.2010 by giving the said landed property to his younger sister namely Anjali Debbarma who was unmarried. Anjali Debbarma died on 01.01.2017 as is evident from the death certificate as issued by the Regional Cancer Centre, Agartala dated 24.03.2017. Anjali Debbarma executed an unregistered will on 02.06.2016 in favour of Sri Gautam Ghosh @ Radhu Ghosh, the petitioner herein and that was authenticated by the notary. Thereafter, the District Magistrate has observed abruptly that "from both these enquiry reports it is clear that there is an apprehension of breach of peace and tranquility due to the dispute related to the instant landed property. But it is not clear the dispute

as referred existed between whom." The District Magistrate has observed further as under :

"Being satisfied with this fact that there is an apprehension of breach and tranquility due to the dispute related to the instant landed property, I registered a case under section 145 of the Cr.P.C. on 05.07.2017. As per the provisions of section 145 of the Cr.P.C., I decided to call the parties to this case for hearing so as to record their statement and to get any evidence from them. Thereby I issued notices upon the complainants to remain present in my court on 12.07.2017 & 21.07.2017. During the hearing the complainants stated before me that there is no any legal heir of this unclaimed landed property and thus there is strong possibility that some anti social elements or land mafia may take illegal possession of this property and thereby there is strong apprehension of breach of peace and tranquility in the locality. Also they requested that as the said landed property is an unclaimed one, the State Government may take it under its possession so as to use this unclaimed property for some social cause such as Old aged home or any other social purpose as the State Government may deem fit.

Meanwhile I received one letter written by Sri Goutam Ghosh @ Radhu Ghosh of Thakurpalli Road, Krishnanagar, P.O-Agartala, P.S-West Agartala, West Tripura District dated 30.06.2017 in this connection along with the same copy of unregistered Gift Deed executed by Lt. Sri Narayan Debbarma in favour of his unmarried sister Smt. Anjali Debbarma and the same copy of unregistered Will Deed sworn before the Ld. Notary Agartala by Smt Anjali Debbarma in favour of Sri Gautam Ghosh @ Radhu Ghosh. In the said letter he has requested to drop the proceeding u/s 145 of Cr.P.C. as he is the owner and possessor of the said land in dispute.

As per the said letter, it transpires that Sri Goutam Ghosh @ Radhu Ghosh is one of the party to this dispute, and thereby as a matter of natural justice, I decided to give him opportunity to be heard. I issued hearing notice to Sri Goutam Ghosh @ Radhu Ghosh who appeared before me on 21.07.2017 and he submitted one written objection in which he has prayed to the court to drop the proceeding u/s 145 of Cr.P.C.

I perused the said objection (petition) written by Sri Goutam Ghosh @ Radhu Ghosh. In the said objection (petition) Sri Goutam Ghosh @ Radhu Ghosh has mentioned that he is the owner and possessor of the said disputed landed property as Lt. Anjali Debbarma sister of Lt. Narayan Debbarma had executed the Will Deed in his name for transfer of the said landed property to Sri Goutam Ghosh @ Radhu Ghosh. In the said petition he has also prayed the Ld. Court for furnishing the copies of all information and reports on the basis of which the present proceeding has been initiated.

I carefully heard Sri Goutam Ghosh @ Radhu Ghosh. He stated before this court whatever he has submitted in his written objection (petition). Hence there is no further need to elaborate the same. However as far as his prayer for furnishing complaint letters and various reports basis on which the instant case u/s 145 of Cr.P.C. has been initiated by this court is concerned, I am of the opinion that in the interest of safety and security of the complainants (petitioners) i.e. the inhabitants of the locality of Thakurpally

Road, Krishnanagar area the complaint letter or petition which bears the names of the local citizens shall not be given to Sri Goutam Ghosh @ Radhu Ghosh. However certified copy of the enquiry report of Officer-in-Charge of West Agartala Police Station and certified copies of the enquiry report of Sub-Divisional Magistrate, Sadar Sub-Division shall be provided to Sri Goutam Ghosh @ Radhu Ghosh based on which this court has instituted the instant case u/s 145 of Cr.P.C.

Overall in the instant case, I recorded statements of the complainants i.e. local inhabitants/complainants of Thakurpally Road, Krishnanagar, TRTC, Agartala and statement of Sri Goutam Ghosh @ Radhu Ghosh who are the main party to this dispute. Also I perused various documentary evidences such as :

1. Enquiry report from the Officer-In-Charge, West Agartala Police Station
2. Enquiry report of Sub-Divisional Magistrate, Sadar Sub-Division
3. Unregistered Gift Deed of this landed property executed by Lt. Narayan Debbarma in favour of his sister Lt. Anjali Debbarma
4. Unregistered Will Deed of the instant landed property by Lt. Anjali Debbarma in favour of Sri Goutam Ghosh @ Radhu Ghosh before the Ld. Notary, Agartala.
5. Letter of Sri Goutam Ghosh @ Radhu Ghosh dated 30.06.2017 to the DM & Collector, West Tripura District.
6. Death Certificate of Lt. Narayan Debbarma, Lt. Maya Barman & Lt. Anjali Debbarma.
7. The objection (petition) submitted by Sri Goutam Ghosh @ Radhu Ghosh in this connected dated 21.07.2017, death certificate of Lt. Narayan Debbarma and Lt. Maya Barman and Lt. Anjali Debbarma, copy of Khatian No.613 of the said landed property."

