MUTHU-VENKATARAMA REDDIAR v. OFFICIAL RECEIVER, SOUTH ARCOT.

WALLER, J.

has vested in the Official Receiver and there is nothing to show that they cultivate any other land as labourers or tenants. A house, to be exempt from attachment under section 60 of the Code of Civil Procedure, must belong to or be occupied by an agriculturist as such, i.e., for the purpose of agriculture. Apart from that, appellants placed the Official Receiver in possession of the lands before the adjudication and I do not think that they should now be allowed to plead exemption. I agree that the appeal should be dismissed with costs.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Krishnan.

1925, April 22.

DONAPUDI NARASAYYA AND ANOTHER (PETITIONERS), PETITIONERS,

v.

CHINGULURI VENKIAH AND OTHERS (COUNTER PETITIONERS) RESPONDENTS.*

Criminal Procedure Code (Act V of 1908)*—Sec.* 145*—Magistrate directing parties to file statements of their claims—Magistrate subsequently dropping proceedings on being satisfied no likelihood of breach of peace—Legality of—Whether parties can insist upon evidence being taken—Disposal of sale proceeds of crops attached.*

It is open to a Magistrate who has passed a preliminary order under section 145 of the Code of Criminal Procedure, directing the parties to file written statements as regards their respective claims to possession of the subject matter in dispute, to subsequently drop the proceedings if he is satisfied that there was no likelihood of a breach of the peace, and he is not bound to give the parties an opportunity to establish the contrary.

Manindra Chandra Nandi v. *Barada Kanta Chowdhry*, (1903) I.L.R., 30 Calc., 112, followed.

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* Criminal Revision Case No. 681 of 1924.

If he so drops the proceedings he cannot pass any orders in favour of either party, as regards the disposal of the sale-proceeds of the crops raised on the land in dispute but should keep the same in deposit pending orders of a Civil Court.

PETITION under sections 436 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order dated 7th June 1924, passed by V. ACHUTHAM PANTULU, Subdivisional Magistrate of Masulipatam, in Miscellaneous Case No. 16 of 1923.

The facts necessary for this report are set out in the judgment.

V. L. Ethiraj and *K. Venkatarama Raju* for the petitioner.

V. Ramadoss for the respondents.

Public Prosecutor for the Crown.

JUDGMENT.

This is an application to revise certain proceedings passed by the Subdivisional Magistrate, Masulipatam, in connection with an application filed by the petitioner asking the Magistrate to take action under section 145 of the Criminal Procedure Code. The Magistrate stating that he was satisfied that there was a dispute likely to cause a breach of the peace passed a preliminary order under section 145 and directed the parties to attend his Court and to file written statements of their respective claims as regards the possession of the subject matter in dispute. At a subsequent stage, the Magistrate became satisfied that there was no likelihood of a breach of the peace and he, therefore, dropped the proceedings, and passed no orders under section 145 regarding possession of the property.

The first point taken before me in revision is that the Magistrate was not entitled to drop the proceedings without giving an opportunity to the petitioner to show by evidence that there was a likelihood of a breach of

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the peace and that the Magistrate's conclusion that there was no likelihood of a breach of the peace from information received was incorrect. It is contended that, without an opportunity being given to the parties to show the existence of the likelihood of a breach of the peace, a Magistrate who has started proceedings under section 145, Criminal Procedure Code, cannot cancel or drop them. This does not seem to me to be the law at all, for, as pointed out in *Manindra Chandra Nandi* v. *Barada Kanta Chowdry*(1), where this very question was raised and considered,

"A party to a proceeding under section 145 is not in the position of a plaintiff in a civil suit who has set the Court in motion and has a right to require a decision upon the question raised by him. If a Magistrate either refuses to make an order under sub-section (1) of section 145 or, having made such an order, subsequently cancels it on the ground that a dispute does not exist likely to cause a breach of the peace, no private person has any *status* to contest the propriety of his refusal to make an enquiry into the question of possession."

It must be borne in mind that proceedings under section 145 are not taken in the interests of private parties but for the preservation of the public peace and if the Magistrate is satisfied that the likelihood of a breach of the peace either did not exist or that it has ceased to exist, it is the proper duty of the Magistrate to drop proceedings under section 145 and withdraw from interfering with the rights of parties in the property. The case in 30 Calc., 112 in which this very question was raised and decided by a Bench of the Calcutta High Court, is against the contention now raised by the petitioner. That ruling has been followed in this Court by SPENCER, J., in *Suryanarayana* v. *Rajah Ankineed Prasad*(2), and I am prepared to take the same view. I do not think it is open to a party to come up here and

(1) (1903) I.L.R., 30 Calc., 112. (2) (1924) 20 L.W., 58.

