



HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 1667 of 2025

(under Section 528 of B.N.S.S.)

Swami KeshwanandApplicant

Versus

State Of Uttarakhand and AnotherRespondent

Presence:-

Mr. A.K. Shukla, Mr. Kundan Rai, Mr. Mohd. Umar and Mr. Zakir Ali,
learned counsel for the applicant.

Mr. Prabhat Kandpal, learned A.G.A. for the State.

Mr. Siddhartha Singh, learned counsel for respondent no.2.

Per: Hon'ble Mr. Alok Mahra, J.

The C-528 Application No.1667 of 2025 has been filed seeking quashing of the judgment/order dated 14.05.2024 passed by the learned Additional Sessions Judge, Kotdwar in Criminal Revision No.03 of 2024 and the order dated 19.07.2024 passed by the learned Sub-Divisional Magistrate, Yamkeshwar/Kotdwar, District Pauri Garhwal under Section 145 Cr.P.C., along with the entire proceedings of Case No.01 of 2022-23 initiated on the basis of challani report dated 17.12.2022 submitted by the Station House Officer, Police Station Laxman Jhoola under Section 145 Cr.P.C. The applicant has also prayed for stay of the effect and operation of the order



dated 19.07.2024 passed by the learned Sub-Divisional Magistrate.

2. Learned counsel for the applicant would submit that the applicant had earlier filed C-528 Application No.77 of 2024 challenging the order dated 14.05.2024 passed by the learned Additional Sessions Judge, Kotdwar in Criminal Revision No.03 of 2024, whereby the revisional court remanded the matter to the Sub-Divisional Magistrate, Yamkeshwar for fresh adjudication of proceedings under Section 145 Cr.P.C. It is submitted that despite having knowledge of pendency of the said application before this Court, the learned Sub-Divisional Magistrate proceeded to pass the order dated 19.07.2024 directing delivery of possession of the disputed property to respondent no.2. Consequently, the earlier application was withdrawn with liberty to file a fresh application challenging both the orders.

3. Learned counsel for the applicant would further submit that the applicant is the General Secretary of Bharat Sadhu Samaj, a society registered under the Societies Registration Act, 1860. According to the applicant, he was appointed to the said post in the year 2019 and has since been managing the ministerial



and administrative affairs of the Society; that, the Bharat Sadhu Samaj was registered on 04.02.1957 and its principal office is situated at Delhi; that, the Society was constituted with the object of promoting cultural, spiritual and social welfare activities across the country; that, Bharat Sadhu Samaj owns various properties across India, including land situated at Village Jok, Tehsil Yamkeshwar, District Pauri Garhwal; that, the land was leased by the Government of Uttar Pradesh to Bharat Sadhu Samaj on 23.03.1960 for a period of thirty years; that, initially, the leased land measured 42 Nali 11 Mutthi comprising Khasra Nos.34, 35 and 36; that, subsequently, in the year 1978, the lease area was reduced to 32 Nali 8 Mutthi; that, Bharat Sadhu Samaj Adhyatmik Yoga Ashram was established on the said land on 29.06.1962 for promoting the objects of the Society.

4. Learned counsel for the applicant would further submit that there exists a permanent structure over the leased property consisting of seventeen rooms along with shops and open land; that, four shops were allegedly entrusted to Swami Krishnanand and his disciples for management purposes during their lifetime



under a document dated 29.06.1962; that, from time to time, caretakers and managers were appointed for supervision and maintenance of the Ashram and adjoining properties; that, Swami Mahant Rishiwaranand, father of respondent no.2, was appointed merely as a caretaker/manager by the then General Secretary, Swami Harinarayanand; that, according to the applicant, respondent no.2's father was a married person and, therefore, was not eligible to hold office in the Society in view of the by-laws of Bharat Sadhu Samaj, which provide that only persons free from family ties may become members; that, respondent no.2's father had no authority to appoint respondent no.2 as Treasurer of the Ashram and any such appointment is illegal; that, after renewal of the lease for another period of thirty years by the District Magistrate, Pauri Garhwal, respondent no.2 and his father started treating the Ashram property as their personal property; that, they attempted to raise a multi-storeyed commercial construction over the leased property by obtaining approvals and sanctions in their personal capacity and not in the name of the Society; that, such acts were done with an intention to illegally grab the



property belonging to Bharat Sadhu Samaj.