The District Magistrate had formulated two points for determination viz.:

- i) Whether the disputed landed property is under any legal possession of any party to the dispute or anybody else ; and
- ii) Whether there is an apprehension of breach of peace and tranquility arising due to the dispute in connection with the instant landed property.

6. After recording the fact of non-traceability of Narayan Debbarma and in respect of status of the petitioner, as extracted, the District Magistrate returned his findings which can be summarized thus :

i) In absence of any legal heir or legal possessor in respect of the landed property, the landed property is liable to be unclaimed.

ii) There is apprehension of breach of peace and tranquility due to the dispute arising because of the said unclaimed property.

7. The basis of such finding was the reports submitted by the officer in charge, West Agartala police station and the report submitted Sub-Divisional Magistrate, Sadar. Based on those findings, the following direction has been issued by the District Magistrate :

"Hence as per the power conferred upon me u/s 145 of Cr.P.C. & section 146 of Cr.P.C, I hereby give order to attach the said disputed landed property vide Khatian No.613, Mouja-Agartala Sheet No.7, Sabek Plot No.6043, Hal Plot No.1995 and area measuring 0.19 acres located at Thakurpally Road, Krishnanagar, TRTC, Agartala under West Tripura District until further order & also I hereby direct the Sub-Divisional Magistrate, Sadar Sub-Division to take possession & to look after this disputed landed property until further order. As there is no legal income as of now from this landed property, I am of the opinion that there is no need to appoint any receiver for the said landed property.

This order shall be withdrawn by this court if the only legal heir of this disputed landed property namely Dr. Subhabrata Debbarma returns back and the court is satisfied with his identity or any Ld. Competent Court of Law determines the right of the party thereto the legal heir or to the possession thereof.

Any Party who is of the opinion that he/she has legal right to take possession of this instant Landed property may approach to the competent Court of Law within 90 days of issue of this order.

Meanwhile Sub-Divisional Magistrate, Sadar Sub-Division shall take every efforts to wide publicity in the national and local daily Newspapers at least 3(three) times i.e. once in every month through the ICA Department of the State Government so as to intimate the only legal survivor namely Dr. Subhabrata Debbarma, MBBS to appear before this court in order to prove his identity as legal heir of this disputed landed property.

For taking care of this disputed Landed Property during the period of attachment, SDM Sadar shall be able to take all the necessary assistance from Agartala Municipal Corporation and the concerned officer of the Agartala Municipal Corporation shall be under obligation for the same.

Also the Officer in Charge West Agartala Police Station shall take necessary action in order to maintain peace and tranquility in the locality and also to prevent any illegal trespassing of the said disputed Landed Property during the attachment period.

If within 90(Ninety) days from the issue of this order, nobody approaches to the competent Court of Law or the

only legal heir Dr Subhabrata debbarma, MBBS does not appear before this court, then Sub-Divisional Magistrate, Sadar Sub-Division shall take necessary action to refer this matter of this unclaimed & disputed Landed Property to the Revenue Department, Govt. of Tripura for further necessary decision by the State Government & if there is any decision from the State Government, then this order shall be withdrawn accordingly.

Anybody who violates this order shall be liable for punishment u/s 188 of IPC. Anybody who illegally trespasses this property after issue of this order shall be liable for punishment u/s 441 of IPC.

Let the certified copies of this order be supplied to the complainants (petitioners), Sri Goutam Ghosh @ Radhu Ghosh.

Copies of this order should be forwarded to the Sub-Divisional Magistrate, Sadar Sub-Division, Officer-In-Charge, West Agartala Police Station, Commissioner, Agartala Municipal Corporation, Director, ICA Department, Govt. of Tripura for necessary action.

Also a copy of this order shall be forwarded to the District Sub-Registrar, Sadar Sub-Registrar for information & prevent any transfer of this property without any order from this court."

8. Mr. P.K. Biswas, learned Senior counsel appearing for the petitioner has at the beginning submitted that the Executive Magistrate, the District Magistrate herein, has exceeded the jurisdiction as conferred upon the Executive Magistrate under Section 145 of the Cr.P.C. In passing the impugned order dated 29.07.2017, the District Magistrate, hereinafter referred to as the Magistrate, has decided two issues which did not fall within his jurisdiction. Those aspects or issues are the title of the land and the right to possess the land. According to Mr. Biswas, learned senior counsel, the purpose of Section 145 of the Cr.P.C. is to enable the Magistrate to intervene and pass a temporary order in regard to the possession of the party in dispute having effect until the actual rights of the parties are determined by a Civil Court of the competent jurisdiction. He has persuaded this court to note that where the dispute is not on the right to possession but on the question of possession, only in that occasion,

the Magistrate has the jurisdiction to take cognizance under Section 145 of the Cr.P.C.

