

11.03.2021
DL-10
ssd

WPA 5954 of 2021

Motijul Biswas
Vs.
The State of West Bengal and ors.

Ms. Shabana Hasin,
Mr. Mobaidur Hossain
...for the petitioner.

Mr. Santanu Kumar Mitra,
Mr. Ganga Prasad Mukherjee
...for the State.

The affidavit of service filed today is kept on record.

The writ petitioner and the State are represented.

Submission has been made on behalf of the writ petitioner that copy of the writ petition has been served upon the private respondents and the seventh respondent had received. Insofar as fifth and sixth respondents are concerned, they are yet to receive.

This writ petition has been filed seeking directions upon the district police authority to render its assistance to the writ petitioner so that the private respondents can be resisted from creating disturbance in the peaceful possession, occupation and enjoyment of an immovable property of the writ petitioner situated at Murshidabad, P.S. Hariharpara, Mouza – Beharia, more particularly mentioned in paragraph 2 of the writ petition.

The writ petitioner and the private respondents are relatives. Disputes and differences occurred between the predecessors of the writ petitioner and the predecessor of the private respondents, which led to a stage when the predecessors of the writ petitioner filed a title suit being

Title Suit No.75 of 1974 before the 2nd Munsif at Berhampore, Murshidabad. On June 27, 1981 the said title suit was decreed in favour of the predecessors of the writ petitioner, who were the plaintiffs in the said title suit. Under the decree the plaintiffs' right, title, interest and possession in the suit land were declared in their favour and the predecessor of the private respondents was perpetually restrained from interfering with the peaceful possession of the plaintiffs on the suit land.

The writ petitioner now claims that the private respondents being the respondent nos.5 to 7 who are successors-in-interest of the defendant in the said title suit are now regularly creating disturbance in the peaceful possession, enjoyment and user of the land of the writ petitioner. The writ petitioner instituted proceedings under 144(2) of the Criminal Procedure Code in which an order was passed on November 11, 2020, whereunder, the Hariharpara P.S. was directed to comply with the said decree dated June 27, 1981 and was further directed to submit report. The fourth respondent was also directed to cause an enquiry and to submit an enquiry report. Similar direction for causing an enquiry and to file a report was also passed upon the third respondent. The learned Advocate for the writ petitioner then drew attention of this court to an order dated January 15, 2021 passed by the Executive Magistrate, Berhampore, Murshidabad, wherefrom it appears that in a proceeding under Section 144(2) of the Criminal Procedure Code initiated by the writ petitioner, the third and fourth respondents were directed to cause an enquiry and submit a report and in the meantime the third respondent was directed to see that lawful and peaceful cultivation by the writ petitioner may not be hampered also to maintain peace at the locale.

In the present writ petition, the writ petitioner states that despite all these directions made by the Magistrate's court the relevant police authorities are not taking any step and as a result the private respondents are interfering with the peaceful possession and enjoyment of the writ petitioner's property. Therefore, the writ petitioner prays for necessary direction upon the concerned police authority to ensure the peaceful possession and user of the writ petitioner on its own land.

Mr. Santanu Kumar Mitra, learned Advocate representing the State submitted that, this is clearly a civil dispute in which the police cannot interfere with, unless necessary direction comes from the jurisdictional civil court and as such this writ petition is not maintainable and should be dismissed.

After hearing the submissions on behalf of the parties and after perusal of the material before this court, this court is of the view that, as submitted on behalf of the writ petitioner, there is a valid decree dated June 27, 1981 passed by the civil court in favour of the predecessors of the writ petitioner and against the predecessor of the private respondents and the land being the subject matter of the this writ petition was also the subject matter of the said decree passed by the civil court. The disputes raised before this court in this writ petition are civil in nature where the police authority cannot provide any assistance unless there is a specific direction from the civil court. Thus the remedies of the writ petitioner lies before the jurisdictional civil court.

This is not such a case, where this court, in exercise of its high prerogative writ jurisdiction should entertain this writ petition.

In view of the above discussions and the reasons

stated no order can be passed in support of this writ petition.

WPA 5954 of 2021 stands dismissed. However, this order will not preclude the writ petitioner to seek appropriate remedy in accordance with law before the jurisdictional civil court, if he is so entitled, in law.

There shall, however, be no order as to costs.

(Aniruddha Roy, J.)