

Prevention of Breach of Peace Concerning Immovable Property

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*This article is written by **Abhay**, a student from Kirit P. Mehta School of Law, NMIMS. This is an exhaustive article which deals with various aspects involved in preventing the breach of peace concerning immovable property.*

Table of Contents



1. Introduction
2. Breach of Peace
 - 2.1. Procedure for prevention of breach of peace
3. Powers of the Magistrate
 - 3.1. Power to attach subject of dispute and to appoint a receiver
 - 3.2. Dispute concerning right of use of land or water
4. Local inquiry
5. Case Laws
6. Conclusion

Introduction

The provisions of the law on the prevention of offences relating to immovable property disputes are found in Chapter 12 of the [Code of Criminal Procedure, 1898](#), from sections 145 to 148. Proceedings pursuant to [section 145](#) are intended to prevent the breach of the peace as well as to avoid any conflict as a safety measure. This is to preserve the status quo until the parties have their case resolved by the Civil Court having competent

jurisdiction. Also, the important thing to note here is the word 'land or water' in these particular sections applies to houses, markets, fisheries, crops, other land products, and the leases or incomes of all such properties.

Breach of Peace

If there is a conflict between two parties/groups over the ownership of land, water, or borders, and if the conflict is likely to do a breach of peace, then the Executive Magistrate can take action under [Section 145 CrPC](#). The police report or the information must contain the nature of the conflict, the clear description of the property, the parties to the conflict, and the nature of the danger it poses to the public peace.

Procedure for prevention of breach of peace

Section 145 of CrPC defines the procedure of disputes concerning land or water which is likely to cause breach of peace. Whenever an Executive Magistrate is convinced by a police officer's report or other evidence that there is a conflict likely to result in a violation of peace involving any land or water or its borders within its local jurisdiction, he can make a written order specifying the reasons for his satisfaction and also mandating the involved parties to attend the court in person or by a pleader at a stated date and time in such dispute.


The parties have to make written explanations of their respective claims, as regards the fact of actual possession of the subject of dispute. A copy of the order has to be issued in the form given by this code, for the service of a summons to such individual or persons as directed by the Magistrate, and at least one copy has to be published by being attached to some prominent place at or near the subject of conflict.

The Magistrate, without giving regard to the grounds or allegations of either of the parties to the right to possess the subject-matter of the dispute, has to review the claims submitted, hear the parties, accept all such evidence as may be provided by them and also take further proof, if he considers it necessary. The magistrate has to determine whether any of the parties were in possession of the subject-matter of the dispute, on the date of the order rendered by him. Parties are not prohibited to address or prove that the conflict does not exist or has ever existed and in that case, the Magistrate can cancel his order, and no further proceedings will continue. But the order of the Magistrate always remains final subject to such cancellation. If the Executive Magistrate believes that one of the parties was or should be regarded as being in possession, he may declare the possession in that party's favour. If the party's possession is determined and ruled, the party shall be allowed to remain in possession until the competent court orders otherwise.

If the Executive Magistrate is not satisfied as to which of the aforementioned parties was in custody, he may issue orders to move the case to the District Judge for further proceedings as provided by the statute. If any party to the proceedings dies, the Magistrate may allow the legal representative of the deceased to become a part of the proceedings and thereby start the proceedings, and if any dispute emerges as to who the legal representative of the deceased is for the sake of such proceedings, all persons proposing to be representatives of the deceased shall be included in the proceedings.

If any standing crop or other product of the property in conflict is prone to rapid and gradual decline, the Executive Magistrate may issue an order for the appropriate custody or sale of the property and, once the inquiry has been completed, it can make the order for the disposal or sale of the property as it considers fit. Nothing in this provision shall be considered to be in derogation of the powers of the Magistrate to function under [Section 107](#).

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Powers of the Magistrate

Consequently, the following necessary conditions to grant jurisdiction to a Magistrate under [Section 145](#) are:

- that there is a conflict;
- that it is likely to result in a breach of peace;
- that the conflict involves land or water or its borders and houses, markets, fisheries, crops or other products of the land and the rentals or income of such properties;
- that the suspected dispossession occurred within two months of the Magistrate issuing the initial order and;
- that it is within the Magistrate's territorial limits.

