

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

**WPA 991 of 2024
IA No. CAN 1 of 2024**

M/s. Rajputana Realty Private Ltd. & Ors.

Versus

The State of West Bengal & Ors.

Mr. Suddhasatva Banerjee

Mr. Shaswat Nayak

Mr. Sumit Biswas

Mr. Raj Bhowmick

.....For the Petitioner.

Mr. Partha Sarathi Deb Barman

Mr. Debasish Mukhopadhyay

Ms. Madhushri Dutta

Mr. Soumyajit Dutta

Ms. Srishthi Sarkar

.....For the private respondents.

Ms. Tiana Bhattacharya

Ms. Rishita Chakraborty

.....For the respondent nos. 6 & 7.

Mr. Joyjit Chowdhury, AAG

Mr. P. Das

Mr. B. Bose

.....For the State.

Hearing Concluded On : 20.05.2024

Judgment on : 24.05.2024

Krishna Rao, J.:

1. The petitioners have filed the present writ application challenging the order passed by the Learned Sub-Divisional Magistrate, Sadar, Jalpaiguri under Section 144 of the Code of Criminal Procedure, 1973 dated 4th May, 2024..0
2. The petitioner no.1 is a company and the petitioner no.2 is one of the director of the petitioner no.1 company. As per the case of the petitioners, the petitioner no.1 by way of Deed of Indenture dated 7th August, 2023 and dated 23rd November, 2023, the petitioner no.1 had purchased some landed properties. The petitioner no.1 had also entered into several registered development agreements with several land owners for the purpose of developing such plots of land.
3. The petitioner says that the petitioner no.2 had purchased approximately 2 acres of land in his personal capacity in Khatian No. 1397 corresponding to L.R. Khatian No.189 with R.S. Plot No.123 corresponding to L.R. Plot No.98 within Mouza- Baropatia Nutanbas, JL No. 1, Sheet No. 2, Jalpaiguri and Jitendra Prasad Dubey has purchased corresponding to L.R. Khatian No.189 with R.S. Plot No.123

corresponding to L.R. Plot No.98 within Mouza- Baropatia Nutanbas, JL No. 1, Sheet No. 2, Jalpaiguri.

- 4.** The petitioner no.2 along with one Jitendra Prasad Dubey agreed to mutually develop the above property but due to several hindrances and disturbances caused by some third party development could not be carried out peacefully. The petitioner no. 2 along with Jitendra Prasad Dubey instituted a suit against the third parties for perpetual injunction before the learned Court of Civil Judge, Junior Division at Jalpaiguri being T.S. No. 542 of 2022. The Learned Court had on 21st November, 2022, has granted ad-interim injunction restraining the defendants from causing interference of the petitioner no.2 and Jitendra Prasad Dubey. The order of injunction was time to time varied or modified and as on date there is an order of status quo upon the suit schedule property.
- 5.** The petitioners says that the suit schedule property in T.S. No. 542 of 2022 are not the under the ownership and possession or occupation of the petitioner no.1. The disputed land is under the personal and independent ownership of the petitioner no.2.
- 6.** On 18th April 2024, the Inspector-in-Charge of the Kotwali Police Station had served a notice to one Jitendra Prasad Dubey wherein it was informed that the as per the information slip received by the police from one Shri Ranjit Das in connection with T.S. No. 542 of 2022 in which by an order dated 31st August, 2023, the Civil Court has directed

the plaintiffs and the defendants to maintain status quo over the schedule property in respect of nature, character and possession of the same till the disposal of the suit.

