

01.05.2024

Sl. No.: 11

Court No.30

BM

CRR 4538 of 2023

Pravanjan Samanta

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Sobhan Majumder,
Mr. K. D. Singh.

For the State : Ms. Rita Datta.

For the Opposite Party No. 2 : None.

- 1.** The present revision has been preferred against an order dated 11.10.2023 passed by the learned Executive Magistrate at Kakdwip, District-South 24 Parganas, in connection with MF Case No.1322 of 2022 pending before the learned Executive Magistrate at Kakdwip, District-South 24 Parganas.
- 2.** Vide the said order the learned Magistrate has directed the parties to file their affidavit in chief on the next date of hearing.
- 3.** Learned counsel for the petitioner being aggrieved has preferred this revision on the ground that though the opposite party no.2 has mentioned a government road in the schedule of his application under Section 147 of Cr.P.C., the learned Magistrate without considering the same has proceeded to record evidence.
- 4.** Affidavit of service filed showing due service upon the opposite parties be kept with the record.

5. In spite of due service there is no representation on behalf of the opposite party no.2.
6. As there is no representation on behalf of the State, Ms. Rita Datta, learned empanelled Advocate of the State present in court is appointed to represent the State.
7. Learned Public Prosecutor is requested to regularise her appointment.
8. On hearing the learned counsel for the petitioner and perusing the materials on record, Section 147 of Cr.P.C. is required to be reproduce here for convenience:-

“147. Dispute concerning right of use of land or water.”-(1)Whenever an Executive Magistrate is satisfied, from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.

Explanation.- The expression "land or water" has the meaning given to it in sub-section (2) of section 145.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, as far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such

right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub-section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1); and when in any proceedings commenced under sub-section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 145.”

9. Considering the nature of dispute before the learned Executive Magistrate, this court finds that the opposite party no.2 has prima facie invoked the appropriate provision under the Cr.P.C. but the learned Magistrate without calling for a Police report has asked the parties to put in their written statement.
10. Accordingly, the revisional application is disposed of with a direction upon the learned Executive Magistrate to call for a Police report as required under Section 147 of Cr.P.C. and on receiving the same along with the statement of the respective parties proceed with the case under Section 147 of Cr.P.C. Learned Executive Magistrate to dispose of the said case within a period of 60 days from the date of communication of this order.
11. **The revisional application being CRR 4538 of 2023 stands disposed of.**
12. All applications connected thereto stand disposed of.

- 13.** Interim order, if any, stands vacated.
- 14.** Let a copy of the order be sent to the learned trial court for compliance.
- 15.** 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.)