Power to attach subject of dispute and to appoint a receiver

[Section 146](#) specifies that even after making the order if the Magistrate finds the matter to be an emergency, or if he determines that neither of the parties was then in such possession, or if he can not reassure himself as to which of them was then in such possession of the subject-matter of the conflict, he may attach the subject-matter of the dispute till the competent court has decided the party's rights with regard to the party entitled to the possession.

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The Magistrate may remove the attachment if he is convinced that there is no chance of breach of peace with respect to the subject matter of the dispute. The Magistrate attaches the subject-matter of the dispute. But, if no receiver has been chosen by any Civil Court in relation to the subject-matter of the dispute, he may make the arrangements as he deems necessary for the care of the property or, if he deems fit, assign a receiver thereof, who shall have all the powers of a receiver appointed under the [Code of Civil Procedure, 1908 \(5 of 1908\)](#).

When a receiver is duly chosen by any Civil Court in relation to the subject-matter of the dispute, the Magistrate shall direct the receiver appointed by him to hand over the subject-matter of the dispute to the receiver appointed by the Civil Court, and shall discharge the receiver of his duties who was duly appointed by him.

Dispute concerning right of use of land or water

[Section 147](#) specifies that if an Executive Magistrate is informed by a police officer's report or other evidence that there is a dispute likely to result in a breach of peace concerning the perceived right of the user to use any land or water within his local authority, whether that right is asserted as an easement or otherwise, he shall make a written order specifying the reasons for his satisfaction. The Magistrate shall then examine such claims, hear the parties, receive all such proof as may be brought by them, understand the impact of such evidence, take such further evidence if it is necessary.

When the Magistrate seems to have certain rights, he may make an order preventing any intervention with the exercise of such right, including, in the appropriate case, an order to eliminate any obstacle in the exercise of any such right. The order can not be made where the right is exercisable at all times of the year. It can be made only if that right has been used within three months of receipt of a police officer's report or other details referring to the investigative institution, or when the right is exercisable only at certain seasons or on specific occasions.

If the Magistrate considers in any proceedings that the dispute relates to an alleged right of a land or water owner, he may, after having recorded his reasons, start the proceedings as if they had been instituted pursuant to 147(1) and if the Magistrate finds in any proceedings initiated pursuant to 147(1) that the dispute should be dealt with pursuant to section 145, he may, after having recorded his reasons, continue the proceedings.

Local inquiry

Section 148 specifies that if a local inquiry is required for the requirements of section 145, section 146 or section 147, a District Magistrate or Sub-divisional Magistrate may appoint any Magistrate who is subordinate to him to conduct the investigation, and must provide him with written instructions that will be appropriate and act as a supervision, and may decide that who will pay for the basic expenses incurred during the inquiry undertaken.

In this case, the report of the person deputed can be considered as important evidence. Where any costs have been incurred by any party to the proceedings as referred to in section 145, section 146 or section 147, the Magistrate passing the judgment may order that the following:

1. whom such costs shall be paid;
2. whether by such party or by any other party to the proceeding;
3. whether in whole or in part or proportion;
4. the costs may include any expenses incurred in respect of witnesses and of pleaders' fees, which the Court may consider reasonable.

Case Laws

There are several case laws related to the breach of peace concerning immovable property and especially regarding the power of magistrates. Some of the cases related to the use of Section 145-48 are mentioned below for the convenience of readers.