- 7.** The petitioner says that suit property involved in T.S. No. 542 of 2022 is not the development property of the petitioners but even the Police Authorities arrested the workers of the petitioners and interfering with the right of the petitioner no.1 in the property.
- 8.** On 6th May, 2024, the order passed by the respondent no.5 under Section 144 of the Code of Criminal Procedure, 1973, dated 4th May, 2024, was pasted on the conspicuous location of the plots of the land of the petitioners and the same was received by the labours of the petitioner no.1. The petitioners say that the respondent no.5 has passed the impugned order dated 4th May, 2024, on the prayer of the respondent no.4.
- 9.** Mr. Suddhasatva Banerjee, Learned Advocate representing the petitioners submits that the respondent no.5 has passed the impugned order based on the several FIR's but all the FIR's are of 2022 and 2023. He submits that if there is threat in the locale and in and around the property, it is the duty of the police authorities to maintain peace and security and not to injunct the petitioners from carrying out development work on their own property.
- 10.** Mr. Banerjee submits that in an proceeding under Section 144 of the Code of Criminal procedure, 1973, the Executive Magistrate cannot

decide the title of the parties. He submits that the BL and LRO cannot act as a Civil Court to settle and decide purported disputes of title as appearing in the impugned order.

11. Mr. Banerjee submits that the police authorities have over-reached its authority under law by creating unnecessary impediment on the part of the petitioner no.1 to carry out its lawful development work.
12. Mr. Banerjee submits that schedule of property in T.S. No. 542 of 2022 and the disputed lands are independent, mutually exclusive, different, distinct and not interconnected with the land of the petitioner no.1.
13. Mr. Banerjee submitted that the impugned order passed by the respondent no.5 is without an application of mind and not proper appreciation of facts that are manifest on the face of record.
14. Mr. Banerjee relied upon the judgment reported in **1935 SCC OnLine Cal 296 (Maniruddin Bepari -vs- The Chairman of the Municipal Commissioners)** and submitted that it is a fundamental principle of law that a person has the capacity to do all lawful thing unless his capacity has been curtailed by some rule of law.
15. Mr. Banerjee further relied upon the judgment reported in **(1982) 1 SCC 71 (Gulam Abbas and Others -vs- State of Uttar Pradesh and Others)** and submitted that the exercise of power must be in aid of those rights and against those who interfere with the lawful exercise thereof and even in cases where there are no declared or established

rights the power should not be exercised in a manner that would give material advantage to one party to the dispute over the other but in a fair manner ordinarily in defence of legal right, if there be such and the lawful exercise thereof rather than suppressing them.

16. *Per contra*, Mr. Joyjit Chowdhury, Additional Advocate General, representing the State submits that respondent no.4 had submitted an application before the respondent no.5 praying for initiation of proceeding under Section 144 of the Code of Criminal Procedure, 1973, in connection with ongoing dispute surrounding a piece of land located at Nathur Char under the Baropatia Gram Panchayat, Sadar Block, Jalpaiguri and on receipt of the application, the respondent no.5 had called for a report from the Block Land and Land Reforms Officer, Jalpaiguri and on 2nd April, 2024, the BL&LRO had submitted a report.
17. On receipt of the report and after considering the request made by the respondent no.4, the respondent no.5 finds that there exist grounds to commence proceedings under Section 144 of the Code of Criminal Procedure, 1973 and interim order is passed.
18. Mr. Chowdhury submits that in the interim order, the respondent no.5 has categorically stated that any person aggrieved with the order or party to this dispute are at liberty to submit detailed report with documents of conversion, mutation and related documents as they rely upon in the proceedings within 19th May, 2024.

- 19.** Mr. Chowdhury submits that the respondent no.5 has passed the order under Section 144 of the Code of Criminal Procedure, 1973, as the respondent no.5 found apprehension of breach of public order and peace, apprehension of danger to human life, health and property.
- 20.** Mr. Chowdhury submits that the respondent no.5 had given liberty to file all the documents but the petitioner without approaching the respondent no.5 have filed this present writ application.
- 21.** Mr. Chowdhury submits that the writ application filed by the petitioner is not maintainable under law and the same is liable to be dismissed.
- 22.** Mr. Chowdhury submits that on 22nd day of April 2024, the people of the locality submitted a representation to the BL & LRO Sadar Jalpaiguri, stating that the disputed land is alluvial land, and initially, the land was recorded as such. The complainants submitted that these alluvial lands were subsequently recorded in different LR Khatians, which they deemed illegal. They demanded correction of the records of rights. Copies of the said complaint were also submitted to the District Magistrate and the Superintendent of Police. As per direction of the Superintendent of Police, Jalpaiguri, a local inquiry was conducted. In the course of the inquiry, it was found that the land in question is indeed alluvial land, as demanded by the local people, and the public at large never accepted the raiyati status of the land. The land, in fact, is alluvial land or to be treated as vested land, subject to disposal by the

State Government, as affirmed by all prudent persons of the locality to the enquiring officer.

