

19
14.12.2021
TN

WPA No.2265 of 2020

Sri Nakul Chandra Jana
Vs.
State West Bengal and others

Mrs. Usha Maiti,
Mr. Gourav Kumar

.... for the petitioner

Mr. Soumitra Bandyopadhyay,
Mr. Aniruddha Sen

.... for the State

Affidavits-of-service filed in court today be kept
on record.

Learned counsel for the petitioner contends that the private respondents have encroached upon the only path of ingress and egress to the petitioner's property. It is further submitted that such encroachment has taken place on a public property. Learned counsel, thus, prays for a writ in the nature of mandamus commanding the respondent-authorities to initiate proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "the 1971 Act"). Learned counsel also seeks directions upon the private respondents to remove

their allegedly illegal constructions made on such property.

However, it is beyond the scope of the writ court to grant the reliefs as prayed for. In the event the petitioner seeks to canvass his own cause of action pertaining to his right of ingress and egress on the property-in-question, it is always open to the petitioner to approach the competent civil court and lead detailed evidence on his title as well as the fact that the path of ingress and egress to the petitioner's property lies only through the land-in-dispute.

It is beyond the charter of the writ court to take detailed evidence and to adjudicate the civil rights of the parties.

On the other hand, there is no law which empowers any court of law to direct a land owner/landlord to initiate eviction proceedings under the law against the alleged encroachers at the behest of a third party. It is entirely for the respondent-authorities to take a call as to whether a proceeding is to be initiated under the 1971 Act or not and no mandatory direction can be passed on the authorities by this court to peremptorily initiate such proceedings.

As such, the writ petition is not maintainable in law and in its present form.

Accordingly, WPA No.2265 of 2020 is dismissed as not maintainable, with liberty to the petitioner to approach the competent civil court canvassing the civil rights of the parties as averred in the writ petition and/or the competent authority in the event the petitioner alleges that the constructions raised by the private respondents are unauthorised and without permission. If such court/authorities are so approached, the court/authorities shall decide the matter before them independently, without being influenced in any manner by any of the observations made herein.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)