

16.09.2025
Item No.7
Ct. No. 446
KS

C.R.R. 387 of 2025

In the matter of: **Panchanon Shaw**

..... Petitioner

Md. Ashraf Ali

....For the Petitioner

Mr. Tanmoy Chowdhury

Mr. Aninda Bhattacharya

.....For the O.P.

1. Affidavit of service filed by the petitioner in Court today and the same be kept with the record.
2. This instant criminal revisional application has been filed under Section 528 of the B.N.S.S., 2023 against the order dated 9th January, 2025 passed by the learned Additional District & Sessions Judge, 1st Court, Jhargram in Criminal Revision No.10/2023 corresponding to CNR No.WBWM 06000839/2023 whereby the order dated 17th May, 2023 passed under Section 147 of the Code of Criminal Procedure passed by the learned Executive Magistrate, Jhargram was set aside.
3. The fact of the case in a nutshell is that an application was filed by the petitioner on 11th January, 2023 under Section 144(2) of the Code of Criminal Procedure against the present opposite parties before the learned Executive Magistrate, Jhargram alleging, *inter alia*, that the scheduled property as was recorded in the Record of Right being used by the father of the petitioner as solitary private path for ingress and egress from the residential house for a period of more than 50 years from the lifetime of the father of the petitioner to be encroached upon by the opposite parties by constructing a fence on 5th January, 2023. Subsequently, after raising objection, the opposite party no.1 has put the pad-lock on the gate of the petitioner and blocked the said private path and stored bricks for the purpose of making house thereon. That apart, further allegation was levelled against the present petitioner to threaten opposite party no.1 and his brother with dire consequence.
4. The learned Executive Magistrate by his order dated 11th January, 2023, called for the reports from the B.L. & L.R.O., Jamboni and the Officer-in-Charge, Jamboni Police Station and also directed to serve copy of the application upon the opposite parties.

5. On 5th April, 2023, petitioner filed application before the learned Executive Magistrate with a prayer for conversion of the said application under Section 144(2) of the Code of Criminal Procedure and in compliance thereof, the proceeding was converted into the same and the matter was enquired into by the R.O G.P. No.10 and A.S.I., Jamboni Police Station and after enquiry, both of them have filed their enquiry reports.
6. During enquiry, a written statement was also filed before the B.L. & L.R.O. by the opposite party no.1. Subsequently, on the date of hearing of the matter, the opposite party was not present and the learned Executive Magistrate proceeded with the matter after examining the petitioner and dispose of the matter in favour of the petitioner.
7. Being aggrieved by and dissatisfied with this, the revisional application was filed by the opposite party before the learned District & Sessions Judge, Jhargram, which was taken up for hearing by the learned Additional District & Sessions Judge, 1st Court, Jhargram by an order dated 9th January, 2025 allowed such revisional application after setting aside the order passed by the learned Executive Magistrate, Jhargram on 17th May, 2023.
8. The learned Court observed while passing such setting aside order that the present opposite parties were not given an opportunity of hearing and there was violation of the principles of *audi alteram partem* and therefore, the order suffers from gross illegality.
9. It is submitted by the learned advocate appearing for the petitioner that since the proceeding is pending before the learned Executive Magistrate, the principle of *audi alteram partem* is not applicable. More so, despite receiving the notice, the opposite parties herein did not turn up. So, they intentionally did not appear before the learned Executive Magistrate to delay and drag the proceeding and therefore, the learned Revisional Court has erred in setting aside such order.
10. Per contra, the submission advanced on behalf of the learned advocate appearing for the opposite party that no opportunity of hearing was given to them and more so, the matter relates to right, title and interest and usage of a passage by the parties herein.
11. That apart, the learned Magistrate cannot declare under Section 147(3) of the Code of Criminal Procedure “that the first party does have the right of easement on the land in question and thereby prohibit any interference

with the exercise of the right of the first party and his family members on the land by the opposite party.”

12. It is submitted by the learned advocate that the undisputed fact, which is apparent is that the matter arises out of a civil dispute relates to usage of a common passage and the documents, which record their respective right in respect of the disputed property and the Civil Court is the appropriate forum in order to mitigate these types of issues, however, before the learned Executive Magistrate on two occasions, the present opposite parties did not turn up and the learned Executive Magistrate examines only the petitioner herein and thereby made such above observation, which this Court finds should not have been done, since it relates to the dispute, where the evidence must come by both the parties.
13. Having heard the submissions of both the learned advocates the relevant fact as emerging from the record is that the learned Executive Magistrate passed a prohibitory order after assessing on the basis of the report that the petitioner is having a right of easement on the basis of the evidence adduced by the petitioner only without ascertaining whether there is any apprehension of breach of peace is there or not.
14. The application under Section 147 of the Code of Criminal Procedure relates to apprehension of breach of peace only in respect of the dispute between the parties concerning use of land or water. The learned Executive Magistrate is empowered to invoke the jurisdiction under Section 147 of the Code of Criminal Procedure only for the purpose of preventing breach of peace. It is a settled law that this provision does not provide any permanent relief in connection with a property as no final adjudication can be made by the learned Executive Magistrate and competent Civil Court is the appropriate authority.
15. In view of the above, since the main grievance of the present opposite party is that they were not given an opportunity of hearing, which was further affirmed by the learned Revisional Court and this Court also does not find any infirmities in the said order for interference. Therefore, the purpose would be sub-served if the learned Executive Magistrate hear out such application afresh after giving an opportunity of hearing to both the parties.
16. It is made clear that no further summon is required to be served upon the opposite parties, since this matter is passed in presence of the learned advocate representing opposite parties herein.

17. With these above observations/directions, criminal revisional application stands disposed of.
18. Learned Magistrate while hearing the matter should not be influenced by any observation made by this Court.
19. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(CHAITALI CHATTERJEE (DAS), J.)