- The complainant had challenged the order of the learned Sambalpur Additional Sessions Judge refusing to drop the proceedings pursuant to Section 145 of the Criminal Code of Procedure. In the case put forward by Naku Meher, the disputed land belonged exclusively to his mother Marehi Meherani who on 6-1-1965 executed a deed of gift in his favour and placed him in possession of it. After the death of Marehi Meherani, her children, with the exception of the petitioner, accepted the gift in favour of Nakul Meher. The disputed land was registered in the record of rights in view of its title and continuous ownership and was mutated in its name. But in 1979 the contested land was registered in the petitioner's name in the settlement process. In the case of *Bhama Meher v. Kausalya Meher and Ors*, it was held that if the consolidation authorities had proclaimed the title of the petitioner, then the possession was granted to him. However, if the Executive Magistrate initiates the proceedings under Section 145 without respecting the judgment of the competent authority, then the initiation of the proceedings shall be considered to be an infringement of the Court's jurisdiction and the proceedings shall be dropped.
- In the case of *Choudhury Prafulla Kumar Das and Anr. v. Lingaraj Rath and Anr*, it was decided that the proceeding under Section 145 is not maintainable during the pendency of the case before the Civil Court and proceeding, under incorporation in respect of the same property.
- For the magistrate to pass a preliminary order, there must be a suspicion of violation of peace and public order. As it was held in the case of *N. A. Ansary v. Jackiriya*, that the opportunity is necessary for all parties to present evidence before the court and the case is vitiated if the opportunity is not granted. A magistrate is therefore not bound to give a preliminary order if he or she has no evidence of a breach of peace.
- Before the Magistrate issues the final judgment, all parties will be allowed to give their evidence to the court. As in the case of *Lakhan Singh v. Kishun Singh*, it was decided that the principle of natural justice should be followed, and the party should be given the opportunity to be heard before any adverse order against it is passed.
- The right under section 145 is not merely procedural rights but also other substantive rights and, as held in the case of *Dhanbar Ali v. Haripada Saha*, the procedures laid down in this section have an integral relation with the enjoyment of the immovable property and should not be dealt with lightly by the trial court. And, in restricted situations, it should be practised where urgent action is needed to preserve peace and avoid any violation of public order.
- In the case of *Amrit-Lal N. Shah v. Nageshwara Rao*, it was held that only because there was no more violence after one side had falsely and violently dispossessed the other, it could not be assumed that there could be no breach of peace and that the proceedings could also be withdrawn under Section 145.
- In the case of *Ram Sumer Puri Mahant v. State of U.P.*, it was held that there is no reason for launching a concurrent criminal case under Section 145 of the Code where a civil lawsuit is pending with respect to the land, in which the issue of ownership is involved and has been adjudicated, as the Civil Court's decision is binding on the Criminal Court. However, the explanation given for such a decision is to the effect that multiplicity of litigation is not in the interests of the parties nor should it be allowed to waste public time over pointless litigation.

- In the case of *Bajjnath Choubey and Ors. v. Dr Ram Ekbal Choubey and Ors*, it was held that, in the facts and circumstances of the case, a combined order for the commencement of proceedings pursuant to Section 145 and an order for attachment pursuant to Section 146 of the Code may be validly passed, in spite of the absence of the term 'emergency' in the order of the Magistrate.
- In the case of *Sardar Amrit Singh and Ors. v. Gyandeo Sharma and Anr*, it was held that mere finding of an anticipation of a breach of the peace may not be enough for attachment of the land. An emergency situation as proposed under Section 146 of the Code must be distinguished from a pure situation of suspicion of a breach of peace. This is based on the law that an apprehension of breach of peace is a prerequisite to start a prosecution pursuant to Section 145 and in all such proceedings, attachment is not necessary.

These were some to the cases which extended the meaning and understanding of the conditions concerning the breach of peace concerning immovable property.

Conclusion

Disputes surrounding property should be resolved in a civilized way by recourse to the statute and not by the members of society taking the law into their own hands. The police report or the details should contain the nature of the dispute, the property's specific description, the parties to the dispute, and the extent of the danger it presents to public peace.

The magistrate has to decide whether either of the parties were in possession of the subject-matter of the dispute, on the date of his order. A judge is not obliged to issue a preliminary order if he or she has no proof of a breach of peace. Perhaps the important thing to remember here is that the term 'land or water' refers to buildings, markets, fisheries, crops, other land products, and the leases or profits of all those properties.

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