

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1119 of 2019

Smt. Chinmoyee Panda

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Syed Nasim Aejaaz.

For the State : Mr. Manoranjan Mahato.

For the Opposite Party No. 2 : Mr. Saurit Kr. Sil,
Mr. Deb Kumar Chandra,
Ms. Aparupa Chakraborty.

Hearing concluded on : 23.08.2023

Judgment on : 20.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 01.04.2019 passed by the Learned Executive Magistrate at Sealdah, in the proceedings under Section 144(2) of Code of Criminal Procedure in M.P. Case No. 1775 of 2018 (in re: Smt. Chinmoyee Panda – Vs- Sri Arjun Gupta).
2. It is stated by the petitioner that she is the sole legal heir of Late Pijush Kanti Chatterjee and Late Gita Chatterjee being the parents of the petitioner.
3. The father of the petitioner died on 04.03.1997.
4. The mother of the petitioner died on 07.09.2013.
5. The petitioner is the sole owner of one fifth share of the premises measuring about 6 Cottah 12 Chittack (a little more or less), lying and situated at premises No. 38, Narkeldanga Main Road (Now renamed as Abul Kalam Azad Sarani), P.S. – Beliaghata, Kolkata – 700054.
6. The petitioner along with other co-owners of the above mentioned premises had executed a development agreement dated 20.09.2006 in favour of the opposite party no. 2 namely Arjun Gupta the, sole proprietor of M/S SUSAMA CONSTRUCTION for construction of new multi storied building at the said premises.
7. After the death of the mother of the petitioner, the petitioner has executed a supplementary development deed in favour of the opposite

party no. 2 namely Arjun Gupta who being the sole proprietor of M/S SUSAMA CONSTRUCTION for construction of the new multi storied building at the said premises on 23.04.2014.

- 8.** The opposite party no. 2 agreed to hand over the peaceful possession of one self contained flat on the first floor, south western side facing, measuring about 700 square feet being the carpet area a little more or less, after the completion of construction as mentioned in the supplementary deed and also verbally promised that he shall also pay Rs. 11,00,000/- (Rupees Eleven Lakhs only) in advance for the permission given by the petitioner for construction.
- 9.** As the opposite party no. 2 verbally promised to pay the said consideration amount, he paid Rs. 11,00,000/- (Rupees Eleven Lakhs only) to the petitioner as the consideration money, for giving permission of construction, through cheque dated 23.05.2014 against which the opposite party no. 2 also issued a money receipt dated 23.05.2014 in favour of the petitioner.
- 10.** It is clearly mentioned in the money receipt issued by the opposite party no. 2 that the opposite party has paid Rs. 11,00,000/- (Rupees Eleven Lakhs only) to the petitioner in exchange of and consideration for construction of a multi storied building on the site comprised within the premises no. 38, Narkeldanga Main Road (Now renamed as Abul Kalam Azad Sarani), P.S. – Beliaghata, Kolkata – 700 054.

11. The petitioner then came to know about the forgery of the opposite party no. 2 from some reliable sources.
12. Now the opposite party no. 2 has already sold the agreed portion of 700 square feet to some unknown person without the consent of the petitioner, though the construction has yet not been completed.
13. The petitioner then enquired about the forgery by the opposite party no. 2 from various sources and when the petitioner and her family members became sure about the same, the petitioner went to the opposite party no. 2 for asking him about his wrong doings.
14. It is also stated that the opposite party is also illegally constructing the new multi storied building without any proper sanction plan from the competent authority.
15. The opposite party no. 2 also misbehaved with the petitioner on 22.12.2018 near his residence.
16. On 23.12.2018 the petitioner again went to meet the opposite party no. 2 at the said above mentioned scheduled premises where the construction is being done at present, the opposite party no. 2 again misbehaved and threatened the petitioner with life risk and also used filthy abusive language towards the petitioner.
17. **Mr. Syed Nasim Aejaz, learned counsel for the petitioner** has submitted that the petitioner only demanded the agreed share of 700 square feet self contained flat on the first floor from the opposite party

no. 2 but the opposite party no. 2 is constantly avoiding and misbehaving with the petitioner.

