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18.04.2022
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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A 787 of 2022

**Smt. Jamuna Roy
-versus
State of West Bengal and others**

Mr. Sandip Mandal
Mr. Abhilash Mittal

...For the Petitioner.

Mr. Bikramaditya Ghosh
Mr. Pretom Das

...For the State.

Mr. Sunil Kumar Sarkar

...For the private respondent
nos.5, 6 & 7.

The only relief prayed for by the petitioner is a direction on the Executive Magistrate, Jalpaiguri to register the application made by the petitioner under Section 145 of The Code of Criminal Procedure.

There is no document-on-record showing that the Executive Magistrate has refused to register the application save and except a statement made in a letter written by the petitioner to the District magistrate on 8th April, 2022.

Learned counsel appearing for the petitioner submits that the petitioner has been dispossessed from her land at the behest of the private

respondents. This fact is disputed on behalf of the private respondents.

Learned counsel appearing for the State submits that the State does not have any objection if an appropriate direction is passed on the Executive Magistrate.

Section 145 of The Code of Criminal Procedure, 1973, empowers an Executive Magistrate to pass an order in writing and requiring the parties concerned in the dispute concerning land or water which is likely to cause breach of peace, to attend court in person and to put in written statements of their respective claims in respect of the actual possession of the subject of the dispute.

The provision requires satisfaction of the Executive Magistrate from a report of a police officer or upon other information that a dispute concerning land or water is likely to cause breach of peace within the local jurisdiction of the Executive Magistrate.

The section hence requires the subjective satisfaction of the Executive Magistrate which must also be stated in the grounds of the order passed by the Executive Magistrate.

In the present case, there is no document on record showing that the Executive Magistrate had

the necessary information which could have led to his being satisfied that the dispute was likely to result in a breach of peace but refused to act on the information despite there being enough grounds to do so.

This court is hence of the view that in the absence of any such information being at the disposal of the Executive Magistrate, a direction on the Executive Magistrate to register the application under Section 145 of the CrPC would not be in order.

The respondent no.4, being the Officer-in-Charge, Ambari Out post under New Jalpaiguri Police Station, is hence directed to file a report with regard to the existing state of affairs concerning the petitioner and the private respondents and if the situation would result in a breach of peace as envisaged in Section 145 of the CrPC.

The said report shall be filed within a period of three days, as suggested by learned counsel appearing for the State, and be placed before the Executive Magistrate within seven days from today.

The Executive Magistrate shall thereafter be at liberty to form an independent opinion as to whether the report contains enough material to result in the satisfaction contemplated under

Section 145 for the Executive Magistrate to pass an order under the said provision.

W.P.A. 787 of 2022 is accordingly disposed of in terms of the above.

(Moushumi Bhattacharya, J.)