9. From the other side, Mr. B. Chowdhury, learned PP appearing for the respondent has submitted that the dispute is relating to "the real possession". That apart, when from the reports of the Officer-in-Charge, West Agartala Police Station and the Sub-Divisional Magistrate it surfaced that there was apprehension of breakdown of peace and tranquility, the impugned order cannot be faulted with. Mr. Chowdhury, learned PP in order to buttress his point has referred a decision of the Patna High Court in **Rudra Singh and Another versus Bimla Debi and Others** reported in **(1960) Cri. L.J. 1477** where it has been observed, having referred to **Ramnarain Singh versus Dhonrai Gope** reported in **AIR (1922) Patna 371**, that stealthy act of possession does not come under the meaning of possession within the ambit of Section 145 of the Cr.P.C. Possession within the meaning of Section 145 of the Cr.P.C. would mean and imply "effective occupation or control." In **Mahabir Singh and Others versus Emperor** reported in **AIR (1934) Pat 565** it is observed by the Patna High Court that an isolated act of trespass does not constitute possession of the wrong doer as against the rightful owner in possession. According to Mr. Chowdhury, learned PP, the petitioner was never in the "real possession" of the land and as such, by directing the Sub-Divisional Magistrate, Sadar Sub-Division to take possession and to look after this landed property until further order no illegality or irregularity has been committed by the Magistrate, having passed the impugned order. The Magistrate has further observed that since there is no legal income from the said

landed property, there is no need to appoint receiver for the said landed property.

10. Having appreciated the submissions of the learned counsel for the parties, this court finds that the disputes as determined by the Magistrate are as regards: i) who holds the title of the land and ii) who has the right to possession of the land. The Magistrate can exercise the jurisdiction under section 145 of the Cr.P.C. only when he is satisfied from the report of police officer or upon other information that a dispute which exists is likely to cause a breach of peace concerning any land or water or the boundary thereof within his local jurisdiction, after making an inquiry in the manner as provided under section 145 of the Cr.P.C., if it appears to the Magistrate that any party has "forcefully and wrongfully dispossessed within two months next before the date on which the report of the police officer or other information was received by the Magistrate, or after the date or 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)."

11. In this regard, the Magistrate is authorized to issue an order declaring such party to be entitled to be in possession thereof, until evicted therefrom in due course of law and forbidding all the disturbance in respect of such possession until such eviction. When the Magistrate proceeds under the proviso (4), he may restore the possession to the party who had been forcibly and wrongfully dispossessed. The Magistrate also can exercise his power and pass an order for the proper custody or sale of such property which is subject to speedy natural decay. On completion of the inquiry, in such

event, the magistrate shall make an order for disposal of such property or the sale proceeds thereof. The magistrate has been given the power to attach the subject land of dispute only when he decides that none of the parties was then in such possession as is referred to in Section 145 of the Cr.P.C. or if he is unable to satisfy himself as to which of them was then in such possession of the subject land of dispute. Such attachment is of interim nature until the competent court determined the rights of the parties with regard to the person entitled to the possession thereof.

12. As the record of the proceeding has been produced in terms of the order of this court, it surfaces therefrom that one complaint filed by one Shampa Debbarma and others from the locality of the petitioner, a slew of allegations have been made. It has been alleged that the petitioner was illegally trying to grab the physical possession of the land. Admittedly, those persons who filed the complaint had no relation with the land neither are they in possession over that land, they are completely strangers so far the title, right to possession and also to the status of possession are concerned. Having perused the said complaint dated 22.06.2017 it would appear that the land is uncared and abandoned. Taking the advantage of that situation, some dishonest persons are trying to take possession of that land illegally. It has been also contended by those complainant as follows :

"Off late, one Sri Goutam Ghosh alias Radhu, S/O Late Mohini Mohan Ghosh of the same locality is trying to take possession of the land appeared to be illegally and fraudulently. There are some tenants staying in the house available in the land and Sri Ghosh is collecting the rents of the houses from the tenants and misappropriating the money. It is a tribal land and without legal permission from the appropriate authority non-tribal cannot occupy the land. The local people have raised strong objection against the activities of Sri Ghosh and asked him to refrain from such activity and also deposit the amount so collected as rent to a trusty so that it can be handed over to the legal owner later on if established.

Owing to this issue a discontentment between the people of the area and Sri Ghosh is going on and some stray incidents had already taken place at the area. The local Police had also visited the area to solve the problems and maintain peace in the area on few occasions. Following this issue further large scale clash/violence may take place at any time since tension is still prevailing in the area. On 04.06.2017 afternoon a meeting has been held by the elders of the locality to avert further clash/violence in the area and in the meeting it has been decided unanimously that the land should be acquired by the Government immediately to prevent any untoward incidents and to maintain peace and tranquility in the area after observing all legal formalities since no legal claimant(s) of the land is available in the area at present."

13. It is further noticed from the records that three sisters (Chaya Rani Barman, Jaya Barman and Gouri Barman) of Maya Barman since deceased (wife of Narayan Debbarma) have expressed their hope that Dr. Subhabrata Debbarma may come back at any time. They urged the District Magistrate to acquire the land keeping one third of the total land, if permitted by law. From the report submitted by the Officer in Charge it clearly appears that "a serious tension is prevailing in the area" on failure of mitigating and resolving the dispute arising out of the land through conciliation. No amicable settlement has resulted in. From the report of the Sub Divisional Magistrate it has appeared further as follows :

"It is also pertinent to mention here that one Sri. Goutam Ghosh son of Mohini Ghosh claiming that he is the owner of the said land and stated that Narayan Debbarma, the third co-owner of the land donated the above said land to Smt. Anjali Debbarma, daughter of Piyari Mohan Debbarma and thereafter Smti. Anjali Debbarma executed a will in favour of Sri Goutam Ghosh. But, in support of this, Sri. Goutam Ghosh could not to show any documentary evidence. So he may be called to produce the will or any other documentary evidence in support of his claim.