- 23.** Mr. Chowdhury submits that one Ranjit Das provided an Order Sheet No. 9 dated 31st August, 2023 in connection with, T.S. No. 542 of 2022 where Learned Civil Judge, Junior Division, Jalpaiguri wherein the Learned Civil Judge passed an order that “the Plaintiffs and Defendant No. 12 are directed to maintain status quo over the schedule property in respect of the nature, character and possession of the same till disposal of the case”.
- 24.** Mr. Chowdhury submits that again on 24th April, 2024, an Order Sheet No. 12 dated 24th April, 2024 was received from the Court of Ld. Civil Judge, Junior Division, Jalpaiguri in T.S. No. 542 of 2022 where Ld. Court passed an order that the petition for police protection is allowed ex parte without costs. The Inspector-in-Charge of Kotwali Police Station, Dist. Jalpaiguri is directed to comply this order and also further directed to look into the matter for which the Court's order dated 31st August, 2023 will not be violated in any manner causing any serious breach of peace there.
- 25.** Mr. Chowdhury submits that on 25th April, 2024, the Plaintiffs of the said Title Suit sent some persons armed with lathi, Bow & Arrow and entered into that land as per information and after getting the information the local people were started assemble near Nathuar Char this refers to Kotwali PS GDE No. 1909 dated 25th April, 2024. The

Mobile Officer along with force rush to the spot to maintain peace and tranquility of that area and observed a huge numbers of people were assembled to protest against the people who entered into that disputed land. The mobile officer rescued 4 persons and brought at PS and subsequently they were released with an instruction to maintain peace of that areas. On 27th April, 2024, again the plaintiffs sent 15/16 people to work on that disputed land and violated the order of Learned Court. This refers to Kotwali PS GDE No. 2091 dated 27th April, 2024. After getting this information the Zonal Officer and force went to the Nathuar char and observed there are every possibilities of breach of peace. Accordingly the police arrested 10 people who entered into the land and violated the order of Learned Court, repeatedly. Over these issues started Kotwali PS Case No. 304/24 dated 27th April, 2024 U/S 188/143/447/120B IPC.

- 26.** Mr. Chowdhury submits that the plaintiffs once again sent some people to work on that land, which led to assemble of local people and tensions escalated. Once again, the Zonal Officer and forces rushed to the spot and observed individuals working on the land, who fled upon seeing the police vehicle. Only one person was detained and subsequently arrested. The petitioners and their team repeatedly violated the orders of the Ld. Court of Junior Division, Civil Court, Jalpaiguri, and their activities have been causing tension in those areas. More cases related to this land issue have been recorded, and investigations are ongoing.

27. Heard the Learned Counsel for the respective parties, perused the materials on record and the judgment relied by the petitioner. The respondent no.4 being the Inspector-in-Charge of the Kotwali Police Station, Jalpaiguri, had submitted a request to the respondent no.5 to pass an order under Section 144 of the Code of Criminal Procedure, 1973, stating the facts that there is a dispute with respect to the two landed properties namely:

“The Land Scheduled :

1. Mouza – Baropatia Nutan Bas

Total Land – 2172 decimals

J.L. No. 01, Sheet No. 03, R.S. Khatian No. 1442, R.S. Plot No. 35, 35/138, 37, 38, 36, 103.

2. Mouza – Baropatia Nutan Bas

J.L. No. 01, R.S. Khatian No. 1382, R.S. Plot No. 223, 230, 190, 206 recorded in LR Khatian No. 38 corresponding to LR Plot No 162, 163, 164, 165, 166, 167, 260, 261, 262, 266, 267.

