

24.02.2021

Item no.5

Ct. No.42

CHC

**C.R.R. No.221 of 2021
(Physical Hearing)**

In Re: An application under Section 482 read with Section 401 of the Code of Criminal Procedure.

In the matter of:-

Basudeb Paramanik
.....petitioner

Mr. Atarup Banerjee,
Mr. Mrityunjoy Chatterjee
... for the petitioner

Md. Anwar Hossain,
Ms. Sreyashee Biswas
...for the State

Mr. Pinaki Ranjan Chakrabarti
...for the opposite parties

The parties are represented through their learned advocates, the names of whom are shown above at the very beginning of this ordersheet.

The impugned order dated 30th December, 2020 passed by learned Sub-Divisional Executive Magistrate, Durgapur in connection with a 144 proceeding directing the opposite parties not to change the nature and character of the subject land is the subject of challenge in this revisional application.

Mr. Atarup Banerjee, learned advocate representing the petitioner submits that by the impugned order, the learned

Magistrate has proceeded to pass an order restraining the petitioner from changing any nature and character of the subject land without recording his satisfaction, which is absolutely illegal. The nature of the order passed in this case, according to the petitioner, can only be passed by Civil Court having competent jurisdiction, and the learned Magistrate is thus not left with any discretion to pass any order of this nature without deciding the title and possession of the subject land.

Per contra, Mr. Pinaki Ranjan Chakrabarti, learned advocate representing the private opposite parties submits that petitioner has encroached some portion of the land of the opposite parties undertaking a construction on a land adjoining to the opposite parties and such construction has been carried out on a piece of agricultural land.

The alleged illegal construction and encroachment has been specifically denied by the petitioner, which is thus left to be decided by the appropriate court of law.

Mr. Hossain, learned advocate representing the State submits that learned Magistrate simply to prevent breach of peace has passed an order requiring the opposite parties not to effect any change in the nature and character of the suit land so as to preserve the intactness of the subject land.

Having considered the rival submission of the parties, it appears that the dispute is cropped up following a simply issue surfacing over the alleged construction, undertaken by the petitioner, which is said to have encroached upon the land of

opposite parties. That being the position, it is purely a dispute of civil in nature, which may be decided by appropriate court of law having competent jurisdiction.

Since recording of satisfaction is missing in the impugned order, which is in essence absolutely necessary to pass an interim order under Section 144(2) Cr.P.C., the Court is of the view that the impugned order is not sustainable at the moment.

The impugned order is, thus, set aside.

Parties are at liberty to approach the appropriate court of law to settle their property dispute permanently.

With this direction/observation, the instant revisional application stands disposed of.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)