

25.11.2024

Sl. No.: 8

Court No.30
BM

CRR 2519 of 2022

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IA No.: CRAN 2 of 2023

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IA No.: CRAN 4 of 2023

Pratap Maity & Anr.

Vs.

Mohan Mondal & Anr.

Mr. Manoranjan Jana
Mr. Radheshyam Maiti
Ms. Mitali Jana

... for the petitioner

Mr. Amit Bikram Mahata

... for the opposite party no.1

1. The present revisional application has been preferred against an order dated 16.06.2022 passed by the learned Executive Magistrate, Kakdwip, South 24 Parganas in MF 519/2015 under Section 147 of the Code of Criminal Procedure.

2. **By the said order the learned Executive Magistrate held as follows :-**

".....15.06.2022 Both parties file hazira.

*16.06.2022 **CR is put up by 1st party with petition.** The pathway in contention needs repairing. Monsoon is round the corner. Necessary repairing of the pathway to be ensured by all concerned....."*

3. It appears that the order has been passed by way of a **'put up' petition** with no notice given to the opposite party and the learned Magistrate proceeded to direct repairing without hearing the other side.

4. **From the Police report on record, it appears that the Police has clearly stated before the Court as follows:-**

*"During enquiry it came to light that, the petitioner used to move on the boundary area of a **paddy land that belong to the name of Pratap Maity s/o Lt, Paresh***

*Maity & Swapan Das s/o Satrugnu Das all of Vill+P.O, Paschim Sripatinagar at present is way is under water due to heavy rain. **The Petitioner has alternative way** to move out, but villagers protest the matter due to said land is opposite party. **However BL & LRO Pathar Pratima is the appropriate authority to state about the status and possession of the schedule land.***

Still there is every possibility of serious breach of peace at the schedule landed property.”

5. It is also on record that the dispute between the parties relates to their land and a civil suit is pending between the parties being Title Suit No.4 of 2015 before the learned Civil Judge, Junior Division, Kakdwip.

6. Considering the said facts and materials on record, the learned Magistrate should have served a notice upon the opposite party before passing the order under revision and without issuing any notice, on the record being put up, passed an order which is clearly not in accordance with law.

7. Furthermore as the dispute between the parties is subjudice before a civil court, the learned Magistrate is not empowered to direct anything to be done on a property which prima facie is a private property and is subjudice before a competent civil court for adjudication.

8. The order under revision thus not being in accordance with law, is clear abuse of process of law and is accordingly, set aside in the interest of justice.

9. CRR 2519 of 2022 is allowed.

10. The order dated 16.06.2022 passed by the learned Executive Magistrate, Kakdwip, South 24 Parganas in MF 519/2015 under Section 147 of the Code of Criminal Procedure, **is quashed.**

- 11.** All applications connected thereto stand disposed of.
- 12.** Interim order, if any, stands vacated.
- 13.** Let a copy of the order be sent to the learned Executive Magistrate Court at once, for expeditious disposal of the case in accordance with law.
- 14.** Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities

(Shampa Dutt (Paul), J.)