

CRR 1850 of 2023

**Uma Prasad Roy
Vs.
The State of West Bengal & Ors.**

Mr. Aniket Mitra
Mr. Moloy Ghosh

... ... for the petitioner

Mr. Debasish Roy, Ld. P.P.
Mr. Partha Pratim Das
Ms. Manasi Roy

... ... for the State

1. Learned counsel for the petitioner has submitted that the order dated 15.03.2023 passed by the Executive Magistrate, Bangaon, North 24 Parganas is illegal, void and therefore the same should be set aside. It is also contended that by the said order the learned Executive Magistrate has restrained the present petitioner and thereafter fixed the next date of hearing after nine months. The learned Executive Magistrate did not apply his mind particularly when the validity of proceeding under Section 144 Cr.P.C. exists for 60 days from the date of drawing up of the proceeding, the learned Executive Magistrate has given a blanket order without recording reasons thereof.
2. The learned counsel for the State has opposed the prayer for setting aside the impugned order since, according to him, the instant proceeding before this Court is not maintainable in view of Section 397 of Cr.P.C.. However, he has fairly admitted that the fixing up of next date after nine months from the date of order shows that the

learned Executive Magistrate had indirectly admitted that there was no emergency.

3. I have gone through the materials on record. Under Section 144(2) Cr.P.C., the Executive Magistrate has been empowered to pass an appropriate ex parte order if there exists some emergent situation. In this case it appears that the learned Executive Magistrate has directed the officer-in-charge Gopal Nagar Police Station to see that the opposite party shall not enter the schedule land if the petitioner is in possession, and thereafter the next date was fixed for about nine months. It appears that no reason for such exigency has been ascribed by the learned Executive Magistrate in passing an order under Section 144(2) of Cr.P.C. ex parte. Such an order, if allowed to continue, will certainly come in conflict with specific provisions of Section 144 Cr.P.C. as a whole.
4. Considering all aspects of the matter, I find that the said order dated 15.03.2023 directing the officer-in-charge Gopal Nagar Police Station to see that the opposite party shall not enter into the scheduled land if the petitioner is in possession, shall not be allowed to stand since no reasons have been recorded by him in passing such ex parte order. Further, when he had fixed the next date for hearing after nine months it is obvious that there was no emergent situation for passing such order.

5. Accordingly, the criminal revisional application is allowed in part. The portion of the said order “Officer-in-charge, Gopal Nagar Police Station directed that opposite party shall not enter the scheduled land if petitioner is in possession” is hereby set aside.
6. CRR 1850 of 2023 is thus disposed of but without any order as to costs.
7. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Apurba Sinha Ray, J.)