- 18.** The petitioner and her family members apprehended serious breach of peace at the instance of the opposite party who was regularly threatening her with dire consequences and as a result serious tension is prevailing at the locals.
- 19.** The petitioner also reported the matter to Beliaghata Police Station vide G.D.E. no. 2368 dated 23.12.2018.
- 20.** The petitioner finding no alternative moved an application under Section 144(2) of the Code of Criminal Procedure 1973 before the Learned Executive Magistrate at Sealdah, which was numbered as M.P. Case No. 1775 of 2018.
- 21.** The Learned Executive Magistrate was pleased to pass an order on 24.12.2018 inter alia directing the Officer-in Charge Beliaghata Police Station to submit a report on 21.01.2019 and also to see that no wrongful act be committed by anybody. Since the opposite party no. 2 did not stop carrying out the construction work, the petitioner was compelled to put up the matter on 21.01.2018 and on the application being put up, the Learned Magistrate was further pleased to pass an order directing the Officer-in-Charge Beliaghata Police Station to see that any type of illegal acts not be done by opposite party no. 2 and fixed the next date on 04.02.2019. On the said date the Officer-in-Charge Beliaghata Police Station submitted the report.

- 22.** The petitioner filed a petition and challenged the said police report and also prayed for extension of the interim relief under Section 144(5) of the Cr.P.C. The Learned Magistrate fixed the matter for hearing on the police report on 01.04.2019. On 01.04.2019 the Learned Executive Magistrate without hearing the parties at length and on the basis of the Hazira filed by the Learned Advocate of the opposite party no.2 dropped the proceedings.
- 23.** It is stated that the Learned Magistrate findings on the said order passed merely on the basis of police report is perverse and it will be used against the petitioner in the Title Suit filed by the petitioner against the opposite party no.2 where in the subject matter in the deed of conveyance executed by the opposite party no.2 in respect of the property is in question and the same is pending before the Learned Civil Judge Junior Division, 3rd Court at Sealdah.
- 24.** It is further submitted that the legal position is that the reasons assigned by the Learned Magistrate in passing the order will damage the case of the petitioner in the Civil Suit pending before the Learned Civil Judge (Junior Division) at Sealdah.
- 25.** That the order passed in proceeding under Section 144(2) of the Code of Criminal Procedure in M.P. Case No. 1775 of 2018 thus being bad in law is liable to be quashed and the order impugned be set aside.
- 26. Mr. Manoranjan Mahato, learned counsel has represented the State.**

27. Mr. Saurit Kumar Sil, learned counsel for the opposite party no. 2

has submitted that the order revision is in accordance with law and need no interference as the statutory period of the said order has expired and the proceedings have been dropped by the Learned Magistrate.

28. The order under revision is as follows:-

*“M.P. Case No. 1775 of 2018
U/S 144(2) Cr.P.C.
Smt. Chinmoyee Panda -Vs- Sri Arjun Gupta.
Dated : 01.04.2019*

*Both parties filed Hazira First party pray for time P.R. is this
- It appears from report of O/C Beliaghata that Firstly, O.P.
obtained a Sanctioned Plan from KMC authority.*

Secondly, property tax is in the name of O.P.

*Thirdly no notice of illegal construction has been received by
P.S.*

*Fourthly OP also provided the copy of deed of convenience
which was duly registered at the office of the Deputy Registrar –
III Alipore, South 24 Parganas.*

Fifthly, the matter is civil in nature.

Sixthly, statutory period is over.

Hence the case is dropped & filed.

**Sd/-
Executive Magistrate at Sealdah”**

29. 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 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 human life, health or safety, or a disturbance of the public tranquility, or a riot, of 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."

- 30. From the materials on record,** it is evident that the order under revision is no more in force having been dropped and the statutory period also being over. But the learned counsel for the petitioner has submitted that the observations of the executive Magistrate shall prejudice his case in the title suit and he shall suffer irreparable loss and injury.
- 31.** It also appears that the total proceeding has been dropped as the statutory period is over. The proceeding is no more in force. As such the observations of the executive Magistrate, if required or relied upon **are subject to proof by way of evidence, adduced in accordance with law, before the respective Court/Courts.**
- 32. Section 144 Cr.P.C. requires the Magistrate to state the material facts of the case, which in this case is on the basis of the police report and as such the said order under revision being in accordance with law requires no interference by this Court.**
- 33. Accordingly the revision is disposed of with the direction that the Civil Court shall dispose of the suit without being influenced by the observations in the order under revision, of the Learned Executive Magistrate.**
- 34. CRR 1119 of 2019 is thus disposed of.**
- 35.** All connected applications, if any, stands disposed of.
- 36.** Interim order, if any, stands vacated.

- 37.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 38.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)