

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Jay Sengupta

C.R.R. 372 of 2021

Gopal Chandra Das & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Gouranga Kumar Das

Heard on : 12.02.2021

Judgement on : 12.02.2021

Jay Sengupta, J. :

This is an application challenging an order dated 04.02.2021 passed by the learned Executive Magistrate, in Case No. MF 320 of 2020 under Section 144(2) of the Code.

Learned Counsel appearing on behalf of the petitioners submits as follows. The petitioners and opposite party no.2 are the co-sharers in a property. In fact, the opposite party no.2 has filed a partition suit. During pendency of the said suit, the opposite party filed an application under Section 144(2) of the Code. On 13.10.2020, the learned Executive Magistrate passed an order directing the Officer-in-Charge, Frezerganj Coastal Police Station to ensure that there shall not

be any infringement to the lawful and peaceful possession of the suit land. A writ petition was filed by the opposite party no.2 to have the said order implemented. After hearing the respective parties, on 15.12.2020 in W.P. No.10283 of 2020, this Court was pleased to direct that immediate steps be taken for the implementation of the said order dated 13th October, 2020. This was beyond the period of 60 days after passing of the restraining order. Subsequently, on 04.02.2021, the learned Executive Magistrate, after receiving a copy of the order passed in the writ application, was pleased to take steps for implementation of the said order. This could not have been done in view of the statutory restriction of 60 days as contained in Section 144 of the Code.

I have heard the submissions of the learned Counsel appearing on behalf of the petitioners and have perused the revision petition.

The prime grievance of the petitioners seems to be that the proceeding under Section 144 of the Code has remained pending even after the passage of 60 days from the date on which a restraining order was passed. However, this point was not raised in the writ proceeding.

Moreover, it is trite law that regardless of any such purported time bar, there is no embargo on this Court to decide an application pertaining to Section 144 of the Code on merits.

If the petitioners were aggrieved with this or, for that matter, with the pendency of the application under Section 144 of the Code beyond the period of 60 days, then the said order of this Court ought to have been challenged before the Hon'ble Division Bench. But, the same was also not done.

Interfering with the impugned order would, among other things, amount to sitting in review over the order passed by the Hon'ble Single Judge in the writ jurisdiction. This is not permissible in law.

Therefore, I do not find any reason to interfere with the impugned order.

Accordingly, the revisional application is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)