

19th February,
2021
(AK)
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W.P.A. 1400 of 2021

Santu Das Alias Santu Chandra Das
Vs.
The State of West Bengal & Ors.

Ms. Shetparna Ray
...For the Petitioner.

Mr. Indrajeet Dasgupta
Ms. Puspita Bhowmick
Ms. Rima Biswas
...For the Respondent
nos.6, 7 & 8.

Mr. Ashim Kumar Ganguly
Mr. Bellal Shaikh
...For the State.

Pursuant to leave granted today, the petitioner files two supplementary affidavits, which may be kept on record.

The police report filed in court today be kept on record.

The petitioner alleges that, despite the petitioner having obtained an order from the concerned Executive Magistrate under Section 144 of the Code of Criminal Procedure, restraining both the private parties from entering into the land-in-question, the private respondents have been blatantly violating such order.

Subsequently, a proceeding was initiated by the petitioner under Section 145 of the Code of Criminal Procedure, in which the Executive Magistrate, vide an

order dated November 12, 2020, directed the Officer-in-Charge of the Chakulia Police Station to report regarding breach of peace and to maintain peace strictly in the meantime. The BL & LRO, G-II was also directed to report regarding physical possession over the case land.

Learned counsel for the petitioner contends that subsequently the police filed a report, pursuant to the order of the Magistrate dated November 12, 2020, which has been annexed to one of the supplementary affidavits filed today.

Such report indicates that the private respondents were given notice of the proceeding under Section 145 of the Criminal Procedure Code and directed to stop work; however, the private respondents did not pay heed to such direction and have been violating the order of the Executive Magistrate by raising construction on the disputed land.

Learned counsel for the petitioner further argues that the petitioner claims title to the property-in-question by virtue of a Deed of Gift, while the private respondents rely on a purported deed of cancellation of such gift.

It is submitted that such deed of cancellation of an already-donated property is unheard of in law and does not confer any title upon the private respondents.

Learned counsel appearing for the private respondents submits that the dispute between the private parties is of a civil nature. It is submitted that the Gift

Deed purportedly executed in favour of the petitioner was never acted upon and/or accepted. As such, the subsequent deed conferred valid title on the private respondents.

It is further pointed out by learned counsel for the private respondents that the order passed on September 4, 2020 under Section 144 of the Code of Criminal Procedure has spent its force by efflux of time and, as such, there is no subsisting restraint order against the private respondents.

It is also pointed out by learned counsel for the private respondents that the subsequent order dated November 12, 2020, passed under Section 145 of the Criminal Procedure Code, contains no restraint order against any of the parties.

Learned counsel appearing for the State respondent files a report which indicates that the private respondents are violating the order of the Executive Magistrate dated November 12, 2020.

However, a careful perusal of the order dated November 12, 2020 indicates that the Executive Magistrate merely directed the OC, Chakulia P.S. to report regarding breach of peace and to maintain peace “strictly in the meantime”.

As such, there was no specific restraint order against either of the parties, as was contained in the previous order dated September 4, 2020 under Section

144 of the Criminal Procedure Code, which restrained both parties specifically from entering into the land-in-question.

“Maintenance of peace” can be interpreted in several manners and cannot *ipso facto* operate as a restraint order against one of the private parties to enter into the property-in-question and/or raise construction thereon.

As far as the dispute regarding the cancellation of the Gift Deed in favour of the petitioner is concerned, the same falls within the domain of the Civil Court.

The conferment of title by virtue of a Gift Deed, even if registered, has to be tested on the yardstick stipulated in Sections 122 and 123 of The Transfer of Property Act.

Even if the deed of cancellation of the private respondents might not have otherwise conferred title on the said respondents, a question arises as to whether the Deed of Gift was validly accepted by the petitioner.

However, adjudication on such questions, as mentioned earlier, falls within the jurisdiction of a competent Civil Court.

Neither the writ court nor the police authorities can decide on such issues, due to constraints regarding adduction of evidence and lack of binding effect of such order vis-à-vis the Civil Court’s order.

The argument advanced on behalf of the petitioner, that the *prima facie* satisfaction recorded by the Executive Magistrate in the order dated September 4,

2020 ought to have given enough teeth to the police to implement the same, cannot be accepted since the findings in an order under Section 144 of the Code of Criminal Procedure survive only till the stipulated period as provided in the Criminal Procedure Code.

Beyond such period, directions passed under the said provision do not have any final and binding effect which could entitle the police to stop the private respondents from raising construction.

However, it is always open to the private parties to approach the competent Civil Court for redressal of their grievances.

Accordingly, WPA 1400 of 2021 is disposed of by granting liberty to the petitioner to approach the competent Civil Court for the ventilation of the grievances as raised in the present writ petition, which pertain to the title of the petitioner and private respondents.

It is made clear that, in the event any civil suit is already pending between the parties, the petitioner and private respondents will be free to ventilate their grievances in the said suit.

It is further clarified that this court has not entered into the merits of the contentions of the private parties regarding their respective right, title and interest and it will be open to the Civil Court to decide such issues without being prejudiced in any manner by any of the observations made herein.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)