*Both Gram Panchayat – Baropetia Nutan Bas,
District – Jalpaiguri.”*

In the application, the respondent no.4 has also described about the details of nine FIR's which are as follows:

*“1. Kotwali PS Case No. 749/22 Dt. 03.11.22 U/S
447/506/34 IPC*

*2. Kotwali PS Case No. 750/22 dt. 03.11.22 U/S
447/506/34 IPC*

*3. Kotwali PS Case No.96/23 dt. 10.02.23 U/S
341/323/325/379/427/34 IPC*

*4. Kotwali PS Case No. 97/23 dt. 10.02.23 US
341/323/325/354B/34 IPC*

*5. Kotwali PS Case No. 101/23 dt. 13.02.23 U/S
341/325/307/506/34 IPC*

6. Kotwali PS Case No. 102/23 dt. 13.02.23 U/S 341/325/307/379/34 IPC.

7. Kotwali PS Case No. 103/23 dt. 13.02.23 U/S 448/436/307/34 IPC

8. Kotwali PS Case No. 266/34 dt. 11.04.24 U/S 447/323/427/506/34 IPC

9. Kotwali PS Case No. 290/24 dt. 23.04.24 U/S 341/354 IPC.”

- 28.** The respondent no.5 has called for report from the BL & LRO but the respondent no.5 found that in the said report, the BL & LRO has not provided details of the right, title and interest of the plots in disputes for specific order of promulgation and had called for detailed enquiry report with field verification from the Land Officials. The respondent no.5 has not satisfied with the report of the BL & LRO but inspite of the same has passed the impugned order which areas as follows:

“Whereas, report has been received from Block Land and Land Reforms Officer, but not much in details as to right, title or interest of the plots in dispute, for a specific order to be promulgated, hence a detailed enquiry with field verification from Land Officials are imperative.

Hence, I am satisfied that grounds exist to commence proceedings under section 144 of the Criminal Procedure Code of 1973. Accordingly, a proceedings is being drawn up under clause (1) of section 144 of the Code of Criminal Procedure, 1973 and till the matter is disposed of through a final order, the following direction are made in the interest of public order and tranquility

1) There shall be no activities related to land that may disturb the tranquility. as defined by the prayer, in the specific area mentioned in above mentioned above Nathuar Char under Baropatia

Nutanbas Gram Panchayat, Sadar Block and Kotwali Police Station, save and except farming activities government institutions, Anganwadi or school, places of public utility or ceremonies of long standing custom related to family or religion.

2) Block Land and Land Reforms Officer, Sadar will ensure detailed enquiry to determine the right, title and interest is undertaken and a report is submitted within 15 days hence i.e. 19th May, 2024.

3) Any person aggrieved by this order or party to this dispute are at liberty to submit detailed order with documents of conversion, mutation and related documents as they will rely upon in this proceedings within 19th May, 2024.

4) The order shall be served upon all concerned and published in public places by the Inspector-in-Charge of Kotwali Police Station, Dist- Jalpaiguri.

5) The order shall be enforced by the Inspector-in-Charge of Kotwali Police Station without resorting to use of force.

29. It is the specific case of the petitioners that the Civil Suit being T.S No. 542 of 2022 is unrelated to the plots of the land which is the subject matter of the present writ application.

30. Set out Section 144 of the Code of Criminal Procedure, 1973, reads as follows :

“144. Power to issue order in urgent cases of nuisance or apprehended danger.- (1) *In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is*

desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed Ex-parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person

aggrieved, rescind or alter any order made by it under the proviso to Sub-Section (4).

(7) Where an application under Sub-Section (5), or Sub-Section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.”

- 31.** As per the submissions of the Additional Advocate General, the people of the locality submitted a representation to the BL & LRO but in the report, the BL & LRO has not mentioned about the same. In the report, the BL & LRO submitted that L.R. Plots 36, 58, 55, 49, 64, 76, 77, 78, 74, 72, 83, 82, 133, 113, 114, 162, 163, 164, 165, 166 and 167 under the possession of the local peoples and the total area is used as fellow. The BL & LRO also stated in the report that L.R. plots Nos. 260, 261, 262 and 267 is used as private tea garden. The said BL & LRO had submitted the report of 25th April, 2024 after the field enquiry by the Revenue Inspector but in the report of the BL & LRO has not stated about any dispute over the said plots of land. The Executive Magistrate in the impugned order has also recorded that the Block Land and Land Reform Officer has not submitted much details as to the right, title or interest of the plots in dispute but inspite of the same, the Executive Magistrate has passed the impugned order.

