

14.01.2021
Item no.1
Ct. No.42
CHC

**C.R.R. No.1822 of 2020
(Physical Hearing)**

In Re: A petition under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

In the matter of:-

Meghnath Halder & ors.
.....petitioners

Mr. Moyukh Mukherjee,
Mr. Abhijit Singh,
Mr. Shakti Halder
... for the petitioners

Mr. Saibal Bapuli,
Mr. Arijit Ganguly
... for the State

Mr. Dipanjan Dutta,
Mr. Biswajit Konar
...for the O.P. no.2

The item is found listed under the heading "To Be Mentioned" for production of a police report what was called for previously pursuant to order dated 21st December, 2020. The police report is produced by learned advocate Mr. Arijit Ganguly representing the State/opposite party no.1. It reveals from the report that at present no construction work is going on on the subject land giving rise to the dispute between the parties.

Let the report be kept on record.

Mr. Dipanjan Dutta representing the private opposite party no.2 candidly submits that the matter may be disposed of without keeping the same pending in the list.

Learned advocate for the petitioners as well as the learned advocate for the opposite party no.1 supports the same in unison. When all the parties are agreeable to the disposal of the case, the Court finds reasons to dispose of the case irrespective of the fact that the matter is appearing under the heading “To Be Mentioned”.

The impugned order dated 8th December, 2020 passed by learned Executive Magistrate, Diamond Harbour in connection with M.F. Case No.1618 of 2020 under Section 144(2) Cr.P.C. directing the petitioner/opposite party not to disturb the peaceful possession of the opposite party/petitioner over the portion of the subject land under the existing possession of o.p./petitioner is the subject of challenge in this revisional application. The revisional application has already been admitted long before passing an interim order directing *status quo* to be mentioned for four weeks in respect of the subject land involved in the case.

Learned advocate for the petitioners, Mr. Moyukh Mukherjee submits that the order impugned has been recorded without recording any satisfaction of the learned court, while passing order under Section 144(2) Cr.P.C., and the learned Executive Magistrate has simply proceeded to determine the title of subject land under the behest of Section 144(2) Cr.P.C. proceeding, which is not permissible under the provisions of the law.

Learned advocate Mr. Dutta for the opposite party no.2 submits disputing with the description of the land shown in the schedule. It is submitted further that there is a school on the

subject land for minor children, which after the Amphan, the functioning of the school has been disturbed. Admittedly, the school was established on vested land. Apprehending illegal construction over the subject land, where the school was running the opposite party/petitioners proceeded to file a proceeding under Section 144(2) Cr.P.C. and obtained the order impugned.

Having regard to the facts and circumstances of the case and upon hearing both sides, it appears that there was a school functioning before Amphan on a vested land, and o.p/petitioners being apprehensive of illegal construction over said land, resorted to a proceeding under Section 144(2) Cr.P.C. The police report so obtained is very clear that there has been no construction going on the disputed land.

Upon perusal of the impugned order, it appears that learned Magistrate proceeded to grant interim order under Section 144(2) Cr.P.C. without recording his satisfaction, which appears to be essence of an order under Section 144(2) Cr.P.C. Moreso, the learned Magistrate proceeded to consider the title and possession of the subject land after its determination. Such determination of title is purely the business of civil court, which the parties are at liberty to take recourse to adhering to the provisions of law. Since there is palpable illegality in the order impugned, the same is not sustainable for the reasons shown hereinabove. The impugned order is, thus, set aside.

The revisionsl application succeeds.

Since the school is submitted to have been established before the Amphan on vested land, which according to the opposite party no.2 has been disturbed being effected with the Amphan, the opposite party no.2 is at liberty to take recourse to police station, when there will be appropriate situation demanding intervention of police so as to provide police help in a suitable case.

With this observation/direction, this 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.)