However, the local people have demanded that the Government should acquire the land for maintaining peace & tranquility in that area.

I would also like to mention here that none of the co-owners are alive now and they did not leave any successors or legal heirs. So, in that case anti social activities may increase to acquire the land or different illegal activities may take place at that portion of land which may break the law & order situation. So, the dispute concerning the land may likely to cause breach of peace. The detail enquiry report is enclosed herewith for your kind perusal and doing the needful please.

This is for favour of your kind information and doing the needful please."

14. In this regard, it is to be noted that the detailed inquiry report is not found with the records except the copy of the report of the Officer-in-Charge, West Agartala Police Station. Having perused that report, it appears that by the order dated 05.07.2017, the magistrate has observed, inter alia :

"Overall I am satisfied there is strong apprehension of breach of peace and tranquility and disruption of law and order in the above said locality due to the dispute arising out of the instant unclaimed landed property."

15. It appears from the record that the claim over the property has been advanced by the petitioner by filing a written objection on 21.07.2017 where he has claimed that on the basis of the will executed by Smt. Anjali Debbarma, sister of Narayan Debbarma during her life time the petitioner has become the absolute owner of the said property. It has been also asserted that he is in possession over the said land and according to him there was no dispute relating to his land with anyone. As the petitioner was not supplied with a copy of the complaint, he had contended that there was no apprehension of breakdown of peace and tranquility in the area as projected. It has been also contended by the petitioner that Narayan Debbarma had transferred the said land in favour of Anjali debbarma who was unmarried, by a deed of gift executed on 24.04.2010. The petitioner submitted the death certificate of Anjali debbarma, purported gift deed which is unregistered, the will dated 02.06.2016 executed by Smt. Anjali Debbarma etc. The Magistrate recorded evidence of Ramaprasad Bhattacharjee (a local resident), Smt. Jaya Barman one of the sister of Mayarani Barman(wife of Narayan Debbarma), Uttam Kumar Koloi, Sub-Inspector of police from West

Agartala police station and Sri Samit Ray Chowdhury , Sub-Divisional Magistrate, Sadar Sub-Division. All of them have categorically stated that there existed a strong apprehension of the breakdown of the peace and tranquility and law and order on the dispute over the possession of the said land as stated. The petitioner's written statement was supported by affidavit. The petitioner has reiterated in the course of hearing that had taken place on 21.07.2017 that he had submitted the copies of the will, gift deed etc. That apart the said land is under his peaceful possession and he is realizing the rent from three tenants who were inducted in the tenement. The order as challenged in this petition had been passed thereafter.

16. So far the claim of the petitioner is concerned, the Magistrate has observed that there is no corroboration by documentary evidence that the petitioner is the owner and the possessor of the land. The petitioner has been claiming the ownership by virtue of the will executed by Anjali debbarma on 02.06.2017. Thereafter, he has observed that as per the prevailing law in the State of Tripura i.e. Section 187 (1) (b) of Tripura Land Revenue and Land reforms Act, 1960 any landed property of a tribal person cannot be transferred to any non-tribal person unless there is a prior permission from the Collector of the district. Since there was no such permission, the landed property owned by tribal family cannot be claimed by dint of the unregistered deed. Finally, it has been observed that "hence the claim of Sri Goutam Ghosh @ Radhu Ghosh that he is the absolute owner and legal possessor of the instant landed property is not valid in the eyes of law and cannot be considered by this court." Further finding followed by the direction is evident from the said order as has been extracted herein above. At

the cost of reputation, a summary of such findings and directions is provided hereunder :

i) There is apprehension of breach of peace and tranquility in the locality due to the dispute arising from the unclaimed property.

ii) The Sub-Divisional Magistrate, Sadar shall take possession over the disputed land. As there is no legal income, no receiver is required to be appointed.

iii) The order shall be withdrawn if the only legal heir, Dr. Subhabrata Debbarma returns and takes over the possession after establishing his identity by the process of the court.

iv) The Sub-Divisional Magistrate, Sadar shall give wide publicity in the national and local daily newspapers at least three times once in every month through the ICA Department, Government of Tripura for intimation to Dr. Subhabrata Debbarma so that he can establish his identity as the legal heir of Narayan Debbarma, since deceased.

v) The Sub-Divisional Magistrate, Sadar may take assistance from Agartala Municipal Corporation for taking care of the disputed land.

vi) The Officer in Charge, West Agartala Police Station shall take action in order to maintain peace and

tranquility in the locality and to prevent any trespass in the disputed land during the attachment period.

vii) If within ninety days nobody or the only legal heir (Dr. Subhabrata Debbarma) does not appear before the Magistrate, the Sub-Divisional Magistrate, Sadar shall take necessary action to refer this matter of the unclaimed and disputed landed property to the Revenue Department, Government of Tripura for further necessary decision by the State Government. If any decision is taken by the State Government, the order shall be withdrawn accordingly.

viii) Anybody who violates the said order shall be liable for punishment under section 188 of the IPC. The trespasser to the property shall be liable for punishment under section 441 of the IPC.

