

**(2010) 09 DEL CK 0415**

**Delhi High Court**

**Case No:** Criminal MC No. 4391 of 2009

Sanjeev Kumar Sharma and  
Others

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision:** Sept. 16, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 145(1), 146, 482

**Citation:** (2010) 119 DRJ 69

**Hon'ble Judges:** S.N. Dhingra, J

**Bench:** Single Bench

**Advocate:** B.R. Sharma, Naresh Sharma and Satpal Sharma, for the Appellant; Shoaif Haider, for N. Waziri and Sunil Sharma, APP for State, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Shiv Narayan Dhingra, J.

This petition u/s 482 Cr.P.C. has been preferred by the petitioners for quashing of the show cause notice bearing No. F/134/SDM/VV/2009/5780 dated 19th December 2009 issued by respondent No. 2 and quashing of order dated 19th December, 2009 passed by respondent No. 2 attaching the property bearing Khasra No. 171/1 in the revenue estate of Village Bijwasan, New Delhi in respect of a piece of land measuring few biswas.

2. Brief facts relevant for the purpose of deciding this petition are that Mr. K. Puri, father of respondent No. 3 in 1979, purchased an agricultural farm measuring 7 bighas 15 biswas in Village Bijwasan, New Delhi in Khasra No. 2697/661/2, 3697/661/1 and 2699/662. In consolidation proceedings carried out in Village Bijwasan, it seems that respondent No. 3's late father was given 8 bighas and 5 biswas of land in revenue estate of Village Bijwasan in Khasra No. 171 which was in excess of original land held by him. The father of the petitioners Mr. R.S. Sharma

filed an appeal bearing number 43 of 2000 in the court of Mr. H.P.S. Saran, Collector, Delhi against the order of Settlement Officer dated 9th December 1980. This appeal was decided on 8th May, 2001 by the Additional Collector and the Additional Collector set aside the order passed by SO(C) dated 9th December, 1980 and remanded the matter back to Consolidation Officer, Village Bijwasan with the directions that the appellant be allotted land after due process as his land had been allotted to some third person during consolidation proceedings. In pursuance of order dated 8th May, 2001, the Consolidation Officer of Village Bijwasan passed an order dated 17th September 2001 and held that father of respondent No. 3 held excess land of 14 biswas which deserved to be withdrawn for the purpose of allotment to the petitioner Nos. 1 to 4. On this wife of late K. Puri moved an application before the Settlement Officer/SDM, Vasant Vihar seeking declaration/nullity of the proceedings initiated by the petitioners' father and prayed further action regarding demarcation of land be deferred. Respondent No. 4 also filed an appeal against the order of Consolidation Officer dated 17th September, 2001 praying therein for setting aside the order and for restoration of excess land of 14 biswas. The learned SDM/SD(C)/ Revenue Assistant, Vasant Vihar vide order dated 3rd July, 2002 decided the appeal and held that there was no illegality in the order dated 17th September 2001 passed by Consolidation Officer. Against the order of SDM, respondent No. 3 preferred an appeal before the Court of Financial Commissioner. The Financial Commissioner dismissed the appeal vide order dated 27th December, 2002. Respondent No. 3, aggrieved by the orders dated 27th December 2002, 3rd July, 2002, 17th September 2001 and 8th May, 2001, passed by the Financial Commissioner, Settlement Officer, Consolidation Officer and Additional Collector, preferred a writ petition before this Court being W.P.(C) No. 267 of 2003 assailing these orders. The writ petition was disposed of quashing the order dated 17th September 2001 of the Consolidation Officer and order dated 3rd July, 2002 passed by Settlement Officer and order dated 27th December 2002 passed by the Financial Commissioner and a direction was given that the Consolidation Officer shall proceed to issue the notice to the writ petitioner as well as to the respondent and the parties shall be heard afresh and consolidation record shall be considered and a fresh decision shall be taken in light of observations made in the writ order. In pursuance of these directions passed by this Court, the Consolidation Officer again passed an order dated 5th February 2005 and held that excess land of 14 biswas allotted to respondent No. 3's father in consolidation proceedings deserved to be withdrawn from Khasra No. 171 reducing it from 8 bighas 5 biswas to 7 bighas 11 biswas which was the actual area of land pre-consolidation held by respondent No. 3's father. This order was again challenged by respondent No. 3 by filing a writ petition being W.P.(C) No. 2844 of 2005. A Single Bench of this Court set aside the order dated 5th February 2005 and observed as under:  
I am of the opinion that the Consolidation Officer while seemingly complying with the directions of the Court in the previous writ proceedings had strayed away from

one of the main issues. The order of this Court indicated that the Consolidation Officer had to record reasons, or the rationale for allotment of excess lands namely 8 bighas 5 biswas. The Court in fact indicated possibly reasons which could have resulted in such allotment i.e. either excess allotment on account of increased area or the effect of the original bhumidar selling the land to the person claiming to be a bonafide owner. All these aspects, however, have gone unnoticed. The impugned order is, therefore, set aside. The matter is remitted for re-consideration of Consolidation Officer who shall hear the parties and render specific findings on the issues indicated in Paras 16 and 17 in the order of this Court dated 8th September, 2004 in W.P.(C) No. 267 of 2003. The Consolidation Officer is directed to complete the process and issue a reasoned order within 8 weeks from today.

3. Against this order of learned Single Bench, an appeal was filed by respondent No. 3 challenging the validity and legality of order dated 31st July, 2006. However, the Consolidation Officer, after the order of learned Single Bench, again heard the matter by giving notice to the parties and vide his order dated 25th September 2006, gave reasons for withdrawal of the excess land and held that withdrawal of excess land from Khata from father of respondent No. 3 or successors was fully justified and warranted. The LPA preferred by the respondent No. 3 against the order dated 31st July, 2006 being LPA No. 1734 of 2006 was dismissed by this Court vide order dated 31st July, 2008.

