

January 30, 2024
AD 88
Ct. No.14
SG

WPA 25494 of 2023

Brindaban Gharami
vs.
The State of West Bengal and others

Mr. T.K. Halder
... for the petitioner.

Mr. K.J. Yusuf
Mr. Parikshit Goswami
... for the State.

Mr. Sagnik Chatterjee
... for the respondent No.6.

Leave is granted to amend the cause-title so far as the name of the respondent No.6 is concerned.

Report filed by the State is taken on record.

Learned advocate for the petitioner submits as follows. The petitioner is a co-sharer of the property along with others. The private respondent is trying to change the nature and character of the property and is disturbing the petitioner's possession of the same. By suppressing material facts, the private respondent filed an application under Section 144 of Cr.P.C. Learned Executive Magistrate passed a restraining the order on the basis of such untested averments. In fact, learned Executive Magistrate acted like a civil court in passing such order. However, the police were directed to maintain peace and reports were called for from the police and the concerned BL&LRO.

Learned advocate for the private respondent denies the allegations made in the writ petition and submits that there is nothing wrong in the order passed by the learned Executive Magistrate.

Learned advocate for the State relies on the report and submits that on the complaint of the petitioner, a proceeding has been initiated under Section 107 of the Code. The police have also filed a report in the proceedings under Section 144 of the Code.

It appears that a proceeding is pending before the learned Executive Magistrate under Section 144 of Cr.P.C. Reports have been called for from the police and the BL&LRO.

It is true that a Learned Magistrate while exercising jurisdiction under Section 144 of the Code cannot act like a civil Court.

Let the learned Executive Magistrate act strictly in terms of the mandate of Section 144 of Cr.P.C and conclude the proceeding expeditiously and in accordance with law.

The petitioner shall be at liberty to file an application for modification of the order dated 11.10.2023.

With these observations, the writ petition is disposed of.

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

[Jay Sengupta, J.]