

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 8561 of 2020

(Through Video Conference)

Md. Yakub Molla

-vs.-

The State of West Bengal & Ors.

Mr. Mohendra Prosad Gupta,
Mr. Ayan Mitra
...for the petitioner

Mr. Srijib Chakraborty
...for the State

The petitioner has filed the writ petition on the allegation that the private respondents are violating an order of *status quo* passed by a civil court on September 23, 2019. Learned counsel for the petitioner relies on a photocopy of certified copy of such order of *status quo* wherein it was recorded that both parties were directed to maintain *status quo* in respect of nature, character and possession of the suit property till disposal of the suit.

Learned counsel further places a police report, filed in connection with a proceeding under Section 144(2) of the Criminal Procedure Code, which shows that both the parties were cautioned to maintain peace and take shelter before the learned court for redressal and that strict vigil was being maintained. It was

further recorded in the report that the situation at that point of time was peaceful. The report is dated June 21, 2019. The learned counsel for the petitioner submits that despite several complaints on the part of the petitioner, the police authorities are not taking any steps for implementation of the civil court's order of *status quo*.

Learned counsel appearing for the respondent-authorities submits that it was recorded in the civil court's order itself that the report of the Advocate Commissioner filed before the civil court was not conclusive regarding demarcated portions of the plaintiff's property. It was further submitted that without ascertaining the area of the plaintiff (present petitioner), neither party could be permitted to change the nature and character of the suit property so that nature and character of the property should be protected during pendency of the suit. It is, thus, argued that the order itself reveals that the specific portion, which is in possession of the petitioner, is not apparent from the order itself. As such, it is difficult for the police to implement the order of *status quo*.

Learned counsel appearing for the respondent-authorities further submits that the enquiry report was filed and the civil court's order were passed on June 21, 2019 and September 23, 2019 respectively. The petitioner approached the police during the initial

months of 2020, but thereafter, sat tight over the matter and has now approached the writ court to obviate the civil court's decision in the matter.

Upon considering the *status quo* order relied on by the petitioner, it is evident that the counsel for the respondent-authorities is justified in arguing that the civil court itself was unsure as to the exact portion of the property in possession of the writ petitioner. It was recorded in the order itself that without ascertaining the area of the plaintiff therein, neither party could be permitted to change the nature and character of the suit property. On such observation, both parties were directed to maintain *status quo* in respect of the nature, character and possession of the suit property.

Even the police report filed in connection with the criminal proceeding under Section 144(2) of the Criminal Procedure Code does not categorically reveal any act on the part of the private respondents in violation of the injunction order. The said report merely records the facts of the case and also indicates that the parties were asked to maintain *status quo* in consonance with the order of the civil court and to maintain peace and take shelter before the court for redressal. Hence, neither the said order of the civil court nor the police report, both relied on by the petitioner, can help the petitioner with regard to the

allegation as to the private respondent having violated the *status quo* order.

Moreover, it is improper for the writ court to enter into the factual merits regarding ascertainment of the actual portions of the property in possession of the respective parties. Although there can be some leeway in the court directing police to maintain *status quo* as regards the nature and character of the suit property, in the absence of specific enumeration in the civil court's order as regards the exact nature and character of the suit property on the relevant juncture, it is not possible for the writ court, even *prima facie*, to adjudicate whether there is any violation of the *status quo* order.

Accordingly, W.P.A. No. 8561 of 2020 is disposed of by granting the petitioner liberty to approach the appropriate civil court which passed the *status quo* order, seeking police help to implement its order. If such approach is made, the civil court shall decide the application as expeditiously as the business of the said court permits, upon a *prima facie* adjudication as to whether the private respondents are actually violating the order of *status quo* passed by the said court.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities. .

(Sabyasachi Bhattacharyya, J.)