4. It is submitted by learned Counsel for the petitioners that in terms of order dated 17th September 2001, the physical possession of the property in question measuring 14 biswas out of Khasra No. 171/1 in Village Bijwasan was delivered to the petitioner on 10th July, 2002 with the help of local police by the then Consolidation Officer after proper demarcation. The possession letter dated 10th July, 2002 was issued. The petitioners had been in possession of this area of 14 biswas since then uninterruptedly and a boundary wall had been constructed with iron gates and two servants rooms were also constructed.

5. A perusal of record, different orders and proceedings would show that the effort of respondent No. 3 was to hold on to the excess area than what was originally purchased by respondent No. 3, by filing one after another petitions. This did not fructify and even the review petition filed by respondent No. 3 against the judgment dated 30th September, 2008 delivered by Division Bench of this Court was dismissed on 23rd January 2009. It is submitted that the respondent had failed right up to Division Bench of this Court. The respondents, however, did not give up their effort to re-possess the land and for this respondent entered into an illegal league with SDM, Vasant Vihar since the previous SDM by that time had changed and a proceeding u/s 145 Cr.P.C. were initiated by the SDM without any prior notice to the petitioner and without there being any breach of peace in existence. The parties were all along contesting rights over the land in the Courts. However, SDM, in patent abuse of his powers conducted the proceedings u/s 145 Cr.P.C. on 17th

December, 2009 late in the night, in absence of the petitioners. When petitioner learnt about these proceedings, he rushed to SDM but he was not heard and was not allowed to participate in the proceedings and in gross misuse of his powers passed the impugned order dated 19th December 2009 and issued notice dated 19th December 2009.

6. A perusal of this notice issued by the SDM, Vasant Kunj, Mr. K.S. Tripathi shows that he observed that disputes regarding physical possession of the aforesaid land was going on between the parties, the complainant had been running around police station for help but no concrete decision was taken by the SHO which made the situation worse resulting into possibility of breach of peace. He, therefore, directed that both the parties should attend the proceedings on 28th December 2009. Apart from issuing notice, the said SDM issued warrants of attachment on 19th December 2009 itself observing that there was likelihood of breach of peace between Mrs. Usha Puri and Sanjeev Kumar Sharma and others concerning land Khasra Nos. 171 and 171/1, Village Bijwasan and said parties were called to make submissions for their respective claims as to the actual possession of the land and upon due examination and while visiting the site he was of the view that a thorough probe in the matter was required to decide the issue of possession which still take some time so he directed that the property be attached and keep possession with him under attachment only till the decree or order of competent court, rights of the parties and claim of possession has not been obtained.

7. It is most unfortunate that an SDM holding a responsible post in executive could have acted in such a corrupt manner that he could pass an order without caring for the order passed by his predecessor in respect of the same land. It is noteworthy that the previous SDM of the area, after considering the dispute with respect to same Khasra number between the same parties and considering the orders of Consolidation Officer and the entire controversy came to conclusion that order of the Consolidation Officer that the excess land of 14 bighas given to the respondent No. 3 in consolidation proceedings, was required to be taken back was just and the excess land was rightly taken back by the Consolidation Officer by its order. The present SDM in teeth of this order of his predecessor still passed the impugned order. The show cause notice and order of there being apprehension of breach of peace reflected absolute dishonesty on the part of SDM. The act of SDM on the face of it is purely a malafide act as he had not taken into consideration the judgment passed by learned Single Bench of this Court and the order passed by his own Consolidation Officer and his own ADM that there was an excess land allotted to the respondent No. 3 in consolidation proceedings and this excess land of 14 biswas after proper demarcation was allotted to the petitioners. Indeed the efforts of respondent No. 3 and other respondents are to cling to the excess land given to them by mistake in consolidation proceedings with the help of such a corrupt SDM.

8. It is also to be noted that an order of attachment can be passed only u/s 146 Cr.P.C. which 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 to 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 the 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. The precondition of passing an order u/s 146 Cr.P.C. are (i) It must be a case of emergency (ii) that none of the parties was in possession at the time of passing order u/s 146 Cr.P.C. (iii) he was unable to satisfy himself as to which of them was in possession (4) the rights of the parties have not been determined by a competent court. In the present case, dispute regarding this 14 bighas excess land was going on for almost eight years before passing of the order by SDM. This dispute was going on in revenue courts and High Court and the record would show that there had been no effort of taking forcible possession by the petitioners and the possession had been asserted only through courts of law and one after another litigation has been going on between the petitioners and the respondent No. 3. Under these circumstances, no sane person could have come to conclusion that it was a case of emergency or the parties were out to breach the peace. The other important factor is that the rights of the parties were adjudicated by a competent court and the complainant Ms. Usha Puri, after failing before the courts of law, as a

last resort to regain the excess land of 14 biswas, seems to have used her influence and money power to grab this excess land illegally with the help of corrupt officers in the administration. That can be the only reason that an SDM went out of his way and in total defiance of all previous orders passed by his predecessors, decided to take upon himself to take back the possession from the petitioners and order for attachment of the land in question.

10. In the result, the petition is allowed and show cause notice bearing No. F/134/SDM/VV/2009/5780 dated 19th December 2009 by respondent No. 2 and order dated 19th December, 2009 passed by respondent No. 2 and also de-sealing of the property bearing Khasra No. 171/1 in the revenue estate of Village Bijwasan, New Delhi in respect of a piece of land fell in Khasra No. 171/1 are set aside. It is ordered accordingly.

11. The petition stands allowed.