

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Jay Sengupta

C.R.R. 1055 of 2021

Margina Bibi

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Dhananjay Banerjee,
Ms. Oindrila Ghosh.

For the OP No.2. : Mr. Manas Kumar Das,
Ms. Shabnam Hasin,
Mr. Mobaidur Hossain.

For the State : Mr. Binay Panda,
Mr. S. Bhakat.

Heard on : 31.03.2022

Judgement on : 31.03.2022

Jay Sengupta, J. :

This is an application challenging a judgment and order dated 08.01.2021 passed by the learned Sessions Judge, Murshidabad at Berhampore in Criminal Revision No.50 of 2020, thereby setting aside an order dated 18.02.2020 passed by the learned Sub Divisional Executive Magistrate, Domkal,

Murshidabad in Petition Case No.194 of 2018 under Section 147 of the Code of Criminal Procedure.

Learned Counsel appearing on behalf of the petitioner submits as follows. The petitioner had filed an application under Section 147 of the Code before the learned Executive Magistrate in respect of her right over a plot of land described in the application as Plot No.7011 and 7504 of Mouza-Raninagar claiming that she had a right of pathway over such land as she has no other outlet for ingress and egress from her residence except the said pathway. The private opposite party and his family members who are the owners of the contiguous land blocked the pathway by erecting a wall. After considering the reports of the BL & LRO and the police, the learned Executive Magistrate held that the private opposite party was trying to block the entrance of the applicant and the police was directed to maintain peace and tranquility. A revisional application was filed by the private opposite party. The learned revisional Court held that the impugned order lacked reasoning and clear findings regarding a right in favour of the present petitioner and accordingly, set aside the order passed by the learned Executive Magistrate. The case satisfied both the counts that a pathway available for the use of the petitioner was illegally blocked by the opposite party and there was an apprehension of breach of case regarding such blockade. Yet, the learned revisional Court came to an erroneous finding. Alternatively, the matter was not even remanded back to the learned Executive Magistrate for passing a fresh order.

Learned Counsel appearing on behalf of the private opposite party submits as follows. The petitioner does not have any right to pass through the pathway which belongs to the private opposite party. Being the owner of such property, the opposite party no.2 has absolute right to protect it by building a wall. Furthermore, the order of the learned Magistrate does not reflect any apprehension of breach of peace. Therefore, the revisional Court was right in passing the order dismissing the said application.

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

It is claimed by the petitioner that the only ingress and egress to the petitioner's property lies through the said property belonging to the opposite party no.2. The petitioner and her predecessors had been using the pathway as easement for a very long time. Thus, the opposite party no.2 had no right to suddenly erect a wall blocking such pathway.

It is also evident from the report filed by the Revenue Inspector that because of such forcible blockade of the pathway, the petitioner has to access a very narrow passage with a great deal of risk.

The issue of likelihood of breach of peace was implicitly referred to inasmuch as it had been mentioned that the wall was constructed forcibly.

The impugned order failed to take all these into consideration.

In view of the above, the impugned order as well as the order dated 18.02.2020 passed by the learned Executive Magistrate are set aside. The matter is remanded back to the learned Executive Magistrate for passing an order afresh after hearing the respective parties.

With these observations, the revisional application is disposed of.

Let the learned Executive Magistrate decide the application as expeditiously as possible without granting any unnecessary adjournment to any of the parties, preferably within a period of three months from the communication of this order to the learned Court below.

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

(Jay Sengupta, J.)