

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 615 of 2020

Sri Avijit Dey

Vs

State of West Bengal & Ors.

For the Petitioner : Mr. Kunal Ganguly.

For the State : Ms. Rita Dutta.

For the Opposite Party No. 2 : None.

Heard on : 19.04.2023

Judgment on : 11.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 27.01.2020 passed by the Learned Sub Divisional Executive Magistrate, Serampore, Hooghly in M/Case No. 107 of 2020 under Section 144(2) of the Code of Criminal Procedure.
2. The petitioner's case is that the total area of land in question has been purchased by the petitioner and other co-purchasers by different Deeds of Conveyance from the ancestors (co-sharers) of the opposite party Nos. 2 and 3.
3. After purchasing the said land, the petitioner and other co-purchasers (the other opposite party members in M/Case No. 107 of 2020) started construction by due process of law.
4. The opposite party nos. 2 and 3 suddenly made a petition before the Learned Sub Divisional Executive Magistrate, Serampore, Hooghly under Section 144(2) of the Code of Criminal Procedure and in the said petition they have contended their legal right over the land in question and steps taken for changing the record of right by the purchasers i.e. the petitioner and other co-purchasers. A prayer was made in the said petition for restraining the opposite party members/(petitioner herein) from their alleged illegal activities over the land in question and also prayed that they should not to change the nature and character of the suit property.

5. On 27.01.2020 the Learned Sub Divisional Executive Magistrate, Serampore, Hooghly, was pleased to fix the matter on 27th of March, 2020 for submitting report by the Inspector-in-Charge, Dankuni Police Station as to the subject matter and also directed the Inspector-in-Charge, Dankuni Police Station to restrain the opposite party members, (including the petitioner) as prayed for by the petitioner therein.
6. **Mr. Kunal Ganguly, learned counsel for the petitioner** has submitted that the subject matter involved in the said application is absolutely civil in nature and the Learned Executive Magistrate has got no power to decide such civil disputes under the provisions of Section 144(2) of the Code of Criminal Procedure.
7. That it is well settled principles of law that in a proceeding under Section 144(2) of the Code of Criminal Procedure no power has been vested upon the Learned Magistrate to decide the right, title and interest over the land in question and here in this case admittedly the opposite party Nos. 2 and 3 have made out a case for disputed right, title and interest over the land in question and as such, the same is an abuse process of law.
8. It is further submitted that it is also the subject matter of application under Section 144(2) of the Code of Criminal Procedure filed by the opposite party nos. 2 and 3 herein that they have made objection to the change of record of rights over the land in question before the concerned Block Land & Land Reforms Officer and in fact for such disputes, a forum is available under the Land Reforms Act but without availing such forum,

the opposite party nos. 2 and 3 have assailed the same in a proceeding under Section 144(2) of the Code of Criminal Procedure which is not permissible in law as well as in fact and as such, the whole proceedings initiated by the opposite party nos. 2 and 3 are liable to be quashed and/or set aside.

9. **Ms. Rita Dutta, learned counsel for the State** is present.

10. The order under revision is dated 27.01.2020.

11. **Order dated 27.01.2020**

“Perused the application u/s 144(2) Cr.P.C. filed by the petitioner Sunanda Hazra this day. Let it be registered.

Heard the Ld. filing lawyer. Considered. Call for a report from the I/C Dankuni P.S. as to the subject matter of the application fixing 27.03.2020 for submitting report.

Parties to maintain peace.

I/C Dankuni P.O. is directed to restrain the OP as prayed for.”

12. The proceedings in the case is under Section 144 Cr.P.C.

13. **Section 144 of the Code of Criminal Procedure, lays down:-**

“144. Power to issue order in urgent cases of nuisance of apprehended danger.-

(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully

employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) *No order under this section shall remain in force for more than two months from the making thereof:*

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing."

14. The order dated 27.01.2020 has been passed by the learned Sub Divisional Executive Magistrate, Serampore, Hooghly in M/Case No. 107 of 2020 under Section 144(2) of the Code of Criminal Procedure, considering the materials on record, **and is found to be in accordance with law, but the present case is now infructuous in view of Section 144(4) Cr.P.C.**
15. **CRR 615 of 2020 is thus disposed of being infructuous.**
16. No order as to costs.
17. All connected Applications stand disposed of.
18. Interim order if any stands vacated.
19. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
20. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)