

August 2, 2023
AD – 15
Ct. 34
SG

*CRR 1884 of 2022
with
CRAN 1 of 2022
CRAN 6 of 2023*

*Tapan Kumar Mondal
-versus-
The State of West Bengal and another*

Mr. Soumik Pramanick
... for the petitioner.

Mr. Tanmoy Kumar Ghosh
Ms. Sonali Bhar
... for the State.

Mr. Subir Banerjee
Ms. Debarshee Bhattacharya
... for OP No.2.

The revisional application was preferred challenging the order dated 31.03.2022 passed by the court of learned Sub-Divisional Executive Magistrate, Gangarampur at Buniadpur, District-Dakshin Dinajpur in MP Case No.19 of 2021 under Section 147 of Cr.P.C.

The relevant part of the observations which led learned Executive Magistrate to pass the order is as follows:

“I have carefully gone through all the reports. Upon perusal of the petition of the petitioner, the written statement of the Opposite Party and written depositions of the witnesses of both the sides and also the reports submitted by the Inspector-in-Charge, Banshihari Police Station and the B.L.&L.R.O., Banshihari Block as well as the ld. APP of Buniadpur Court and considering all

aspects it has become very much clear to this Court that there exists a Pathway/Rasta since 40/45 years through the disputed plot being no. 307 of Mouza Aligara which belongs to the O.P. which is being used by the petitioner and many other persons of the locality including school going students for their ingress and egress to the National Highway No. 512. And said O.P., leaving only 2 ft / 2.5 ft. space, has unlawfully raised pucca construction of his building Parapet on said property and encroached a major part of said Pathway/Rasta which is in use of the petitioner and many other common people of the locality for more than 40/45 years causing inconvenience to them, which law does never permit and thus such unlawful obstruction needs to be removed from said Pathway / Rasta.”

Learned advocate for the petitioner submits that in respect of a private property, the private opposite party has created a background of public harassment and thereafter was able to obtain an order from the learned Executive Magistrate thereby attempting to encroach upon his property.

The order of the learned Executive Magistrate reflects that there is a possibility of public inconvenience and as such the obstruction which was alleged for movement over the passage smoothly was granted and the inspector-in-charge was ordered accordingly.

So far as the title of the property is concerned, the learned Executive Magistrate cannot pass any order which is permanent in nature. These orders are temporary orders without affecting the right and title of the parties. The said order would be valid for a period of 6 months. In the meantime the parties would be at liberty to approach the civil court to establish their rights.

The Inspector-in-Charge of Banshihari Police Station will not exert any force upon any of the concerned parties. It would be the civil court to decide whether the passage was a public pathway or it belonged to the present petitioner namely Tapan Kumar Mondal.

No further order is required to be passed in view of the observations made above.

With the aforesaid observations, CRR 1884 of 2022 is disposed of.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of such requisite formalities.

(Tirthankar Ghosh, J.)

