

02.12.2019
Krishnendu/01
Ct. No.01

CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

W.P. A. No.529 of 2019

Sudhindra Nath Ghosh
-Vs-
The State of W. B. & Ors.

Mr. Nabankur Paul .. Advocate
... .. for the petitioner

Mr. Sunil Kumar Sarkar .. Advocate
Ms. Smita Sinha .. Advocate

... .. for the respondents 5 & 7

Ms.Chokila T. Bhutia.. Advocate
Mr. Ashis Sinha ... Advocate
. ..for the respondent no.6

The present writ petition has been preferred
primarily praying for the following relief :

*a) a writ and/or order or orders and/or
direction or directions in the nature of
Mandamus directing the concerned
respondents and each of them to
forthwith act in accordance with law, to
register a case treating the complaint
dated 23.06.2019 as an FIR, to
investigate in connection with the FIR
and earlier and subsequent complaints
in accordance with law, to protect the
life and the property of the petitioner
from the illegal interference of the
respondent nos.5 to 8 and their men in*

order to maintain public peace and tranquility in the area, to arrest the accused persons named in the complaint in connection therewith and restraining them creating further disturbance in the land of the petitioner.

Mr. Paul, learned advocate appearing for the petitioner submits that the petitioner purchased land, as detailed in paragraphs 2 to 4 of the writ petition, by several deeds. Some portion of the said land was purchased from the private respondents. The concerned land was thereafter mutated in the name of the petitioner. Subsequent thereto, in the month of August, 2018, the petitioner intended to set up a construction upon the said land when the private respondents forcibly obstructed the petitioner from raising any such construction though they had no right, title and interest over the said land. Such fact was brought to the notice of the panchayat authorities and thereafter a site map was prepared upon engaging a retired government Amin. The private respondents are dangerous persons against whom criminal cases are pending and due to their resistance, the petitioner had not been able to utilize the concerned land. A complaint was thereafter lodged by the petitioner before the respondent no.4, however, no steps were taken.

Aggrieved thereby, the petitioner submitted a detailed representation to the respondent no.3 on 23rd June, 2019 but the same was also not attended to. Aggrieved thereby, the petitioner has approached this Court.

Records reveal that by an order dated 12th September, 2019, the parties were directed to exchange their affidavits. Pursuant to such direction, the petitioner, the private respondent no.6 and the private respondent nos.5 and 7 have exchanged their affidavits.

Mr. Sarkar, learned advocate appearing for the respondent nos. 5 and 7 submits that the petitioner has approached this Court suppressing material facts. As the dispute was civil in nature, the petitioner himself initially preferred a title suit, being T.S. no.134 of 2006 impleading the private respondent no.5 seeking *inter alia* a declaration that the defendant has no right, title and interest over the said land. As the petitioner did not take any steps in the said suit, the same was ultimately dismissed on 28th October, 2014. In the midst thereof, the petitioner also preferred an application under Section 144 of the Code of Criminal Procedure alleging that the private respondents have forcibly restrained him from raising any construction and are constantly threatening him of dire consequences.

The said proceeding was also dropped on 17th July, 2013 observing *inter alia* that no breach of peace exists. Thereafter the respondent no.5 preferred a title suit impleading the petitioner, being Title Suit no.56 of 2019. In the same, an *ad interim* injunction has been passed and extended till the next date of hearing on 3rd January, 2020.

Placing reliance upon a judgment delivered in the case of *Sunil Kanta Goswami –vs- State of West Bengal & Ors.*, reported in (2016)2 WBLR (Cal) 696, he submits that writ petition is not maintainable and the petitioner ought to have availed the remedies as provided under the Code of Criminal Procedure.

Mr. Paul in reply, submits that the petitioner has no information pertaining to the Title Suit no.56 of 2019 as stated to have been preferred by the respondent no.5 and he is also not aware about any *ad interim* order of injunction passed in the same. According to him, there is a threat perception and in view thereof, necessary direction needs to be issued upon the police authorities.

Though no one appears on behalf of the State respondents today, it appears from the record that a report was forwarded by the respondent no.4 to the learned advocate appearing for the State respondents stating that the complaint lodged by the

petitioner does not disclose any cognizable offence, however, steps have been taken to maintain peace and tranquility by initiating proceedings under Section 107 of the Code of Criminal Procedure.

Proper explanation has not been furnished as to why the petitioner had not disclosed the fact that he approached the civil forum earlier. The plaint of T.S. no.134 of 2006 reveals that the suit property pertains to plot no. 735 and the plot of land stated in paragraphs 2 to 4 of the writ petition is also plot no. 735. From the records, it appears that an application under Section 144 of the Code of Criminal Procedure was also preferred by the petitioner but the same was also dropped. The petitioner has been impleaded as a defendant in T.S. no. 56 of 2019 preferred by the private respondent no.5 and therein the suit property also pertains plot no. 735 and the said title suit is still pending.

Indisputably, the matter relates to demarcation of an immovable property and as regards possession of the same. Such issues are civil in nature and involve disputed questions of fact which cannot be decided in an application under Article 226 of the Constitution of India. In the event the police authorities are not treating the petitioner's complaint to be an F.I.R., though the same discloses cognizable offence, avenues are available to

the petitioner under the provisions of the Code of Criminal Procedure.

In view thereof, this Court is unable to grant the relief, as prayed for, by the petitioner and the writ petition is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Tapabrata Chakraborty, J.)