- 32.** The Executive Magistrate in the impugned order, has recorded that the Police Officer has inferred in his report that Blood Shed could not be ruled out in this land disputed matter and the situation in the area is very tensed but in the application filed by the Police Officer i.e. the Inspector-in-Charge, Kotwali P.S. Jalpaiguri dated 25th April, 2024 does not find any report or any supporting document with respect to the said allegation, though the report of BL & LRO is otherwise.
- 33.** The Executive Magistrate in the report directed the Block Land and Land Reforms Officer, Sadar to ensure detailed enquiry to determine the right, title and interest but the Executive Magistrate failed to appreciate that the Block Land and Land Reform Officer cannot decide right, title and interest of any of the property.
- 34.** The object of the provisions of Section 144 of the Cr.PC. is to invoke only in grave circumstances for maintenance of public peace. The efficacy of this provision is to prevent some harmful occurrence immediately and therefore, the emergency must be sudden and the consequence sufficiently grave. The provision of Section 144 cannot be resorted to merely on imaginary or likely possibility or likelihood or tendency of a threat, as the executive power, to cause a restriction on a Constitutional right within the scope of Section 144 of the Cr.PC. has to be used sparingly and very cautiously.
- 35.** The Executive Magistrate is not expected to invoke the power under Section 144 of the Cr.PC. in a routine manner. There must be material

before him to show that a situation has come which required immediate action to prevent breach of peace.

- 36.** In the present case, the respondent no. 4 i.e. the Inspector-in-Charge, Kotwali, P.S. Jalpaiguri, has mentioned about the 9 cases which were registered in the said police station, from the month of November, 2022 to 23rd April, 2024 and all the cases are cognizable in nature and the police has already investigating the matter. The application filed by the Officer-in-Charge does not reveals any emergent occasion wherein immediate an order under Section 144 of the Cr.PC. is required to be passed to prevent any disturbance of the public tranquility or a riot or any affray.
- 37.** The Executive Magistrate has passed the impugned order only on the basis of the land dispute between the parties. It is also admitted that a civil suit is also pending wherein an order of status quo is passed and the Learned Civil Court has also passed an order directing the Police Authority to see the order of status quo should be maintained.
- 38.** As per the submission of the Learned Additional Advocate General, the plaintiffs and their team repeatedly violated the order passed by the Learned Civil Judge, Jalpaiguri but by an order dated 24th April, 2024, the Learned Civil Judge, Junior Division directed the Inspector-in-Charge of Kotwali Police Station to comply with the order and also directed to look into the matter so that order of the Court dated 31st August, 2023, will not be violated. Instead of submitting of report by

the respondent no. 4 to the Learned Court of Civil Judge, had made prayer before the Executive Magistrate to pass an order under Section 144 of the Cr.P.C.

The respondent no. 4 has not informed about the facts of civil suit, order of injunction and direction upon the respondent no. 4 by the Civil Court to the respondent no. 5.

39. As regard to the question of maintainability of the writ application, in the case of ***Gulam Abbas (supra)***, the Hon'ble Supreme Court held that if the order passed under Section 144 of the Cr.P.C. violates or infringes any fundamental right, the same is amenable to writ jurisdiction. In the present case also the Executive Magistrate has passed the impugned order under Section 44 of the Cr.P.C. in general by infringing the rights of the petitioner.
40. This Court finds that the impugned order passed by the Learned Executive Magistrate by invoking the provisions of Section 144 is not covered under the parameters of the Section 144 of the Cr.P.C. and only on the request of the respondent no. 4, the respondent no. 5 has passed the impugned order in general.
41. In view of the above, the impugned order dated 4th May, 2024 passed by the respondent no. 5 is set aside and quashed.
42. **WPA No. 991 of 2024** thus **allowed**. Accordingly, **CAN 1 of 2024** is **disposed of**.

- 43.** All the parties have argued the matter on merit and thus without calling for affidavits, the matter is disposed of at the motion stage.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)