5. It is further submitted that upon learning about these activities, a meeting of the Central Working Committee of Bharat Sadhu Samaj was convened at Haridwar on 05.06.2019 under the chairmanship of Shankaracharya Swami Swaroopanand Saraswati; that, in the said meeting, the applicant was appointed as Acting General Secretary in place of Swami Harinarayanand on account of his ill health; that, in the said meeting, Swami Mahant Rishiwaranand was directed to hand over documents relating to the Ashram and submit accounts regarding income and expenditure; that, the Working Committee also allegedly resolved that any authority earlier granted to him stood withdrawn; that, thereafter, in a meeting of the National Working Committee held on 12.12.2022 at Haridwar, the applicant was appointed as National General Secretary of Bharat Sadhu Samaj and was authorised to take steps for removal of unauthorised occupants from the Society properties; that, pursuant thereto, by authorization letter dated 13.12.2022, one Manoj Rajput was temporarily authorised to manage the Ashram and adjoining properties and to represent the Society in legal



proceedings.

6. It is submitted that on 13.12.2022, respondent no.2 lodged a complaint before Police Station Laxman Jhoola alleging that the applicant along with several persons forcibly entered the Ashram premises, assaulted the staff, damaged property and removed documents and valuables, however, according to learned counsel, upon inquiry the police found the allegations to be false and submitted a challani report dated 17.12.2022 stating that there existed a dispute regarding possession and management of the property and there was likelihood of breach of peace; that, on the basis of the said report, proceedings under Section 145 Cr.P.C. were initiated; that, the Sub-Divisional Magistrate, Yamkeshwar/Kotdwar initiated proceedings under Section 145 Cr.P.C. on 07.02.2023; that, both parties filed written statements and led evidence; that, respondent no.2 admitted in his cross-examination that he was not present at the Ashram on the date of the alleged incident and also failed to produce any documentary proof of his appointment as Treasurer of the Society; that, despite the evidence on record, the learned Sub-Divisional Magistrate by order dated



06.04.2023 attached the disputed property in favour of the State Government and appointed the Station House Officer, Laxman Jhoola as Receiver; that, the said order was challenged by respondent no.2 in Criminal Revision No.03 of 2024, which was allowed by the revisional court on 14.05.2024 and the matter was remanded for fresh consideration.

7. Learned counsel submits that the applicant thereafter challenged the revisional order before this Court. However, during pendency of the proceedings, the Sub-Divisional Magistrate passed the impugned order dated 19.07.2024 holding respondent no.2 to be in possession of the disputed property and directing restoration of possession in his favour; that, the dispute between the parties essentially relates to management and administration of a registered society and not to possession of immovable property, therefore, according to him, proceedings under Section 145 Cr.P.C. were wholly misconceived and without jurisdiction; that, the Assistant Registrar under the Societies Registration Act is the competent authority to adjudicate disputes relating to office bearers and management of the Society; that, the Magistrate while exercising powers under



Section 145 Cr.P.C. cannot adjudicate questions of title or ownership and is only required to ascertain actual possession for the limited purpose of maintaining peace. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in Ashok Kumar vs. State of Uttarakhand and Others, (2013) 3 SCC 366, wherein it has been held that proceedings under Section 145 Cr.P.C. are preventive in nature and are intended only to prevent breach of peace.

8. Learned counsel submits that the entire proceedings under Section 145 Cr.P.C. have been initiated on incorrect assumptions and without there being any genuine dispute regarding possession of land; that, the property admittedly belongs to Bharat Sadhu Samaj and the dispute merely concerns internal management of the Society, therefore, the impugned orders dated 14.05.2024 and 19.07.2024 are illegal, arbitrary and liable to be quashed.

9. Learned counsel for the State submits that upon inquiry into the complaint dated 13.12.2022, the police found that a serious dispute existed between the rival parties regarding possession and management of the Ashram property situated over Khasra Nos.65, 66,



67 and 68; that. considering the likelihood of breach of peace, proceedings under Section 145 Cr.P.C. were rightly initiated by the Sub-Divisional Magistrate; that. that pursuant to the order dated 06.04.2023, the disputed property was attached and possession was taken by the Station House Officer, Laxman Jhoola on 13.04.2023, thereafter, the revisional court remanded the matter and ultimately the Sub-Divisional Magistrate by order dated 19.07.2024 held respondent no.2 to be in possession and directed restoration thereof. However, pursuant to interim orders passed by this Court, possession presently remains with the police authorities.

