

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 404 of 2020

Sri Swapan Baidya & Anr.

Versus

Md. Abdul Mannan Mullick & Anr.

For the State : Mr. Anwar Hossain, Adv.
Mr. M.F.A. Begg, Adv.

For the O.P. No. 1 : Mr. Md. Y. Mondal

Heard on : 02.03.2023

Judgment on : 09.03.2023

Ajay Kumar Gupta, J:

1. This application under Section 401 read with Section 482 of the Code of Criminal Procedure has been filed by the petitioners against the order dated 20.12.2019, thereby Learned Sessions Judge, North 24 Parganas rejected the prayer for stay of operation of the impugned order dated 16.12.2019 passed by the learned Sub-divisional Executive Magistrate in connection with M.P. Case No. 2201 of 2018 under Section 147 (3) of the Code of Criminal Procedure, directing the I/C, Deganga P.S. to remove the illegal obstruction from the 'B' scheduled suit property after converting application under Section 147(1) from 145 (1) of the Code of Criminal Procedure.

2. Case of the petitioners in short, as per pleading, is that opposite party no. 1 is trying to oust the petitioners from their possession as Squatters, where the petitioners are running tea stall as well as fish stall for more than 40 years. The opposite party no.1 also filed a Title Suit No. 1135 of 2016 together with injunction application but no injunction was granted by the learned Civil Court due to non-production of documents in support of his physical possession over the suit property. He is also tried to disturb the possession of the petitioners by filing several cases under Sections 144 (2) and 107 of the

Code of Criminal Procedure time to time though he has no right, title, interest or possession of the suit property.

3. Opposite party no.1 filed an application under Section 145 (1) of the Code of Criminal Procedure and subsequently sought for conversion of the said application under Section 147 (1) of the Code of Criminal Procedure for forceful eviction before the Learned Sub-divisional Executive Magistrate being M.P. Case No. 2201 of 2018. After hearing both the parties, the learned Sub-divisional Executive Magistrate whimsically and capriciously converted the said case from Section 145 (1) of the Code of Criminal Procedure to Section 147 (1) of the Code of Criminal Procedure and further directed the I/C, Deganga P.S. to remove illegal obstruction as per Section 147 (3) of the Code of Criminal Procedure immediately and to comply the said order within 15 days on 16.12.2019.

4. Feeling aggrieved with the said impugned order, the present petitioners have filed revisional application praying for stay of impugned order dated 16.12.2019 before the Learned Sessions Judge at Barasat, North 24 Parganas but learned Judge rejected the prayer for stay of the operation of the said impugned order dated 16.12.2019 and fixed date for hearing. Hence, this revisional application.

5. No body appeared for the petitioners on many occasions. In view of the said fact, nature of relief sought for and to avoid further delay, I am inclined to dispose of this matter on merit.

6. On the other hand, learned counsel appearing on behalf of the State submitted a detailed report as well as status of the proceeding pending before the learned Sessions Judge at Barasat, North 24 Parganas.

It is further submitted that the State Highway Taki Road was widened. Temporary stalls of the petitioners, Swapan Baidya and Azahar Rahaman Molla were removed from the area. After that the Taki Road has been modified and widened. Petitioners, Swapan Baidya and Azahar Rahaman Molla further constructed temporary stalls like others for their business. Some portion of their temporary stalls obstructed the part of the frontal portion of house and shop of the opposite party no.1, Abdul Mannan Mallick. Consequently, he filed one Misc. Petition vide No. 2201/18 U/S 145 (1) of the Code of Criminal Procedure in the Court of Learned SDEM, Barasat, North 24 Parganas against Swapan Baidya and Ajanar Rahaman Molla for removal of temporary structures. Learned Magistrate, after hearing the parties, rightly directed to remove illegal obstruction from the 'B' scheduled property. Said order was challenged by the petitioners before the Learned Sessions Judge by way

of revisional application. However, prayer for stay order has been rejected, which is under challenged in this case though petitioners have no case as such application should be dismissed.

7. Having gone through the pleadings, impugned orders and report filed on behalf of the State, this Court prefers to place the provision of Section 147 of the Code of Criminal Procedure, which read as follows:-

147. Dispute concerning right of use of land or water.

(1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.

Explanation: The expression “land or water” has the meaning given to it in sub-section (2) of section 145.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section

(1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub-section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) and when in any proceedings commenced under sub-section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 145.

8. Upon perusal of the aforesaid provision as well as the case in hand, this Court finds the petitioners have constructed illegal structures over the Land of Zilla Parishad, North 24 Parganas and also obstructed the front portion of house and shop of the opposite party No.1. Accordingly, learned Magistrate passed an order on 16.12.2019 in which the case has been converted from Section 145 (1) of the Code of Criminal Procedure to Section 147 (1) of the Code of Criminal Procedure as well as directed the I/C, Deganga P.S. to remove the illegal obstruction under Section 147 (3) of the Code of Criminal Procedure from the 'B' scheduled property immediately. At the same time, the Learned Sessions Judge refused to grant stay order against the said impugned order since the petitioners fail to make sufficient grounds.

9. Thus, application filed by the petitioners has devoid of merit. This requires no interference.

10. In view of the above observations, C.R.R. No. 404 of 2020 is dismissed without order as to costs.

11. However, this order will not preclude the learned Sessions Judge to proceed with the case in accordance with law and shall be disposed of as early as possible preferably within two month from the date of communication of this order.

12. Concerned Department is directed to communicate this order to the Learned Fast Track Court-III at Barasat, North 24 Parganas, where the case is pending as per the information Slip supplied by the learned advocate appearing on behalf of the State.

13. Photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)