

23rd April,
2021
(AK)
34

W.P.A. 6282 of 2021

(Via Video Conference)

Rawalwasia and Sons Exim Ltd.

Vs.

The State of West Bengal & Ors.

Mr. Ankit Agarwala

Ms. Alotriya Mukherjee

...For the Petitioner.

Mr. Ankit Sureya

...For the Respondent no.6.

Ms. Jayeeta Sinha

Mr. Ranjit Rajak

...For the State.

The limited scope of the writ petition is that, although the Baidyabati Sheoraphuli Co-operative Bank, whose Chief Manager has been impleaded in the present writ petition as respondent no.6, obtained an ad interim order of injunction in a suit where the petitioner-company is not a party in its capacity as a juristic entity, merely restraining transfer of the property-in-question, the police authorities are actively preventing the petitioner-company from carrying out development work and construction on the disputed premises.

Learned counsel appearing for the State contends that several complaints were lodged by the Bank against the petitioner-company, alleging fraud and other offences.

In view of such complaints, an enquiry/investigation has been commenced.

Learned counsel appearing for the respondent no.6 contends that the petitioner-company, in violation of the injunction order, has been transferring the proper-in-question in favour of third parties and, as such, the police were justified in stopping such development work.

It is unheard of that an injunction order passed against an individual, although in the capacity of the Director of a Company, without impleading the company, which is a separate juristic entity, as a defendant can bind the company itself.

That apart, the Bank committed blatant illegality in issuing advertisements, annexed at pages 176 and 177 of the writ petition, making false assertions that the court order also restrained the defendants from changing the nature and character of the property, whereas the actual order, annexed at page-163 of the writ petition, clearly discloses that the restraint order was limited to transferring the suit property to third parties/outsideers.

That apart, a copy of the plaint, annexed at page-152 of the writ petition, clearly reveals that the petitioner-company, although a separate juristic entity, was never arrayed as a defendant in the suit.

First, the interim order does not bind the company itself. Secondly, there was a patent misrepresentation of the tenor of the order of injunction restraining the

transfer of the suit property by the Bank by way of publishing advertisements to the public indicating that change of nature and character was also restrained by the said order.

Despite allegations having been made against the petitioner-company by the Bank and the pendency of the enquiry/investigation in such connection, which is not being interfered with by this court, the police authorities have no business, by taking shelter under the court's order, which does not operate at all against the petitioner, let alone regarding carrying on construction work, to prevent the petitioner from carrying out such constructions on the property-in-question.

It is evident from the materials-on-record that the police authorities are acting hand in glove with the Baidyabati Sheoraphuli Co-operative Bank Limited for some unknown reasons.

The police has no business to stop construction and/or any development of the property-in-question in the absence of any specific restraint order of any court of law in that regard and/or any direction by the civil court on the police to implement such order. That apart, the civil court's order is *ex facie* not binding on the petitioner-company in its own capacity.

Accordingly, WPA 6282 of 2021 is disposed of by restraining the respondent no.4 from creating any obstruction to the development / construction work being

undertaken by the petitioner-company on the site-in-question, subject to any subsequent order, if passed by a competent court against the petitioner-company.

Rather, in the event the petitioner is obstructed in making such construction and there is a law and order situation due to that, the respondent no.4 shall immediately extend all assistance to the petitioner, if so approached by the petitioner, in carrying out the constructions, subject to the construction being otherwise in accordance with law.

The respondents shall act on the written communication by the learned advocates for the parties and/or server copy of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)