10. Learned counsel appearing for respondent no.2 submits that Bharat Sadhu Samaj Adhyatmik Yoga Ashram, Rishikesh has been functioning independently since 1962 and regular meetings of its working committee have been held from time to time; that, various resolutions and minutes of meetings were relied upon to show that Swami Rishiwaranand and thereafter respondent no.2 had been managing the affairs of the Ashram for several years; that, respondent no.2 and the working committee have been regularly maintaining accounts, conducting audits and carrying on the objects



of the Ashram; that, the lease of the property was renewed in the name of Bharat Sadhu Samaj itself and not in the individual name of any person; that the resolutions dated 05.06.2019 and 12.12.2022 relied upon by the applicant are forged and fabricated documents. It is argued that the impugned orders have already been acted upon and, therefore, the challenge to the earlier orders has become infructuous.

11. Learned counsel appearing for respondent no.2 further submitted that the applicant himself has, in several paragraphs of the affidavit filed in support of the present application, admitted the possession and management of respondent no.2 and his father over the property in dispute. The relevant admissions may be summarised as follows:

(i) The applicant has admitted that the father of respondent no.2 was functioning as the caretaker/manager of Bharat Sadhui Samaj Adhyatmik Yog Ashram, Rishikesh.

(ii) It has been admitted that the father of respondent no.2 got the lease renewed pertaining to the land, upon which the Ashram and its appurtenant properties exist, renewed in his



favour. Significantly, the said renewal of lease was never challenged by the applicant before any competent forum.

(iii) The applicant has further admitted that possession of the property was entrusted to the father of respondent no.2 and thereafter to respondent no.2 for promoting and carrying forward the objects and activities of the Ashram. Such admission unequivocally demonstrates that respondent no.2 and his father were in actual and physical possession and control of the Ashram property.

(iv) The affidavit also contains an averment that the applicant had subsequently taken back the documents relating to the Ashram, shops and market from the father of respondent no.2. This statement itself accepts that the respondent no.2 and his father were in possession and management of the property and its records.

(v) It has further been averred that one Shri Manoj Rajput was authorised by letter dated 13.12.2022 to look after the Ashram and its



properties. Learned counsel submits that Shri Manoj Rajput is one of the tenants occupying shops situated in the Ashram market and that the eviction proceedings against him have been upheld up to the Hon'ble Supreme Court. It is further contended that the incident relating to the alleged dispossession of respondent no.2 and the complaint lodged by him are also of 13.12.2022 itself, which prima facie indicates that Shri Manoj Rajput, acting under the purported authorization dated 13.12.2022, along with his associates and musclemen, entered the Ashram premises without recourse to due process of law and attempted to interfere with the settled possession of respondent no.2.

12. Learned counsel for respondent no.2 further submitted that the applicant has sought to contend that respondent no.2 has neither lawful ownership nor legal possession over the Ashram property and that the dispute pertains to rival claims regarding management of societies and allegations of forged documents. According to the learned counsel, all such questions



involve adjudication of disputed rights, title and management, which can only be determined in properly instituted civil proceedings. These issues lie wholly outside the limited and preventive jurisdiction exercisable under Section 145 of the Code of Criminal Procedure.

13. Heard learned counsel for the parties and perused the material available on record.

14. The moot question that falls for determination is whether respondent no.2 and his father were in actual possession of the Ashram property on 13.12.2022 or whether they had been forcibly and wrongfully dispossessed within two months preceding the said date.

15. Section 145 of the Code forms part of the preventive jurisdiction conferred upon an Executive Magistrate for preservation of public peace and tranquillity. The jurisdiction can be invoked only when the Magistrate is satisfied from a police report or other information that a dispute concerning land, water or boundaries thereof exists and is likely to occasion a breach of peace. The object of the provision is not to adjudicate questions of ownership or proprietary rights



but merely to ascertain which of the rival parties was in actual possession on the relevant date and to preserve such possession until the rights of the parties are determined by a competent civil court.

