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Ct.08

WPA 5590 of 2021

Uttam Bhakta vs State of West Bengal & Ors.

Mr. A.S. Tarafder

..For the petitioner.

Mr. I. Nandi

Mr. S. Konar

..For the private respondent nos. 5-11.

Liberty is given to Mr. Indranil Nandi, learned advocate for the respondent no. 5-9 to file vakalatnama as the instructing lawyer has in the recent past died due to Covid-19.

Now, the writ application is taken up for consideration on its merit.

Heard learned counsel for the petitioner and the private respondent nos. 5-9.

The petitioner has sought for a direction upon the respondent authorities to stop from disturbing and from interfering with the construction work in respect of the plot no. 1016 situated at Mouza-Payrachali, J.L. No. 275, RS Khatian No. 1264, LR Dag no. 295/3 and to provide assistance and protection to the petitioner and those employed by the petitioner in constructing the boundary wall and iron gate in respect to the above mentioned plot.

It appears that the petitioner though claims to be lawful owner of land measuring about 0.3 decimal along with one story building in the above mentioned plot by virtue of

his registered deed of Kobala, but the petitioner appears to have pleaded on oath that the private respondents are clouding his title when the petitioner employed his men to construct a boundary wall around the plot.

It is submitted that the private respondents have no locus standi to stop the petitioner from constructing a boundary wall and iron gate in the petitioner's above mentioned plot.

Therefore, it appears to this court that the petitioner is claiming right, title interest in the entire land in plot no. 1016, Mouza-Payrachali, J.L. No. 275, RS Khatian No. 1264, LR Dag no. 295/3 and the prayer is also made to that extent that protection be given to the petitioner so that the he can construct boundary wall and put iron get in the above plot.

Such prayer cannot be considered bearing in mind the registered Deed of Kobala dated 18th March 2015 wherefrom it is revealed that the petitioner has purchased only 3 decimal of land out of 21 decimal in the said plot of land.

Mr. Nandi, learned counsel for the private respondents has invited this Court's attention to an order of SDEM, 1st Court, Purba Medinipur passed in M.P. Case No. 39 of 2021 u/s. 144(2) Cr.P.C dated 15.01.2021, whereby the Executive Magistrate having considered the apprehension of serious breach of peace in the locality over the issue was pleased to direct the officer in charge of Tamluk P.S. and BL

& LRO to cause an enquiry and submit report within three weeks. The officer in charge of Tamluk P.S. was also directed to stop the illegal activity by the O.P. member over the petitioner's land and maintain peace and tranquility at the area.

It would appear that the last part of the order with regard to the illegal activity is otherwise not required to be passed at this stage before the report of the concerned OC and BL&LRO is received and that part of the order can be challenged by the petitioner or any person affected thereto. However, since a direction was given to hold enquiry and to obtain report from BL&LRO to ascertain the boundary dispute as alleged, this Court is of the view that the Executive Magistrate is not the civil court to decide the boundary dispute in the suit plot. In case of any dispute with regard to boundary wall, it is imperative for a civil court to enquire into the matter of dispute by way of investigation and not otherwise.

The dispute raised by the parties and the claim made by the petitioner is contrary to the petitioner's contention himself as he is claiming entire plot of land for raising boundary wall at the same time he is claiming only a piece of land measuring 3 decimal out of 21 decimal land of the above mentioned plot.

Therefore, this writ application is disposed of with a direction upon the petitioner to seek redressal before the civil court after the boundary dispute is ascertained by local

investigation because in the Deed of Kobala there is no boundary wall given, though the area can be taken into consideration in the absence of any boundary given in the Deed of Kobala.

With the above observation, the writ application being WPA 5590 of 2021 is disposed of, however, without any order as to costs.

(Shivakant Prasad, J.)