say that the Magistrate had no business to drop proceedings on the ground that there was no likelihood of a breach of the peace without giving him an opportunity to show that there was such a likelihood. It is the Magistrate's duty to be satisfied that there is no breach of the peace in his district. If he is so satisfied, it is not for a private party to object. Clause (5) of section 145 provides for a special case where as the Magistrate is proceeding with the trial of the question of possession, the parties to the proceedings or even other persons who are interested are given the right to show that no dispute likely to cause a breach of the peace exists or has existed. The existence of this clause does not take away the power of the Magistrate himself to drop the proceedings, if he is satisfied that there is no further likelihood of a breach of a peace. The first objection therefore fails.

The main point in the case however is as regards the order passed by the Magistrate about the deposit in Court. While the proceedings were going on in his court, the property seems to have been put under attachment and the crops seem to have been sold and certain moneys realised were deposited in Court. The Magistrate has passed an order directing the deposit to be given over in the main to the counter-petitioner excepting a small sum of Rs. 5-8-0 to be paid to the petitioner before me on proving his title. On this point it has been contended before me that, having dropped the proceedings under section 145, the Magistrate is *functus officio* and has no jurisdiction to pass any further orders in the case. That contention is supported by two decided cases in this Court, *Chenga Reddi* v. *Ramaswami Goundan*(1) *Natesa Naicken* v.

(1) (1914) 1 L.W., 1032.

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Raghavachari(1). On the contrary, there is a case, *Mahalakshmi* v. *Subbarayadu*(2), which has been followed in *Suryanarayana* v. *Rajah Ankineed Prasad*(3), which says that a Magistrate may pass orders directing that the income or profits obtained by sale of the crops on the land should be given over to the person who raised the crops or from whose possession the property was taken. As pointed out in 1 L.W., 1032 and 20 L.W., 924, it is this very point that is in dispute in a proceeding under section 145, as to who was in possession of the land, and, if the Magistrate is not going to make an enquiry to find out who was in such possession on the ground that there is no further likelihood of the breach of the peace and drops proceedings, it seems to me to be hardly correct for him to say that the sale-proceeds of the crops should be handed over to the person who raised the crops. That means that the Magistrate has to come to a conclusion as regards the very question that he is not going to consider.

I am inclined to follow the rulings in 1 L.W., 1032 and 20 L.W., 924 in preference to that in 17 L.W., 429. I notice that in the 17 L.W case the counter-petitioners were not represented and the order was in favour of the petitioner who apparently made out that the crops had been taken from him. The Magistrate had directed that the money should be kept in deposit to enable the party entitled to it to get a decree of a civil court to show his title. It seems to me that that was the proper order in the case. I think it is not right for the Magistrate after having dropped the proceedings to make any further orders. He must leave the parties to settle their rights in the manner they think best to do, in the meanwhile holding his hands. In this case,

(1) (1924) 20 L.W., 924. (2) (1923) 17 L.W., 429.
(3) (1924) 20 L.W., 58.

therefore, I set aside the order of the Magistrate directing payment of the money deposited to the counter-petitioner. The money will be kept in deposit in Court till one or other of the parties produces a decree of a civil Court to show his right to that money, and, on the production of such a decree, the money will be paid to the party entitled to it.

With this variation the petition must be dismissed.

D.A.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss.

VEERARAGHAVACHARIAR (PLAINTIFF), APPELLANT,

1924, October 8.

v.

THE SECRETARY OF STATE FOR INDIA (DEFENDANT), RESPONDENT.*

Sec. 3 (f) and sec. 6 (3) of the Land Acquisition Act (I of 1894)—Declaration of acquisition of village-sites—Conclusive evidence of public purpose—Right of suit not taken away—Sec. 6 (3) not ultra vires—*"Village sites," meaning of.*

In accordance with section 3, clause (*f*) of the Land Acquisition Act (I of 1894) the Government of Madras declared, by a notification in 1895, in favour of acquisition of village-sites in the Tanjore district.

Held, (1) that acquisition of house sites for Panchamas is a public purpose within the meaning of section 3 (*f*) of the Act,

(2) that a declaration under section 6, clause (3) of the Act is only conclusive evidence that the land is needed for a public purpose, and it does not deprive the subject of his right of suit; *Ezra* v. *Secretary of State for India* (1905) I.L.R., 32 Calc., 605 (P.C.) and *Secretary of State for India* v. *Moment* (1913) I.L.R., 40 Calc., 391 (P.C.), distinguished,

(3) that section 6, clause (3) is therefore not *ultra vires* of the Indian legislature, and

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* Second Appeal No. 688 of 1921.