17. The jurisprudential objection raised by the petitioner is the main stay of challenge against the order dated 29.07.2017, the relevant part of which has been substantively extracted or appreciated. Pari materia provision similar as Section 145 was available in the Criminal Procedure Code, 1898 (Act 5 of 1898). The full bench of Calcutta High Court in **Agni Kumar Das versus Mantazaddin and Another** reported in **AIR 1928 Cal. 181** while deliberating on the scope and ambit of section 145 of the said Act and the jurisdictional limit of the Magistrate it has been observed (**Per Rankin, CJ**) that Section 145 is not the only weapon with which a Magistrate is entrusted for maintenance of peace in connection over the dispute over land. He has a power specially adopted to cases of

urgency under Section 144 and he has a power under Section 107 which in some cases will suffice. It is clear enough that whatever meaning be given to the word "shall" in the first Sub-Section of Section 145 it need in no way embarrass any Magistrate in exercise his discretion. If he is of the opinion that an order under Section 107 will meet the case and propose to make one, he has only to make it to justify himself in holding that the dispute no longer is likely a breach of the peace: he can do this either without taking action under Section 145 or at any stage of proceeding under that section. If he thinks that the case calls for action under Section 144, he can take such action and if he thinks that sufficient to prevent the likelihood of a breach of the peace he can postpone all actions under Section 145.

In **Agni Kumar Das (supra)** it has been further observed **(per Mukherjee J)** that the words "actual possession" in Sub-Section (1) of Section 145, Criminal Procedure Code mean actual physical possession even though wrongful, of a recent trespasser in actual physical possession unleashing the dispute as to possession and that has not been determined by a Civil Court. The word "dispute" in the same section means actual disagreement existing between the parties at the time of proceedings under Section 145, even though the question as to the right of possession has already been decided by a civil court. If the decision of the civil court amounts only to determination of the right to possession but not in cases where such right under consequent claim to possession has been negatived by a decree which is either inter parties or may be treated as such and in cases in which khash and actual possession have been delivered by the civil court either in the parties or to the persons who

may in effect be regarded as parties to the proceeding [in the context of that case].

18. The Gauhati High Court in **Konjengbam Ibopishak singh versus Ahongsangbam Sanakhomba Singh and Others** reported in **1986 Cri. L.J. 1110** had occasion to dwell upon that aspect of the matter and having referred a few precedents has observed that the jurisdiction to act under Section 145 arises in a case of "dispute" as to "actual possession" of immovable property which is likely to lead to breach of peace. As soon as, the written report is placed in pursuance to the preliminary order passed under Section 145(1), it is the duty of the Magistrate to examine if the claims relate to the question of actual possession as emphasized by Section 145 (5) or not, not to "right to posses". Indeed, there may be no occasion for receiving any evidence if no "dispute" as such is apparent. If the claim is vague or is of a nature which projects not "facts of actual possession" but the "right to possess" being the subject matter of dispute, he would be justified in dropping the proceeding or otherwise cancelling the order passed under Section 145(1) by virtue of powers vested under Section 145(5) because whenever a claim is made by any party in his written statement as regards the "right to possess", the party may also insist on leading evidence under section 145(4) to establish his claim. This is not permitted by law. For purpose of better reference, it appears apposite to extract the observation made in **K.Ibopishak Singh(supra)** which reads as under :

7. In order to deal objectively with the legal contentions discussed above, the relevant provisions are extracted:

"Section 145(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) & (3) x x x

x x x

x x x

(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 any and which of the parties was, at the date of the order made by him under Sub-sec.(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-sec.(1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under Sub-sec.(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-sec.(1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to Sub-sec.(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 disturbances of such possession until such eviction; and when he proceeds under the proviso to Sub-sec.(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-sec. (3).

x x x

x x x "

8. It is needless to emphasise the care and caution which a Magistrate must exercise in dealing with a proceeding under Sec. 145 Cr. P.C. for several reasons. As held by this Court in Rahmat Ali, (1984) 1 Gauhati LR (NOC) 29, the power under Sec. 145 is to be exercised in public interest to prevent breach of the peace as a duty is cast thereunder on the Magistrate to act in emergent situations. But, it is necessary to note that the power is not misused and the provision is not misapplied. Because, not infrequently parties take resort to criminal Courts to settle a civil dispute. Care should be taken to steer clear of pit-falls which beset the long journey on which a Magistrate may be set upon by private litigants interested in serving their personal cause and not really in preservation of peace in public interest. Indeed, in a Special Bench case AIR 1949 Patna 146: (1949 (50) Cri L J 299), (S.M. Yaqub v. T.N. Basu) judicial concern about this course

is vocally projected as indeed by this Court as well in its decision in Henkholam, (1985 Cri L J 1381) (supra).

