

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R 4112 of 2022

**Mahammad Khan
Vs.
The State of West Bengal & Anr.**

For the Petitioner:	Ms. Pampa Dey Dhabal, Adv., Mr. Nikhil Kumar Gupta, Adv.
For the Opposite Party No.2:	Mr. Imtiaz Ahmed, Adv., Mrs. Ghazala Firdaus, Adv., Mrs. Smita Saha, Adv., Mr. Sk. Saidullah, Adv., Mr. Mithun Mondal, Adv., Mr. Md. Arsalan, Adv.
For the State:	Mr. Md. Anwar Hossain, Adv., Mr. Mirza Firoj Ahmed Begg, Adv.

Heard on: 03 January, 2023.

Judgment on: 03 January, 2023.

BIBEK CHAUDHURI, J. : –

1. Affidavit of service kept with the record.
2. An order dated 1st November, 2022 passed by the learned Executive Magistrate, Arambagh, Hooghly in M.P Case No.1090 of 2022 under Section 144(2) of the Code of Criminal Procedure is under challenge in the instant revision.
3. It is the case of the petitioner that he is the owner of a piece of land admeasuring 33 decimal out of 104 decimal of land situated in khatian

No.378, R.S and L.R & L.R dag No.937 of mouza -Borosal Beltala under the police station Goghat, in the district of Hooghly by purchase. The opposite party No.2 claiming to be the foster son of the husband of one Ayesha Khatun erstwhile owner of the aforesaid plot of land has been trying to obstruct the petitioner in his cultivation and enjoyment of the said property on the strength of fictitious Record of Rights. The petitioner therefore filed a suit for declaration and permanent injunction before the learned Civil Judge (Junior Division), 1st Court which was registered as Title Suit No.114 of 2019 against the opposite party No.2. In said suit petitioner's prayer for temporary injunction was allowed by the learned trial judge vide order dated 13th July, 2022 restraining the defendants/opposite party No.2 and others from interfering with peaceful possession of the petitioner over the aforesaid property or from obstructing him in cultivation. Suppressing the order of the Civil Court, the opposite party No.2 filed an application under Section 144(2) of the Code of Criminal Procedure which was registered as M.P Case No.1090 of 2022.

4. The Executive Magistrate without drawing up any proceeding directed the police authority attached to Goghat Police Station to keep a close vigil over the area to maintain law and order and also to see that harvesting of the paddy by the petitioner on the disputed land and his possession over the said land may not be disturbed by the opposite party/petitioner herein.

5. The petitioner being aggrieved has filed the instant revision. It appears from the order passed by the learned Civil Judge (Junior Division), 1st Court at Arambagh that prima facie ownership and possession of the petitioner was established in the Civil Court. The Civil Court passed an order of injunction restraining the defendants from interfering with peaceful possession of the plaintiffs upon the suit property or from obstructing in its cultivation by the plaintiffs or from making any construction upon it till the disposal of the suit.

6. The learned Executive Magistrate without considering the order passed by the Civil Court at the interim stage passed the impugned order on 1st November, 2022.

7. The impugned order dated 1st November, 2022 being contrary to the order of the Civil Court is liable to be set aside.

8. Accordingly the instant criminal revision is allowed on contest.

9. The impugned order dated 1st November, 2022 is set aside.

(Bibek Chaudhuri, J.)