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DISPUTES CONCERNING LAND OR WATER **LIKELY TO CAUSE BREACH OF PEACE**

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ABSTRACT

Disputes over land, water, boundaries, crops, access routes and other immovable-property interests can quickly escalate into public disorder. Indian criminal procedure therefore provides a preventive, summary mechanism through which an Executive Magistrate may preserve peace by determining who was in actual possession at the relevant time, without deciding title or ownership. Since 1 July 2024, the principal provision is Section 164 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which substantially carries forward Section 145 of the Code of Criminal Procedure, 1973 (CrPC). This article examines the statutory framework, procedural safeguards, the distinction between possession and title, attachment of disputed property, the relationship with civil litigation, and leading judicial decisions. It argues that the provision is most effective when used narrowly as an emergency peacekeeping measure, with reasoned orders, fair hearings and due regard to civil-court jurisdiction.

Keywords: land disputes; water disputes; breach of peace; Executive Magistrate; BNSS; Section 164; possession; preventive jurisdiction.

1. INTRODUCTION

Land and water are economically valuable and socially sensitive resources. Boundary disagreements, rival claims to agricultural fields, irrigation channels, fisheries, village pathways, crops or rental income may produce threats, intimidation and violence. The criminal process is not designed to decide every question of ownership arising from such disputes. Its immediate concern is the prevention of violence and preservation of public tranquillity. Civil courts, by contrast, ordinarily determine title, easements, partition, injunctions and final rights in property.

Section 164 BNSS provides a limited preventive procedure where a dispute concerning land or water, or the boundaries thereof, is likely to cause a breach of peace. It is the current successor to Section 145 CrPC. Decisions interpreting Section 145 remain important when the language

and purpose of the successor provision are materially the same; however, such cases should be described accurately as decisions under the former Code, rather than as judgments directly interpreting the BNSS.

2. STATUTORY FRAMEWORK UNDER THE BNSS

Section 164(1) BNSS applies when an Executive Magistrate is satisfied, on a police report or other information, that a dispute likely to cause a breach of peace exists concerning land or water or their boundaries within the Magistrate's local jurisdiction. The Magistrate must make a written preliminary order stating the grounds for that satisfaction and require the parties to appear, personally or through an advocate, on a specified date and time and submit written statements concerning actual possession.

Section 164(2) gives 'land or water' an inclusive meaning. It extends to buildings, markets, fisheries, crops or other produce of land, and rents or profits from such property. The provision is consequently not confined to disputes over the soil itself. Section 164 also prescribes service and publication of the preliminary order, consideration of the parties' statements and evidence, and a determination—if possible—of which party was in possession on the date of the preliminary order.

The statutory proviso permits the Magistrate, in defined circumstances, to treat a party forcibly and wrongfully dispossessed within the two months preceding receipt of the police report or other information, or between receipt and the preliminary order, as if that party had been in possession on the date of the order. If the Magistrate identifies the party entitled to be treated as in possession, the order protects that possession until eviction in due course of law and prohibits disturbance. The section does not confer authority to adjudicate ownership or declare title.

Section 165 BNSS addresses attachment of the subject of dispute and appointment of a receiver in circumstances specified by law. Section 166 BNSS separately concerns disputes over an alleged right of use of land or water, including easementary rights. These provisions should be distinguished: Section 164 is principally concerned with actual possession, while Section 166 concerns the right of user.

3. OBJECT AND NATURE OF THE JURISDICTION

The purpose of Section 164 is preventive rather than punitive. The Magistrate is not trying an offence merely because the parties disagree over property. The jurisdiction is activated by a dispute and a likelihood of breach of peace, not by the mere existence of competing claims to

title. The statutory inquiry is summary and fact-focused: who possessed the property at the legally relevant time, subject to the specific rule concerning recent forcible dispossession? The requirement to record grounds in writing is an important safeguard. A bare assertion that a dispute exists is not a substitute for the Magistrate's satisfaction that the dispute is likely to cause a breach of peace. The order should identify the information relied on and demonstrate a rational connection between the dispute and the anticipated risk. The parties must receive notice and a meaningful opportunity to present their positions.

4. PROCEDURE BEFORE THE EXECUTIVE MAGISTRATE

4.1 INFORMATION AND PRELIMINARY ORDER

Proceedings may begin on a police report or other information. The Magistrate must independently assess whether the statutory conditions are met and record the grounds for satisfaction. The written preliminary order identifies the dispute, calls upon the parties to appear and submit their written claims regarding actual possession, and initiates the inquiry.

4.2 SERVICE AND PUBLICATION

The order must be served in the manner prescribed for summons, and at least one copy must be published by affixing it at a conspicuous place at or near the disputed property. These requirements promote notice, transparency and compliance.

4.3 EVIDENCE AND THE RELEVANT DATE

The Magistrate considers the written statements, hears the parties and receives evidence produced by them, together with any further evidence considered necessary. The inquiry is directed to actual possession at the date of the preliminary order, not to which party has the better title. Relevant material may include testimony, cultivation or occupation records, revenue materials insofar as they illuminate possession, photographs, boundary evidence and other admissible information. No single document should automatically be treated as conclusive of title or possession without considering the circumstances.

4.4 RECENT FORCIBLE DISPOSSESSION

The statutory proviso prevents a party from benefiting from a recent forcible and wrongful dispossession falling within the prescribed period. If the conditions are established, the Magistrate may treat the dispossessed party as having been in possession on the relevant date and may restore possession in accordance with the provision. This is a narrowly defined

statutory protection; it should not be expanded into a general power to resolve long-standing title disputes.