9. Their Lordships of the Supreme Court also in their decision in Bhinka v. Charan Singh, AIR 1959 SC 960: (1959 Cri. L J 1223) observed that the foundation of the jurisdiction of a Magistrate to pass an order under Section 145(6) is an apprehension of the breach of the peace and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. Thus, if preservation of the peace be the real object of Section 145 before the learned Magistrate decides to exercise his jurisdiction thereunder it behoves him to examine the conditions- precedent before acting thereunder and also to examine other relevant provisions empowering him in this behalf. Although it is the Executive Magistrate who is authorised to act in emergent situations to preserve the peace under various provisions of the Act, such as, Ss. 107,144 and 145 Cr. P.C., in each case he has to act in a judicial manner and exercise his power strictly within the four corners of the relevant provisions. Indeed, in each case he has to mark out the ambit of his jurisdiction and, therefore, examine what provision in the particular fact and circumstances of the case can be invoked by him to preserve the peace.

10. On a plain reading of S.145, it appears clear that jurisdiction to act thereunder arises in a case only when there is a "dispute" as to "actual possession" of any immovable property, which is likely to lead to breach of the peace. However, the procedure to be followed in respect of such a dispute is indicated and also scope of the dispute which can be (not must be) resolved in a proceeding under S.145. The Magistrate is not only not required to come to a positive and affirmative finding as to "actual possession" of the subject-matter of dispute in favour of any of the parties to the proceeding as he is required to decide the question "if possible" to do so, as per provision of Sub-sec.(4), but he is empowered also, as per Sub-sec.(5), to "cancel" (i.e. to drop proceeding also) at any stage, the order made under Sub-sec.(1) by which he had taken upon himself responsibility of making the inquiry into "claims" of the parties in accordance with Sub-sec.(4). However, his determination under Sub-sec.(6) acquires the character of a judgment in rem, al beit with a limited life, which is manifested by the language of the sub-section itself, as indeed, also of Sub-sec.(3) and proviso to Sub-sec.(4). The extent and reach of the final order passed under Sub-sec.(6), therefore, requires the Magistrate to guard against over-stepping his jurisdiction at each stage of the proceeding. Thus, as soon as the written statements of "claims" are put in pursuant to the "preliminary order" passed under Sub-sec.145(1) it becomes his duty to examine if the "claims" relate to the question of "actual possession". This follows from the language of Sub-sec.(5) itself. He need not tarry and wait until evidence is led. Indeed, there may be no occasion for receiving any evidence if no "dispute" of the nature contemplated under Sub-sec.(1) is disclosed by the "claims" put in by the parties in their written statements. He must, therefore, examine the nature of the claims and decide whether to proceed under Sub-sec.(4). He must also see if the "dispute" was such as was capable of being decided by him under Sub-sec.(4). By merely putting in their written statements parties cannot compel him to proceed under Sub-sec.(4). If the claim is vague or is of a nature which projects not the "facts of actual possession" of, but the "right to possess", the subject-matter of dispute, he will be justified in dropping the proceeding or in other words, cancelling the

order passed under Sub-sec.(1) in virtue of power vested in him under Sub-sec. (5). Because, whenever claim is made by any party in its written statement of "right to possess" the party may also insist on leading evidence under Sub-sec.(4) to establish its claim. This is what is not permitted by law. It is true that evidence need not be stated in written statements but it is still necessary to state the nature of the right claimed by the parties. Thus, when, several individuals, joined together as a "party" to the proceeding filed a single written statement it becomes the duty of the Magistrate to examine if the right claimed by them was such as related to the claim of "actual possession" or of "right to possess" and also whether or not claim was made of joint possession or of specified areas of the land in case the subject of dispute was: land. Because, in a case in which several persons file a joint written statement and still claim possession each in respect of unspecified areas it becomes a case of exclusive possession of specified areas of land by different persons. In such a case, it may not be possible for the learned Magistrate to decide the "dispute" in the same proceeding without causing prejudice to the other side; so also, when nature of possession of each is not at all stated.

[Emphasis supplied]

19. In **Bhinka and Others versus Charan Singh** as referred in **K. Ibopishak Singh** (supra), the apex court has observed as under :

"17. Can it be said that the appellants had taken possession in accordance with the provisions of s. 145 of the Code of Criminal Procedure ? The short answer is that s. 145 of the said Code does not confer on a Magistrate any power to make an order directing the delivery of possession to a person who is not in possession on the date of the preliminary order made by him under s. 145(1) of the Code. Under s. 145(1) of the Code, his jurisdiction is confined only to decide whether any and which of the parties was on the date of the preliminary order in possession of the land in dispute. The order only declares the actual possession of a party on a specified date and does not purport to give possession or authorise any party to take possession. Even in the case of any party who has been forcibly and wrongfully dispossessed within two months next before the date of the preliminary order, the Magistrate is only authorised to treat that party who is dispossessed as if he had been in possession on such date. If that be the legal position, the appellants could not have taken possession of the disputed lands by virtue of an order made under the provisions of s. 145 of the Code of Criminal Procedure. They were either in possession or not in possession of the said lands on the specified date, and, if they were not in possession on that date, their subsequent taking possession thereof could not have been under the provisions of the Code of Criminal Procedure."

