

19.01.2021
Item no.16
Ct. No.42
CHC

**C.R.R. No.1889 of 2020
(Physical Hearing)**

In Re: An application under Sections 401 and 482 of the Code of Criminal Procedure, 1973.

In the matter of:-

Nasir ali kha
.....petitioner

Mr. Navanil De,
Mr. Debasish Sur
... for the petitioner

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

The impugned order dated 9th December, 2020 passed by learned Executive Magistrate, Chandernagore, Hooghly in connection with S Case No.475 of 2020 granting interim order under Section 144(2) Cr.P.C. thereby directing the petitioner not to disturb the peaceful possession of the opposite party in the subject property, is the subject of challenge in the instant revisional application.

Learned advocate, Mr. Navanil De for the petitioner submits that father of the petitioner is the recorded owner of the land, to which the opposite party has no interest thereon so as to interfere with the possession of the petitioner over the subject land.

It is further contended by Mr. De that recording of satisfaction goes missing in the impugned order, while passing any interim order under Section 144 (2) Cr.P.C. and taking such grounds, as principal thrust, the impugned order has been challenged.

A report is found to have been called for from the concerned Officer-in-Charge of the police station by order dated 5th January, 2021.

The police report, submitted by Officer-in-Charge, Haripal Police Station, Hooghly dated 11th January, 2021, through Mr. Anwar Hossain, learned Advocate representing the State, be taken on record.

It appears from the report that opposite party no.2 has claimed himself to be the co-sharer of the subject land and his grievance is that the petitioner undertook construction on the subject land without having demarcated the same by metes and bounds and also without any sanctioned plan.

Mr. De, does not raise any objection to the claim of the opposite party no.2 denying his claim on the subject land.

Going by the submission raised by both the parties and bearing in mind the illegality committed by the learned Executive Magistrate without recording his satisfaction, while passing an order under Section 144 (2) Cr.P.C., the Court is of the view that the appropriate remedy may be duly had from the civil court. Since the order is recorded without recording any satisfaction on the part of the learned Magistrate, the same is however, not sustainable. Accordingly, the impugned order is set aside with observation that neither of the parties to this case should not go for any construction on subject land till they approach the civil court having jurisdiction over the disputed property.

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.)