4.5 FINAL ORDER AND LIMITS

Where the Magistrate determines possession, the order declares the party entitled to remain in possession until evicted in due course of law and forbids disturbance of that possession. It does not permanently determine ownership, validate an unlawful title, or prevent a competent civil court from deciding the parties' substantive rights. If no qualifying dispute exists or has existed, the Magistrate must cancel the preliminary order and stay further proceedings.

5. ATTACHMENT AND APPOINTMENT OF A RECEIVER

Where the statutory conditions for attachment are met—for example, in an emergency or where the Magistrate is unable to decide which party was in possession—the related attachment power under Section 165 BNSS may become relevant. Attachment is an exceptional protective measure, not an automatic consequence of every property disagreement. The Magistrate must act within the statute and explain why the circumstances justify intervention. A receiver appointed by a competent civil court may affect the continuation of a Magistrate-appointed arrangement, as provided by the statutory scheme.

The practical objective is to prevent either side from using force to alter the status quo. Attachment should not be used as a substitute for a civil injunction or as a means of deciding ownership indirectly.

6. RELATIONSHIP WITH CIVIL PROCEEDINGS

A central limitation is that preventive criminal jurisdiction must not become a parallel trial of title. Where a competent civil court is already seized of the same property dispute and is able to grant effective protection, continuing parallel proceedings under Section 164 may be unnecessary or inappropriate. The position depends on the procedural stage, the relief sought and the protection actually available; the existence of any civil suit does not mechanically answer every question.

Parties seeking a final declaration of title, partition, recovery of possession, easementary relief or a permanent injunction should ordinarily pursue the appropriate civil remedy. Section 164 is designed to address the immediate risk of violence while leaving substantive civil rights to the proper forum.

7. LEADING JUDICIAL DECISIONS

7.1 RAM SUMER PURI MAHANT V. STATE OF U.P.

In Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427, the Supreme Court cautioned against maintaining parallel proceedings under Section 145 CrPC where a civil court was already dealing with the property dispute and could grant appropriate relief. The decision supports the principle that preventive proceedings should not duplicate civil adjudication when the civil forum can adequately protect the parties.

7.2 AMRESH TIWARI V. LALTA PRASAD DUBEY

In Amresh Tiwari v. Lalta Prasad Dubey, (2000) 4 SCC 440, the Supreme Court applied the reasoning in Ram Sumer Puri Mahant and explained that parallel Section 145 proceedings should not continue where a civil suit concerning possession or title is pending and the civil court is capable of protecting the property. The Court also distinguished cases in which a Section 145 proceeding had already concluded before the later civil suit. The decision therefore calls for a contextual inquiry rather than an inflexible rule.

7.3 SHAKUNTALA DEVI V. CHAMRU MAHTO

In Shakuntala Devi v. Chamru Mahto (Supreme Court, 10 February 2009), the Court considered the limitation applicable to an application seeking restoration of possession following an order under Section 145 CrPC. It held that, in the absence of a specific limitation period in that provision, Article 137 of the Limitation Act supplied a three-year residuary period. The decision illustrates that procedural rights arising from a possession order must be pursued within the applicable limitation framework.

7.4 BHINKA V. CHARAN SINGH

Bhinka v. Charan Singh, AIR 1959 SC 960, is a leading Supreme Court authority on the limited scope of proceedings under Section 145 CrPC. The provision is concerned with actual possession and prevention of breach of peace; it is not a forum for adjudicating title. The distinction remains central to the interpretation of the successor provision.

These authorities were decided under the former CrPC. They are relevant to Section 164 BNSS because of the substantial continuity in statutory language and purpose, but the precise wording of the BNSS and any later authoritative interpretation must always be checked before filing or publication.

8. PRACTICAL CHALLENGES AND SAFEGUARDS

In practice, land disputes may be accompanied by incomplete records, overlapping revenue entries, seasonal possession, shared access to water, or allegations of forcible occupation. The summary nature of the proceeding makes careful fact-finding essential. Magistrates should distinguish genuine threats to public peace from ordinary civil disagreements, avoid treating ownership documents as automatically determinative of actual possession, and provide each party a fair opportunity to be heard.

Police reports can assist in identifying the immediate risk, but the statutory decision belongs to the Magistrate. Orders should be reasoned, proportionate and limited to the relief authorised by law. Parties should avoid self-help, intimidation or forcible changes to possession and should seek urgent civil relief where the dispute requires adjudication of title or continuing injunctive protection.

9. CONCLUSION

Section 164 BNSS is an important mechanism for preventing violence arising from disputes concerning land or water. Its legitimacy depends on maintaining a clear boundary between preservation of public peace and adjudication of civil rights. The Magistrate's task is to identify a real likelihood of breach of peace, follow the prescribed notice and evidence procedure, determine actual possession at the relevant time, and make only those orders authorised by the statute. The Supreme Court's decisions under Section 145 CrPC continue to offer guidance, particularly on the limited nature of the inquiry and the need to avoid unnecessary parallel proceedings when a civil court can provide effective protection. Properly applied, the provision protects public tranquillity without displacing the jurisdiction of civil courts.

REFERENCES AND SELECTED AUTHORITIES

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Suraksha Sanhita, 2023 (official text).

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