

Party Name : KAMAL CHAKRABORTY Vs THE STATE OF TRIPURA

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. S.S. Debnath, learned counsel appearing for the petitioner as well as Ms. A.S. Lodh, learned Addl. Govt. Advocate appearing for the respondents No.1 & 2.

This court does not feel that any notice for purpose of disposal of this case is required to be issued to the respondent No.3.

The grievance is entirely against the order dated 26.03.2014 passed by the Sub-Divisional Magistrate, Udaipur, Gomati Tripura, recording that the demarcation has been made in presence of the petitioner and the respondent No.3. The order dated 26.03.2014 is extracted hereunder :

“Notice issued to both the parties.

Order issued to DCM, Udaipur to supervise the demarcation task. Date fixed for demarcation on 18 March 2014.

Demarcation completed in the presence of both the parties. Contentions point of dispute amicably removed.

DCM Udaipur, demarcation report perused. On perusal I am of the opinion that the apprehension of breach of peace and disturbance of public tranquility has ceased to exist. Hence there is no dispute between both the parties as regard to plot No. 864/7457 and 864/8336.

Therefore, it is ordered that the dispute arises out of the possession over Hal Plot No.864/8336 of Mouja, Udaipur Town and subsequent.

Proceeding drawn up under section 145, 146 of Cr. P.C. is hereby treated as settled and disposed off.

It is further ordered that the boundary wall existing in between the two plots (Northern side of R.S-plot No 864/7457 and (South side of R.S- plot No 864/8336) belonging to both the parties will remain as a common boundary wall delineating the possession of both the parties. Both parties is further barred from entering the land area beyond the boundary wall.

Prepare a extract copy of the order and arrange to cause service of the same to both the parties.”

It is apparent on the face of the record that a demarcation proceeding was initiated, but from that demarcation proceeding, suo motu proceeding under Sections 145/146 of the Cr.P.C. has been drawn by prohibiting the parties from entering the land area beyond the boundary. Without making any observation on the merit it is observed that the order dated 26.03.2014 is clearly an appealable order under Section 93 of the Tripura Land Revenue and Land Reforms Act, 1960. The nature of the dispute as raised by this writ petition cannot be adjudicated under the jurisdiction conferred by Article 226 of the Constitution of India.

Accordingly, this petition stands dismissed.

However, the petitioner is given liberty to file an appeal against the order dated 26.03.2014. If the appeal is filed within 15(fifteen) days from today, since the petitioner has approached a wrong forum and also filed a protest application before the District Magistrate & Collector, Gomati District, the delay in filing the appeal shall be condoned by the District Magistrate & Collector, Gomati District for purpose of entertaining the said appeal, but if within 15 days no appeal is filed, any appeal as may be filed thereafter would be dealt with in accordance with law.