

11.12.2024
Item no.19.
Court No.30.
S. De

CRR No. 4533 of 2023

In the matter of : Tapan Kumar Maity.
.....Petitioner.

Mr. Manoranjan Jana,
Mr. Radhasyam Maiti, **...for the Petitioner.**

Mr. Dipankar Aditya,
Mr. R. Jana,
Ms. Tina Biswas,
...for the opposite party no.1.

1. The present revisional application has been preferred against an order dated 01.06.2023 passed in Criminal Revision No.06 of 2022. Where in the learned Additional Session Judge, 1st Court, Kakdwip, South 24-Parganas was pleased to affirm the order of the learned Executive Magistrate dated 20.01.2022.
2. **The order under revision was passed on the finding as follows :-**

“.....On the basis of that report Ld Executive Magistrate passed an order to remove the fencing. So from the materials on record it appears that it is a civil dispute and whether opposite party has any easement right on the path in question or not it is a civil dispute and it can be decided by the civil court only. Unless any specific order has been passed by the civil court to that effect the right of way of the petitioner/opposite party cannot be curtailed.....”

3. The order of the learned Executive Magistrate dated 20.01.2022 which was affirmed by the order under revision is as follows :-

“.....CR is put up by 1st party with a petition. CR is put up by 2nd party. Learned Adv. appeared vide vokalatnama with a petition. Gone through roughly the field enquiry

report submitted by the B.L. & L.R.O. Sagar. According to the field enquiry report from the time of the C.S. operation of the L & L.R. department C.S. Plot No.1237 was government road that means from that period there is existing easement right through the land. Hence it is ordered anyhow this easement right cannot be disturbed and all kind of fencing would be removed to ensure free ingress and egress. The O.C. Sagar kindly take necessary action. This case is dropped.....”

4. Section 147 Cr.P.C. reads as follows :-

“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 statement 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, so far as may be, apply in the case of such inquiry.

(3)If it appears to such Magistrate that such right exists, 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.”

5. Affidavit-in-opposition filed by the opposite party be kept with the records.
6. It appears from the materials-on-record that the learned Executive Magistrate exercised his right in the present case under Section 147(3) of the Cr.P.C. The provision of Section 147(4) Cr.P.C. is also available to the learned Executive Magistrate to decide the dispute in the present case.
7. This Court finds that the findings of the learned Additional Sessions Judge in the order under revision to the extent that the dispute between the parties is civil in nature, is Prima facie, in accordance with law and as such this Court is not inclined to interfere with the order under revision.
8. **CRR 4533 of 2023 is dismissed.**
9. All connected Applications, if any, stands disposed of.
10. Interim order, if any, stands vacated.
11. Copy of this order be sent to the learned Trial Court for necessary compliance.

- 12.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]