

25.11.2020

Mithun

Sl. No.16

S/L.

Ct.No.19

CRR/1650/ 2020
(Via Video Conference)

In Ref: An application under Section 399/401 read with Section 482 of the Code of Criminal Procedure, 1973, order dated 10.11.2020 passed by the learned Executive Magistrate at Jalpaiguri in connection with Petition/R./No.415/2020 dated 25.08.2020 under Section 144 of the Code of Criminal Procedure thereby directing the I.C. Bhaktinagar to see that no construction take place upon the land in question herenceforth until further order and order dated 19.11.2020 passed by the learned District Judge at Jalpaiguri in Criminal Reivision Case No.60 of 2020.

Smt.Harmeet Kaur & Ors.
Vs.
State of West Bengal & Anr.

Mr. Rajdeep Mazumder, Adv.,
Mr. Avrojoyti Das, Adv.,
Mr. Moyukh Mukherjee, Adv,
Mr. Pritam Roy, Adv,
Mr. Rohit Agarwal,Adv.,
Ms. Shyanti Poddar, Adv.

... for the petitioners

The opposite Party No.2 initiated a proceeding under Section 144 of the Code of Criminal Procedure before the learned Executive Magistrate, Jalpaiguri which was registered as Petition/R./No.415/2020 dated 25th August, 2020. On the date of filing itself the learned Executive Magistrate passed an ex

parte order directing the I.C., Bhaktinagar P.S. to see that the petitioner is not disturbed by the opposite party members in any way and should maintain peace and tranquility over the year.

It is needless to say that the force of a proceeding under Section 144 of the Cr.P.C. remains for sixty days. However, after expiry of the said statutory period an order was passed by the Executive Magistrate staying operation of construction work upon the disputed land against the petitioners. It is pointed out by the learned Advocate for the petitioners that a long-standing civil dispute is pending over the disputed land between the parties. The nature of the impugned order is like that of an order of injunction restraining the petitioners from making any construction over the disputed property. Only the Civil Court can grant such order. The learned Counsel relies upon an unreported decision of this Court passed in CRR 2179 of 2014 **(Bhagwandas Vehicle Test Services Pvt. Ltd. Vs. The State of West Bengal & Anr.)**, dated 11th November, 2014 where a Co-ordinate Bench was pleased to hold that where there is a civil dispute between the parties concerning disputed land. It is prudent for the learned Magistrate not to pass any order under Section 144 of the Cr.P.C.

Be that as it may the proceeding under Section 144 (2) of the Cr.P.C. being Petition/R./No.415/2020 was initiated on 25th August, 2020 and it lost its force after the expiry of 60 days. Practically there is no such proceeding under Section 144(2) of

the Cr.P.C. in the eye of law before the learned Executive Magistrate, Jalpaiguri and the said proceeding has become non est.

In view of such circumstances, the impugned order is grossly illegal and liable to be set aside.

Accordingly, the instant revision is allowed.

The order dated 10th November, 2020 passed in Petition/R./No.415/2020 is set aside.

(Bibek Chaudhuri, J)