

CODE OF CRIMINAL PROCEDURE ,1973
Act 2 of 1974
EXECUTIVE MAGISTRACY-
(Sections 44, 107 -124, 129-148,174- and 176)

By

B.Ramaiah, I.A.S.,(Retired)

ASPECTS DEALT BY EXECUTIVE MAGISTRACY

- Arrest by Executive Magistrate Sec -44

- Security for keeping Peace and good behavior. Sec 107 - 124

- Maintenance of public order and tranquility
 - Unlawful Assemblies Sec 129 - 132
 - Public nuisance Sec 133 – 143
 - Urgent cases of nuisance /apprehended danger Sec 144
 - Dispute as to Possession over Immovable Property Sec 145—148

- Inquests and Inquiries into unnatural deaths Sec174-176

- Dying Declaration Sec 32(1) of Evidence Act

DISPUTE AS TO IMMOVABLE PROPERTY

- **Initiation of Proceedings under Section 145 Cr P C**

- **Initiation of Proceedings under Section 147 Cr P C**

INGREDIENTS TO BE FULLFILLED

- Dispute as regards to **possession** over land or Water or boundaries there of
- "land or water" **includes** buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.
- likely to lead **breach of peace** exists
- **Immediate action** is required
- Proposed action **to prevent** the apprehended breach of peace
- Land / water under dispute be located within local **jurisdiction** of the Magistrate
- The Executive Magistrate **to satisfy**

DISPUTES COVERED BY Sec 145

▪

- Dispute relating to possession of **standing crops and crops harvested but still on the land**
- Dispute relating to **trees** growing on the land
- Dispute as to possession of **bund**
- Dispute as to possession of **Temple, Mosque or a Dargha or a church**
- Dispute as to **mining**

IMPORTANT TO REMEMBER

- **Not** for deciding disputes or **adjudicate** upon the rights of the parties
- **Criminal Court shall not be misused** for settlement of civil dispute
- **Not for securing possession and there by force the other party** to approach the Civil Court

BASIS FOR INITIATION OF PROCEEDINGS

- Report of the police
- Application by aggrieved person
- Information from other sources
- Magistrate to satisfy with the material record made available as regards to fulfillment of Ingredients.

PRELIMINARY ORDER

- Issued under sec 145(1)
- Statement that E M satisfied as to the existence of a dispute on possession of land/ water likely to cause breach of the peace
- The grounds on the basis of which the E M is satisfied
- Description of the property in respect of which there is dispute
- The names of the persons concerned in the dispute

--contd

PRELIMINARY ORDER --contd

- Time and date of inquiry
- Be specified that Claims on possession can be put in the form of written statements
- Be specified that the documentary evidences can be filed
- Be specified that the possession on the date of primary order to be decided
- Be specified that Advocate can be engaged

PROCEDURE FOR ACTION UNDER SECTIONS 107-110 --contd

SERVICE OF THE PRELIMINARY ORDER

- Served in the manner provided in the Code Sec ---62
- By a police officer
- By other public servant
- If practicable on the person
- Acknowledgement to be obtained on back of the Duplicate
- Served on adult male member of the family-servant is not a member Sec-64
- Be affixed to some conspicuous part of the house where he lived in

INQUIRY

- Be held on the **specified date**
 - **Evidences** are received
 - **Statements** are recorded
 - If required **witnesses** be allowed to be produced
 - Witnesses can be **summoned**
 - If necessary **local inquiry** got held through subordinate E M
- Sec 148**
- **Points of inquiry report,, the nature of inquiry, examination of witnesses , time of report are specified to E M deputed to local inquiry**

CONCLUSIONS TO BE ARRIVED

- Who is in possession on the date of primary order
- It need not be legally valid / one need not possess title
- The possession be as per documentary evidences
- Whether such possession is forcible
- Whether Wrongful dispossession occurred within two months prior to date of date of filing complaint- **DEEMED POSSESSION**
- Whether no party produced evidence in support of claim of possession
- Whether the E M satisfied or not with the evidence filed by both the parties