[Emphasis supplied]

20. The apex court in **Prakash Chand Sachdeva versus State and Another** reported in **(1994) 1 SCC 471** had occasion to

examine the applicability of Section 145 and 107 of the Cr.P.C. It has been observed there that where the dispute is not on the right to possession but on the question of possession, the Magistrate is authorized to take cognizance under Section 145 of the Cr.P.C. It has been observed thereafter as follows:

"Neither the High Court nor the Sub-Divisional Magistrate cared to ascertain if the respondent had any claim to lawfully prevent the appellant from entering into his own house. The proceedings under Section 107 are for public peace and tranquility whereas those under Section 145 relate to disputes regarding possession between parties concerning any land or water or boundaries thereof. Therefore, dropping of proceedings under Section 107 could not furnish foundation for dropping the proceedings under Section 107 could not furnish foundation for dropping the proceedings under Section 145. Nor the law laid down in Puri Case could result in rejecting the application filed under Section 145 of the Cr.P.C. There being no dispute of title between the appellant and respondent the only claim to be decided was if the appellant had been forcibly or wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the appellant had sought the remedy in civil suit without applying the mind if that decision was in any way helpful for dropping the proceedings. In law, therefore, the order passed by the two courts below cannot be maintained."

21. In **Ranbir Singh versus Dalbir Singh and Others** reported in **(2002) 3 SCC 700**, the apex court has made some observations which may be relevant in the context and hence are gainfully reproduced hereunder :

"The further contention of Shri A.M. Singhvi is that the High Court has gone beyond the scope of Section 145 of the Code and has dealt with the question of title and right to possession without paying due attention to the undisputed factual position that the parties are before the civil court in a suit which is pending and in that proceeding the civil court will determine the question of possession and may incidentally go into the question of title to the property also. According to Shri Singhvi, in any view of the case, the High Court was in error in directing the learned Sub-Divisional Magistrate to restore possession for the land in dispute to the petitioner, Respondent 1 herein."

22. In **Shanti Kumar Panda versus Shakuntala Devi** reported in **(2004) 1 SCC 438**, where the apex court has observed that the order of the magistrate passed under Section 145 or under

Section 146 of the Cr.P.C. should remain confined only to the factum of possession of the property in dispute. The order that is passed under Section 145 of the Cr.P.C. is temporary in nature and is subject to determination of right to title by the competent court. The apex court has further elucidated the nature and the scope and ambit of Section 145 of the Cr.P.C. as under :

10. Possession is nine points in law. One purpose of the enforcement of the laws is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in Sub-section (2) of Section 145 having arisen, causing a likelihood of a breach of the peace, Section 145 of the Code authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Sections 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in proviso to Subsection (4) of Section 145 and maintain the status quo as to possession until the entitlement to possession was determined by a court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned.

11. There is a difference between a case where the subject-matter of dispute is not attached by the Executive Magistrate under Section 146(1) and the case where it is so attached. 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 therefrom 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 under Section 145.

12. What is an eviction "in due course of law" within the meaning of Sub-section (6) of Section 145 of the Code? Does it mean a suit or proceedings directing restoration of possession between the parties respectively unsuccessful and successful in proceedings under Section 145 or any order of competent court which though not expressly directing eviction of successful party, has the effect of upholding the possession or entitlement to possession of the unsuccessful party as against the said successful party. In our opinion, which we would buttress by reasons stated shortly hereinafter, ordinarily a party unsuccessful in proceedings under Section 145 ought to sue for recovery of possession seeking a decree or order for restoration of possession. However, a party though unsuccessful in proceedings under Section 145 may still be able to successfully establish before the competent court that it was actually in possession of the property and is entitled to retain the same by making out a strong case demonstrating the finding of the Magistrate to be apparently incorrect.

13. *****

14. *****

15. It is well-settled that a decision by a criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court (See - Sarkar on Evidence, Fifteenth Edition, page 345). A decision given under Section 145 of the Code has relevance and is admissible in evidence to show :- (i) that there was a dispute relating to a particular property; (ii) that the dispute was between the particular parties; (iii) that such dispute led to the passing of a preliminary order under Section 145(1) or an attachment under Section 146(1), on the given date, and (iv) that the Magistrate found one of the parties to be in possession or fictional possession of the disputed property on the date of the preliminary order. The reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court and the competent court is not bound by the findings arrived at by the Magistrate even on the question of possession though, as between the parties, the order of the Magistrate would be evidence of possession. The finding recorded by the Magistrate does not bind the Court. The competent court has jurisdiction and would be justified in arriving at a finding inconsistent with the one arrived at by the Executive Magistrate even on the question of possession. Sections 145 and 146 only provide for the order of the Executive Magistrate made under any of the two provisions being superseded by and giving way to the order or decree of a competent court. The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its

16. In Bhinka v. Charan Singh: AIR 1959 SC 960, this Court held that the Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. His order is a temporary order irrespective of the rights of the parties, which will have to be agitated and adjudicated upon by a competent forum and in the manner provided by law. The life of the said order is coterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court. The orders under Section 145 of the Code are thus merely police orders and do not decide any question of title.

