

69 September  
14, 2020

W.P.A. 6152 of 2020  
with  
I.A. 1 of 2020 (CAN 4446 of 2020)

Mr. Partha Pratim Roy,  
Mr. Shibaji Kumar Das,  
...for the petitioner.

Mr. Lalit Mohan Mahata,  
Mr. Prasanta Behari Mahata,  
...for the State respondents.

Via Video Conference

Considering the urgency pleaded by the petitioner in the application filed under I.A. 1 of 2020/CAN 4446 of 2020, the writ petition is taken up for hearing via video conference.

Accordingly, the application being I.A. 1 of 2020/CAN 4446 of 2020 is disposed of.

I have heard the learned advocates appearing for the petitioner and for the State respondents.

In this writ petition, the writ petitioner has sought for a direction upon the respondent police authorities, particularly, the Officer in-charge, Polba Police Station, Hooghly, being the respondent no. 6 herein, to register a criminal case against the private respondent no. 7 and his associates on the basis of the written complaints dated June 27, 2020 and July 3, 2020 made on behalf of the petitioner against the private respondent no. 7.

This matter is required to be disposed of in one go.

The writ petitioner is claimed to be the owner

of the brick field business under the name and style of M/s. P. N. Tewari & Brothers and continued with such business upto the beginning of the year 2000 and thereafter out of total sixty (60) bibhas of land twenty four (24) bighas was leased out in favour of Shib Narayan Mitra alias Bhaja Mitra and the remaining thirty six (36) bighas of land remains with the possession of the petitioner and his family members till date. Such lease executed in favour of the private respondent no. 7 was expired in the year 2009.

It is pointed out that the said private respondent no. 7 with mala fide intention had filed a civil suit being Title Suit No. 27 of 2009 in the court of the learned Civil Judge (Senior Division), Second Court at Chinsurah, Hooghly, against the petitioner and his family members. In the said suit, the plaintiff and the defendants no. 1 and 2 were directed to maintain status quo as on that date with regard to the peaceful possession of the suit property till disposal of the suit. It is understood that the said suit is still pending.

With the passage of time the said Shib Narayan Mitra being the private respondent no. 7 along with some anti social henchmen were trying to change the nature and character of the suit property and to alienate the same by creating a third party interest with respect to the leasehold twenty four bighas of land. The petitioner and his family members being the plaintiffs in the said suit jointly filed an application under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure and by order No. 8

dated August 18, 2017, the learned trial judge has been pleased to pass an order directing both the parties to maintain status quo with regard to the nature, character and possession of the suit property and not to alienate the suit property till September 18, 2017. The plaintiffs were also directed to comply with the provisions of Order XXXIX, Rule 3(a)(b) of the Code of Civil Procedure.

It is submitted on behalf of the petitioner that during the existing Covid-19 pandemic when the regular functioning of the civil court is suspended, the said Shib Narayan Mitra being the private respondent no. 7 by taking undue advantage violated the order of status quo passed by the civil court in connection with the suit filed by the petitioner and his family members and had stolen two lakhs bricks as well as chimney shed and other valuable machineries from the brick field which were valued totaling about Rs. 20 lakhs. On such count, the petitioner had lodged a complaint before the Officer in-charge, Polba Police Station on June 27, 2020, but the police authorities declined to register any case by registering a formal first information report. It is open to the petitioner to move before the learned Chief Judicial Magistrate by invoking provisions of Section 156(3) of the Code of Criminal Procedure. By invoking writ jurisdiction, such a direction cannot be given to the police authorities to register a criminal case for such a crime.

Be that as it may, if there is violation of civil court's order, it is incumbent on the part of the petitioner to

have knocked the door of the civil court by filing an application under Section 151 of the Code of Civil Procedure wherein the civil court is very much empowered to invoke its inherent power to grant police help to keep the order of status quo in respect of the nature and character of the suit property so that the same is maintained till the disposal of the suit.

It is stated that the petitioner had already filed a Miscellaneous Case under Section 107 of the Code of Criminal Procedure alleging violation of status quo order passed by the civil court. Apart from that the petitioner has every right to move the civil court under Section 151 of the Code of Civil Procedure.

At this state, Mr. Lalit Mohan Mahata, learned advocate appearing on behalf of the State, submits that the private respondent no. 7 and the petitioner both had filed criminal miscellaneous cases under Section 107 of the Code of Criminal Procedure - being Misc. Case No. 509 of 2020 at the instance of the private respondent no. 7 and Misc. Case No. 510 of 2020 at the instance of the petitioner, both dated July 19, 2020. Both the cases were disposed of by not taking cognizance but by giving a direction that no untoward mischief takes place in the area, that is to say, where the suit property situates.

If that be so, it is desired on the part of the State to instruct the police authorities to see that the order of the civil court is maintained till disposal of the suit. The Officer in-charge of Polba Police Station is directed to see that the order of the civil court is regarded by the parties.

With the above observation, the writ petition is disposed of.

There will be no order as to costs.

Let a copy of this order be communicated to the officer in-charge, Polba Police Station, as well as to the Superintendent of Police, Hooghly through the learned advocate for the State.

**( Shivakant Prasad, J. )**

ar & dns