FINAL ORDER TO BE PASSED

➤ Passed under Sec 145(6) / sec 146

➤ Under Sec 145(6)

- when concluded that **one party** is in possession/ dispossessed forcibly and in wrongful manner within two months prior to date of preliminary order / date of filing complaint
- In Form No 25 **second Schedule**
- Definite **finding as regards to possession of one party** be ordered

---contd

FINAL ORDER TO BE PASSED ---contd

- **Grounds leading to conclusion be specified**
- **Be specified that disturbance of possession of the party , until evicted under due course of Law, is prohibited.**
- **Restoration of possession be ordered in case of -DEEMED POSSESSION**
- **Order be in force till-parties file compromise petition--one party gives up right voluntarily-civil court appoints receiver-civil court restrains interference of one party**

ORDER OF ATTACHMENT

➤ Under Sec 146

- when concluded - **no party** produced evidence in support of claim of possession / E M not satisfied with the evidence filed by both the parties and when considered the case to be one of emergency
- In Form **No 26**
- **Definite finding** be specified and
- **Grounds** leading to conclusion be specified
- Be indicated why it was felt as a case of **Emergency**
- A **Receiver** is appointed to take the charge of the property
- Be specified that it is under attachment **until**-decree or order of a competent court obtained/ claim of possession declared by civil court

CONSEQUENCES OF ATTACHMENT

- **Management and control of the property rest with the E M**
- **The Receiver has all the powers of receiver appointed by Civil Court**
- **Persons trespassing are liable for punishment U/s 447 IPC**

DISPUTES RELATING TO RIGHTS OF USE OF LAND OR WATER

- Dealt under Sec 147
- Following rights of user are examples
 - Right to use water of a well
 - Right of way
 - Right to fish
 - Right to bury dead in the burial ground
 - Right to irrigate from a tank
 - Right claimed as an easement or otherwise.

Contd...

DISPUTES RELATING TO RIGHTS OF USE OF LAND OR WATER--contd

- **Dispute is likely to cause a breach of peace**
- **The basis ,procedure similar to cases under Sec 145**
- **concluded as regards to which party has been exercising the right**
- **Order in Form 27**
- **No Order be made where the right is exercisable all times of the year , except right has been exercised within three months before receipt of report**
- **No Order be made where the right is exercisable only in a particular season/ occasion unless the right was exercised during last season/ occasion**
- **No order of attachment is passed under the Section**

IMPORTANT ASPECTS

- If felt that crop or other produce is subject to speedy decay –E M may make an order for proper custody or sale **Sec 145(8)**
- No order of Attachment be passed without issue of preliminary order U/S 145(1)
- Final order be served in the same manner as preliminary order
- Final orders be pronounced in open court
- It should be specified how the cost incurred in conduct of local inquiry/ summoning witnesses in the orders passed under sec145/146/147 is apportioned.
- The E M can not review or alter the final orders once passed under sec145/146/147. Only clerical or arithmetical errors can be corrected
Sec 326
- Revision lies to both Court of Sessions Judge and the High Court
Sec 397
- Mere pendency of **civil court** is not a bar- but injunction orders exist-E M has no jurisdiction

IMPORTANT POINTS TO BE KEPT IN MIND BY REVENUE OFFICERS IN HOLDING COURT PROCEEDINGS

- Should **possess** rectitude, uprightness, impartiality, fairness, propriety, ability to listen
- **Notify** by appropriate means- working hours and days on which court work is held
- **Never delegate** any work- record statements in person
- Approach every case with **open mind**
- Be sure that **jurisdiction** is there –stipulated procedure be followed
- Apply mind to material record –carefully consider rival claims-record findings on every issue-issue **speaking order**
- Remember **Lawyers** are **officers of the court**- not subordinates-have responsibility to their clients-avoid temptations while talking in court
- Not to give the impression that the **clerk in charge** of the Section has role in discharge of business

Thank You