

10-08-2021
ct no. 13
Sl.57
sp

WPA 2181 of 2020
Kausalya Mondal @ Kausallya Mondal
-Versus-

State of West Bengal & Ors.
(Via Video Conference)

Mr. Sabyasachi Mukherjee,
Mr. D. Chowdhury,
Mr. Bibek Dey

...for the petitioner

Mr. Amitesh Banerjee, Sr. Adv.
Mr. Jaydip Banerjee

...for the State

Affidavit of service filed in Court today by the learned counsel for the petitioner is taken on record.

The writ petitioner is aggrieved by the alleged police inaction in respect of the complaint being New Town Police Station Case No. 470 of 2018 dated 12/11/2018 that was registered against the private respondents under Sections 448/341/324/325/188 /427/506 and 454 of the Indian Penal Code. After completion of investigation a charge sheet has been filed being No. 531 of 2018 dated November 30, 2018 under Sections 341/323/34 of the Indian Penal Code. Hence inaction cannot be alleged against the police in this regard.

However, counsel for the petitioner submits that T.S. No. 371 of 1994 has been filed before the learned Civil Judge (Junior Division), 1st Court at

Barasat complaining of encroachment and illegal occupation by the private respondents. Upon injunction being refused, the Misc. Appeal No. 42 of 2015 was filed before the learned District Judge at Barasat. The learned District Judge, Barasat has ordered status quo on October 12, 2018.

It is not known whether the order of status quo is continuing till date. Upon respondents being adamant and refusing to comply with the order of the learned District Judge, police help was ordered on October 12, 2018 and the Officer-in-Charge, New Town Police Station was directed to ensure that the order of status quo is implemented. It is submitted that the Newtown police have not complied with the order of the District Judge.

It appears to this Court that more than three years have lapsed since the order of status quo and the alleged inaction by the police authorities. The petitioner should have immediately approached the Civil Court for further steps. It is difficult for the police or this Court to ascertain the nature and character of violation by the private respondents, if at all of the order of status quo, today.

Since the records and documents of the case are lying before the learned District Judge at Barasat, the writ petitioner would be better placed to move the learned Civil Judge (Junior Division),

1st Court at Barasat or the District Judge in the pending appeal to seek remedies against the private respondents, inter alia, under Order 39 Rule 2(a) of the Code of Civil Procedure. Although it is submitted that there is no evidence of service on the private respondents and receipt thereof, the writ petition is still taken up and disposed of, since this order is unlikely to prejudice anybody since no affidavits have been used the allegations in the writ petition shall not be deemed to have been admitted by the respondents.

The writ petitioner shall serve a copy of this order on the private respondents.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)