

AD. 23.
February 22, 2021.
MNS.

W. P. A. 3727 of 2021
(Via video conference)

Sri Bholanath Naskar and others
Vs.
The State of West Bengal and others

Mr. Debabrata Roy,
Ms. Miru Hazra

... for the petitioners.

Mr. Ashim Kumar Ganguly,
Ms. Sukla Das Chandra

...for the respondent-authorities.

Mr. Arun Naskar

...for the respondent nos. 5 and 6.

Mr. Girish Chandra Gupta

...for the respondent nos. 7 to 16

The petitioners allege that the petitioners became owners of the disputed property by virtue of purchase.

Learned counsel, apart from relying on a copy of such purchase deed, also places reliance on extracts from the records of rights in the name of the petitioners. It is contended that when the petitioners accumulated clay over the property for the purpose of constructing a mud pathway over the property, within their own territory, the private

respondents obstructed the same, prompting the petitioners to lodge a complaint with the police authorities. However, it is submitted that the petitioners themselves were arrested, apparently under Section 151 of the Code of Criminal Procedure, without following due process of law as settled by the Supreme Court.

It is submitted that, for the proposed construction of a temporary mud pathway for the convenience of the petitioners, no prior permission is necessary from any authority. As such, learned counsel for the petitioners prays that the police may afford protection to the petitioners to complete the construction of the pathway.

Learned counsel appearing for the private respondents submits that, without complying with the relevant provisions of the West Bengal Land Reforms Act, 1955 regarding notice, the petitioners purportedly bought the disputed portion of the property from one of the other co-owners than the private respondents and, without partition by metes and bounds having been effected, sought to usurp a portion of the property for their own usage. Hence, the private

respondents were also constrained to lodge complaint before the police authorities.

Learned counsel appearing for the respondent-authorities files a police report, which is kept on record, *inter alia*, indicating that a complaint had been lodged against the petitioner no. 1 regarding conversion of the disputed property unlawfully. There was also a mass petition filed by the people of the neighbourhood to that effect. That apart, complaints and counter complaints were lodged both by the private respondents and the petitioners against each other. While undertaking enquiry thereon, the police authorities alleged that petitioner no. 1 used rough and filthy language and threatened the private respondents, which resulted in the police having to stop such construction of pathway by the petitioners, apprehending an imminent law and order situation.

It is also alleged by the police authorities that even after petitioner no. 1 was directed by the police officer to stop such activities, the latter deliberately started preparing to assault the private respondents, which might have led to cognizable offences, in the presence of the police. Accordingly, having no other alternative,

the petitioners had to be arrested under Section 151 of the Code of Criminal Procedure. Subsequently one Kalidas Saha stood surety for the petitioner no. 1, upon which the petitioner no. 1, Bholanath Naskar, was enlarged on bail upon furnishing a bail bond.

There are allegations and counter allegations on three broad aspects.

First, as regards whether the petitioners are absolute owners or co-owners in respect of the disputed property and, consequentially, whether they have a right to construct a pathway over a particular and specific portion of the disputed property.

Secondly, whether the petitioners are seeking to convert the character of the property-in-dispute, which apprehension was raised not only by the private respondents but also by several people of the local neighbourhood, as per the police report.

Thirdly, whether the petitioners were arrested illegally under Section 151 of the Code of Criminal Procedure without complying with due process of law.

As regards the first question, which is the genesis of the other consequential issues,

adjudication of the same falls within the domain of a civil court and not the writ court.

Regarding conversion, although the petitioners asserted that they do not wish to convert the character of the property-in-dispute, it appears from the annexures to the writ petition, at pages 95 and 96 thereof, that the petitioners had obtained permission from the Panchayat Pradhan to convert the property from a 'suna' land to a 'bastu' plot.

As far as the law goes, the Revenue Officer, being the Block Land and Land Reforms Department, and not the Panchayat Pradhan has the authority to grant such permission. Moreover, such permissions, annexed to the writ petition, lend force to the apprehension that the present attempt of the petitioners might have been to convert the property-in-dispute.

As regards the third allegation, regarding legality of the arrest of the petitioners, the police report discloses sufficient *prima facie* material for such arrest to interdict breach of peace in the area. However, such report cannot be sacrosanct and, since the petitioners have already approached the Commissioner of Police of the Chandannagar Police Commissionerate of

Chinsurah Police Line (respondent no. 2), in that regard by way of a representation annexed at page 99 of the writ petition, it would be premature to decide such question on merits at the present juncture.

In conclusion, since the petitioners' right to build a pathway over the property-in-dispute is itself in question on the issues of exclusive title as well as conversion, the petitioners are not entitled to the reliefs claimed in the present writ petition, at least at the present juncture, unless the petitioners vindicate their stand before an appropriate civil court and/or the proper authorities competent to grant permission for conversion.

Accordingly, W. P. A. 3727 of 2021 is disposed of by granting the petitioners and the private respondents liberty to approach the civil court to resolve their dispute as regards title to the property-in-question. In respect of conversion, in the event the petitioners so desire, they may approach the authority competent in law for such conversion. The authority, in that event, will decide the issue without being influenced by any of the observations contained herein.

The respondent no. 2 is directed to immediately look into the representation given by the petitioners on January 11, 2021, annexed at page 99 of the instant writ petition, and communicate to the petitioners the result of such enquiry at the earliest. Such exercise shall be completed by respondent no. 2 within one month from date.

A copy of the police report be served on the petitioners to enable the petitioner to pursue the matter further, if any necessary.

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.)