

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 481 of 2020

Archana Mondal

Vs

The State of West Bengal & Ors.

For the Petitioner

: Mr. Dibashis Basu,
Mr. Arun Bandopadhyay.

For the State

: Ms. Sreyashee Biswas.

For the Opposite Party Nos. 3 to 5

: Mr. Zohaif Rauf,
Mr. Shounak Mitra,
Mr. Zulfiquar Ali Al Quadin.

Heard on

: 24.02.2023

Judgment on

: 24.03.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 14.11.2019 passed by the Learned Sub-Divisional Executive Magistrate, Egra in Miscellaneous Case No. 07/2019 under Section 147 Criminal Procedure Code.
2. The petitioner's case is that the petitioner filed an application under Section 147 Criminal Procedure Code before the Learned Sub-Divisional Executive Magistrate, Egra against the Opposite Party inter alia praying for removing the obstruction from the only pathway of the petitioner's house to the western side Government road.
3. The petitioner's case is that he purchased 'Ka' Schedule property i.e. 07 decimal of land in plot no. 1087, J.L. No. 246, Mouza-Chotorasulpur from one Pradip Pariya on 14.08.2018 by a registered deed. The petitioner also got patta of the 'Kha' schedule property i.e. plot no. 203, area 15 decimal of Bararasulpur from the Government. The petitioner also has a 300 sq.ft. old house on the said 'Ka' schedule property. The petitioner is using the said 'Ka' and 'Kha' Schedule property. But the opposite parties on 29.12.2018 obstructed the only pathway from the petitioner's house to the western side Government road by a fencing.
4. The opposite parties also destroyed the said pathway by digging earth. When the petitioner objected to such illegal activities of the

opposite parties, they threatened the petitioner with dire consequences. The petitioner made a G.D. Entry No. 1384 dated 29.12.2018 with Egra Police Station.

5. The opposite parties contested the said application by filling written objection. They specifically contended that the opposite party no. 1 purchased some portion of the 'Ka' Schedule plot by registered deed with Specific demarcation and the petitioner also purchased some portion of that plot but there is no road as claimed by the petitioner.
6. As per direction of the Learned Magistrate, the Block Land & Land Reforms Officer, Egra-II, submitted his report. In the report, it is specifically stated that in 1986 one Battery factory was established in the suit plot. One "Sishu Siksha Kendra" was also there. Two to three feet wide pathway between the paddy field was there from the said Battery factory to the western side, and the same was connected with the "pitch" road. At present there was no pathway between the paddy fields.
7. The Police authority of Egra Police Station also submitted a report before the Learned Magistrate, it was specifically stated that there is every chances of possibility of breach of peace and tranquility.
8. On 14.11.2019, after seeing the said reports of Block Land & Land Reforms Officer and the police report, the Learned Executive Magistrate has been pleased to drop the said proceeding being Miscellaneous Case No. 07/2019.

9. The petitioner states that in her purchase deed, it is specifically written that there is a “pitch” road and clay road to the western side of her purchased property. The petitioner further states that the opposite parties blocked the only pathway by digging earth.

10. **Mr. Dibashis Basu, learned counsel for the petitioner** has submitted that the Learned Executive Magistrate erred in law by dropping the application under Section 147 Code of Criminal Procedure, when the police authority in his report specifically stated that there is every chance of possibility of breach of peace and tranquility and the opposite parties are changing the nature and character of the suit land by making construction.

11. **Section 147 of the Code of Criminal Procedure** empowers an Executive Magistrate to assume jurisdiction to make an order against the parties concerned relating to a dispute which is likely to cause breach of peace over a right of user of any land or water, on the strength of a police report and upon other information, subject to his satisfaction about the existence of breach of peace over the said right of user of any land or water.

12. In the instant case it is specifically stated in the police report that there is every chance of possibility of breach of peace and as such the Learned Magistrate should have proceeded further with the said application. When the report of the police specifically stated that there is apprehension of breach of peace and the report of the concerned Block

Land & Land Reforms Officer, also revealed that there is a possibility of breach of peace over the issue.

13. It is further submitted the Learned Magistrate has not considered the reports of the concerned Block Land & Land Reforms Officer and the police authority in its proper perspective and passed impugned order mechanically.

14. **Mr. Zohaif Rauf, learned counsel for the private opposite parties** has submitted that the order under revision is in accordance with law and as such the revision is liable to be dismissed.

15. The present revision is against an order passed in a proceedings under Section 147 Cr.P.C.

16. **Section 147 of the Code of Criminal Procedure, Proviso lays down:-**

“.....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 a seasons or on the last of such occasions before such receipt.....”

17. The **report dated 06.06.2019** submitted by Egra Police Station to the learned S.D.E.M. clearly states:-

“.....It is totally civil in nature and a long standing dispute is going on both the parties, over the issue of taken possession of the suit plot. The both parties did not produce any valid documents of the suit land.....”

18. **The report of the Revenue Inspector dated 04.02.2019, states that there is no “Sishu Sikhsha Kendra” now in the petitioner’s property and the Battery factory running there earlier is also closed. As prima facie the property is closed, its user as per proviso is doubtful and the dispute is totally civil in nature.**

19. The **order dated 14.11.2019** passed by the Learned Magistrate is as follows:-

“As per report of the BL & LRO Egra-II there is no specific report of obstruction over the suit plot. Hence the case is dropped after hearing both parties is the light of the reports of BL & LRO, Egra II and OC Egra P.S”.

**Sd/-
Sub-Divisional Executive Magistrate (Egra)**

20. The Learned Magistrate held that there was no obstruction over the suit plot and dropped the proceedings on hearing both parties and considering the report of the BL & LRO, Egra-II and OC Egra Police Station.

21. Thus considering the materials on record it is seen that the dispute between the parties is civil and private in nature and the petitioner's property is not in use and as such the relief under Section 147 Cr.P.C. is not available to the petitioner in view of the proviso to Section 147 Cr.P.C.
22. Thus the order dated 14.11.2019 passed by the Learned Sub-Divisional Executive Magistrate, Egra in Miscellaneous Case No. 07/2009, under Section 147 of the Criminal Procedure Code being in accordance with law, needs no interference by this court.
23. **CRR 481 of 2020 is dismissed.**
24. There will be no order as to costs.
25. All connected Application stand disposed of.
26. Interim order if any stands vacated.
27. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
28. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)