

## CHAPTER XII

## DISPUTES AS TO IMMOVABLE PROPERTY

**145.**(1) Whenever <sup>1</sup>[a Metropolitan Magistrate, District Magistrate], Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water of the boundaries thereof, within the local limits of his 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, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Procedure where dispute concerning land, etc., is likely to cause breach of peace

(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 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 such 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 respectively, consider the effect of such evidence, 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 before mentioned in such possession of the said subject:

Inquiry as to possession

Provided that, if it appears to the Magistrate that any party

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<sup>1</sup> The letter, words and comma "a Metropolitan Magistrate, District Magistrate" were substituted, for the words "the Chief Metropolitan Magistrate, a District Magistrate" by section 2 of the Code of Criminal Procedure (Amendment) Act, 1980 (Act No. IV of 1980).

has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(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-section (1) shall be final.

Party in  
possession to  
retain  
possession until  
legally evicted

(6) If the Magistrate decides that one of the parties was or should under the first 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 first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(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 purpose 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.

**146.**(1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof:

Power to attach  
subject of  
dispute

Provided that <sup>1</sup>[the Metropolitan] Magistrate or] the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the <sup>3</sup>[Code of Civil Procedure, 1908]:

Provided that, in the event of a receiver of the property, the

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<sup>1</sup> The words "The Chief Metropolitan Magistrate or" were inserted by section 2 and Schedule of the Code of Criminal Procedure (Amendment) Ordinance, 1976 (Ordinance No. LXXXVI of 1976).

<sup>2</sup> The words "the Metropolitan" were substituted, for the words "the Chief Metropolitan" by section 2 of the Code of Criminal Procedure (Amendment) Act, 1980 (Act No. IV of 1980).

<sup>3</sup> The words, comma and figure "Code of Civil Procedure, 1908" were substituted, for the words "Code of Civil Procedure" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

Disputes concerning rights of use of immovable property, etc.

**147.(1)** Whenever, <sup>1</sup>[any Metropolitan Magistrate,] District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145, sub-section (2) (whether such rights be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

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<sup>1</sup> The words and comma "any Metropolitan Magistrate," were substituted, for the words "the chief Metropolitan Magistrate or any" by section 2 of the Code of Criminal Procedure (Amendment) Act, 1980 (Act No. IV of 1980).

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.

**148.**(1) Whenever a local inquiry is necessary for the purposes of this Chapter, <sup>1</sup>[\* \* \*] any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Local inquiry

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under this Chapter the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. Such costs may include any expenses incurred in respect of witnesses, and of <sup>2</sup>[advocate] fees, which the Court may consider reasonable.

Order as to costs

### CHAPTER XIII

#### PREVENTIVE ACTION OF THE POLICE

**149.** Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Police to prevent cognizable offences

**150.** Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences

<sup>1</sup> The words "the Chief Metropolitan Magistrate or" were omitted by section 2 of the Code of Criminal Procedure (Amendment) Act, 1980 (Act No. IV of 1980).

<sup>2</sup> The word "advocate" was substituted, for the word "pleaders" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).