16. The section contemplates a summary inquiry. Upon recording satisfaction under sub-section (1), the Magistrate is required to call upon the parties to put forth their respective claims regarding actual possession. After considering the written statements, documents and other materials produced by the parties, the Magistrate has to determine the factum of possession without entering into the merits of competing claims of title. The proviso to sub-section (4) specifically empowers the Magistrate, where it appears that a party has been forcibly and wrongfully dispossessed within two months immediately preceding the date of receipt of information or thereafter but prior to the preliminary order, to treat such party as being in possession on the date of the preliminary order. In cases of emergency, Section 146 empowers the Magistrate to attach the property and appoint a receiver until completion of the proceedings. The orders passed under Sections 145 and 146 are temporary, preventive and provisional in nature



and continue to operate only until the rights of the parties are finally adjudicated by a competent civil court. Thus, the proceedings under Section 145 cannot be converted into an adjudication of title, nor can they be employed as a substitute for ordinary civil remedies.

17. The inquiry under Section 145 is necessarily summary and pragmatic. The Magistrate is required to act expeditiously on the basis of available materials and arrive at a practical conclusion regarding actual possession. Strict rules of evidence applicable to regular civil or criminal trials do not govern such proceedings. The Magistrate may take into consideration affidavits, contemporaneous documents, oral statements and surrounding circumstances having probative value. The consistent view of the Supreme Court is that the determinative factor under Section 145 is actual physical possession and not legal or constructive possession arising merely from title documents. A person may possess ownership papers, yet if another person is in settled physical possession of the property, the latter's possession deserves protection under the provision. Even a person in settled possession cannot be dispossessed except by due process of law. Overt acts



evidencing possession, such as management and control of the property, erection of structures, payment of charges and taxes, maintenance of accounts and records, employment of security personnel and regulation of ingress and egress, constitute relevant circumstances for determining actual possession. The legislative intent underlying Section 145 is to ensure that disputes relating to immovable property do not degenerate into breaches of peace and public disorder.

18. the Hon'ble Supreme Court in the case of *Shanti Kumar Panda v. Shakuntala Devi*, (2004) 1 SCC 438 has held that in proceedings under Section 145 Cr.P.C., the Magistrate is concerned solely with the question of actual possession and is not required to enter upon disputed questions of title or ownership. The Hon'ble Court further held that possession may be established not merely through title documents but also through overt acts and conduct indicating control and dominion over the property. Likewise, in *M. Siddiq (D) Thr. Lrs. v. Mahant Suresh Das & Ors.*, (2020) 1 SCC 1, the Hon'ble Supreme Court reiterated that the jurisdiction under Section 145 is founded upon the existence of a dispute likely to occasion a breach of



peace and that the Magistrate's function is limited to taking immediate preventive measures for preserving public tranquillity and protecting the party shown to be in actual possession.

19. Applying the aforesaid principles to the facts of the present case, the inquiry before the Magistrate was confined to determining whether respondent no.2 and his father were in possession of the Ashram property on 13.12.2022 or whether they had been forcibly dispossessed within the preceding period of two months. The contemporaneous materials, admissions made by the applicant in his own affidavit, the conduct of the parties and the sequence of events placed on record disclose a continuous and consistent chain of circumstances indicating that respondent no.2 and his father were in settled possession and management of the Ashram property. Their possession is reflected not only from documentary material but also from acts of management and control exercised over the property and its affairs. Conversely, the applicant has failed to place any convincing material demonstrating his own actual and physical possession of the property on the relevant date or any overt acts indicating exercise of



dominion and control over the same.

20. Upon perusal of the impugned orders, this Court finds that the learned Magistrate meticulously examined the material placed on record and considered the contemporaneous documents and surrounding circumstances bearing upon the issue of possession. Upon appreciation of the evidence, the Magistrate recorded a finding that respondent no.2 was in settled possession of the property on the relevant date. The finding is based upon relevant material, is neither arbitrary nor perverse, and accords with the settled principles governing proceedings under Section 145 Cr.P.C.

21. This Court, therefore, finds no illegality, jurisdictional error or perversity in the impugned orders warranting interference in exercise of powers under Section 482 of the Code. The application being devoid of merit deserves dismissal.

22. Accordingly, the C-528 application is dismissed. No order as to costs.

23. Consequently, the order dated 19.07.2024 passed by the Sub-Divisional Magistrate, Yamkeshwar, shall be complied with forthwith. The Station House



Officer, who has been appointed as Receiver in respect of the property in question, is directed to hand over possession of the property to respondent no.2 in terms of the directions contained in the order passed by the Sub-Divisional Magistrate, Yamkeshwar.

24. Interim order, if any, stands vacated.

25. Pending applications, if any, also stand disposed of.

(ALOK MAHRA,J.)
18.06.2026