17. We would like to clarify that in the case of *Bhinka v. Charan Singh*: AIR 1959 SC 960, the question - what is a competent court, did not arise for determination; nor did the question as to what is the weight and value to be assigned to or what is the efficacy of the order of the Magistrate in a subsequent suit or proceeding initiated before a competent court directly arise for consideration. This we say because it is also well-settled that Sections 145 and 146 nowhere specifically provide for the order of the Magistrate being subject to and superseded by only a decree of 'Civil Court'. The words 'competent court' used in Section 146(1), in the context in which they have been used, only mean "any court which has jurisdictional competence to decide the question of title or rights to the property or entitlement to possession based on right or title to the property though the court is not necessarily a Civil Court". The words 'until evicted therefrom in due course of law' as occurring in Sub-section (6) of Section 145' mean the eviction of the party successful before the Magistrate, consequent upon the adjudication of title or right to possession by a competent court; that does not necessarily mean a decree of eviction. The party unsuccessful before the Magistrate may dispute the correctness of the finding arrived at by the Magistrate and is at liberty to show before the competent court that it had not dispossessed the successful party or that it is the unsuccessful party and not the successful party who was actually in possession and the finding to the contrary arrived at by the Magistrate was wholly or apparently erroneous and unsustainable in law.

19. *****

20. *****

21. The order of the magistrate under Sections 145/146 of the Code is not only an order passed by Criminal Court but is also one based on summary enquiry. The competent Court in any subsequent proceedings is free to arrive at its own findings based on the evidence adduced before it on all the issues arising for decision before it. At the stage of judgment by the Civil Court the order of the Magistrate shall have almost no relevance except for the purpose of showing that an enquiry held by the magistrate had resulted into the given declaration being made on a particular date. The competent Court would be free to record its own findings based on the material before it even on the question of possession which may be inconsistent with or contrary to the findings arrived at by the Magistrate.

[Emphasis added]

23. Thus, it surfaces that the Indian Courts are consistent about the interpretation of Section 145 or Section 146 of the Cr.P.C. To act under the jurisdiction created by Section 145 of the Cr.P.C., there must be a dispute i.e. both sides must disagree on question of "actual possession" of the land. It would not be dispute if one party claim right to possession and other party asserted actual possession. A distinction has been clearly made out in respect of the dispute on actual possession and the dispute on right to possession. Thus, when the claim is vague or is of a nature which projects not the "facts of actual possession" but the right to possess, the subject matter of such dispute cannot be adjudicated under Section 145 of the Cr.P.C.

24. That apart, Section 145(6) of the Cr.P.C. requires the Magistrate to guard against overstepping the jurisdiction, each stage of proceeding there must be a categorical finding of actual possession immediately before two months over the dispute raised. A casual reference may be made to the title but the Executive magistrate does not have the jurisdiction to direct the inquiry in order to determine the title in any manner or the right to possession. Those disputes fall within the jurisdiction of "the competent civil court". On perusal of the complaint filed by the person having no interest either in the title or

in the right to possession or in the actual possession, the magistrate ought have dropped the complaint on the face of it. Even in the enquiry there had been no endeavour to determine the actual possession over the land in dispute. However, the petitioner has specifically asserted that he was in the possession. No evidence is available in the records to show that save and except the petitioner, anyone else has disagreed over the possession or claimed 'actual possession'. The petitioner has categorically asserted that the tenants are occupying the tenements and they are paying the rents to him regularly. Absence of observation in respect of actual possession over the land vitiates the impugned order. The observation and direction as summarized above would show that the magistrate has flagrantly overstepped his jurisdiction in passing the said order in his anxiety to do justice as it appeared before him that the transfer from Narayan Debbarma to Anjali Debbarma and the will executed by the Anjali Debbarma cannot be held to be legal or regular. Such observations are not germane to the jurisdiction created under Section 145 of the Cr.P.C. as the law is crystal clear from the precedents discussed by this court above.

25. Having observed thus, the impugned order is set aside and quashed. But the parties are to observe the following directions till the dispute as latent in the controversy are determined or settled :

- I) The Secretary, Revenue department shall independently make an inquiry so as to ascertain whether the property is an unclaimed property or not. If the property appears to him as unclaimed, he shall take all the legal steps for vesting the property in the state. If any testament or instrument of transfer appears to him grossly illegal or irregular, he shall within a period of six months from the day when he would receive a copy of this order, approach the court of the competent

jurisdiction seeking the appropriate relief in respect of the said property.

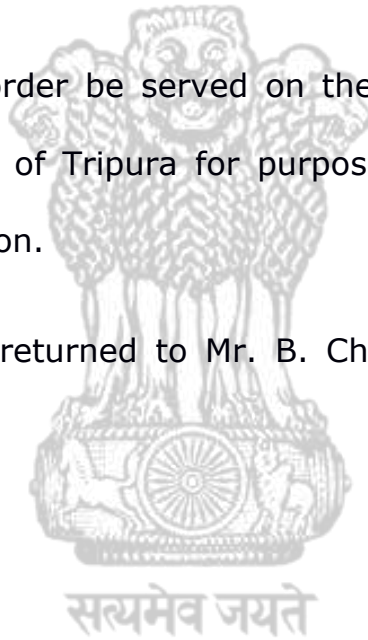
II) The petitioner shall not create any third party interest nor shall he change the character of the suit land in any manner. The status of the suit land shall be maintained by him for the next six months as prescribed above.

It is needless to say that this order shall not truncate any right of the legal heirs of Narayan Debbarma, since deceased in whose name the property is recorded conforming to his title and as in this regard, no dispute has been projected as yet.

In the result, this petition stands allowed to the extent as stated above.

A copy of this order be served on the Secretary, Revenue Department, Government of Tripura for purpose of taking action in terms of the above direction.

The records be returned to Mr. B. Chowdhury, learned PP forthwith.



JUDGE