

25.03.2021
Sl. No.5
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 7513 of 2021

(Via video conference)

Sri Mohan Chandra Santra & Ors.
Vs.
State of West Bengal & Ors.

Mr. Sudeep Sanyal,
Mr. Snehasis Jana,
Ms. Tutun Das

....for the petitioners.

Mr. Amitesh Banerjee, Sr. Standing Counsel,
Mr. Joydip Banerjee

....for the State.

Affidavit of service filed in Court today is taken on record.

The petitioners claim to be the shebait of Sri Sri Manasha Mata Thakurani, who have been dedicated, according to the petitioners, by an Arpannama a land measuring about 2.09 acres of land comprised in plot no.142 and about 1.12 acres in plot no.143 of Khatian no.854, J.L. no. 193, Mouza – Gohalsini, P. S. Chandrakona, District – Paschim Medinipur (hereinafter referred to as the said plot of land). The petitioners say that there is also a pond in a portion of the said plot of land. The petitioners say that taking advantage of the lockdown due to the pandemic a mosque has been forcibly constructed on a portion of the said plot of land. The mosque,

according to the petitioners, has been constructed on 0.04 acres of land. The petitioners say by such construction encroachment has taken place and further infringement to the deity's right, title and interest over and in respect of the said land is sought to be made by creating pathway for entry and exit to the said mosque. The petitioners say that for many years with the consent of the petitioners, the respondent nos.6-12 (private respondents) have been holding "Urush" festival once in a year at the said plot of land with the nomenclature "Urush" of "Pirbaba Madar Saheber Mela" at "Gohalsini Basak Pushkorinir Tireh" (hereinafter referred to as the said mela). The petitioners say that owing to the recent dispute arising out of the construction of the mosque and encroachment of land, the petitioners are no more interested to allow the private respondents to hold the said mela. The petitioners further say that they have also not given any permission for holding such mela for this year. The petitioners have come to learn that the respondents are circulating pamphlets and brochures that the said mela will be held also for this year in the said plot of land. The petitioners have filed a proceedings under Section 144(2) of the Code of Criminal Procedure (in short Cr. P. C.), 1973 wherein a report has been filed by the Block Land & Land Reforms Officer confirming the construction of

the mosque on 0.04 acres of land. The petitioners say that despite of such fact being brought to the notice of the local administration including the police authorities, no steps are being taken and as such, the private respondents have openly declared to hold the said mela also this year.

On behalf of the State, it is submitted that there is no element of truth in the allegation of police inaction as the police authorities have already initiated proceedings under Section 107 of Cr. P. C. after receiving complaint from the petitioners. The police authorities have also enquired from the private respondents about the holding of the said mela for this year when the private respondents have assured that they will not be holding such mela in the said plot of land or in any part or portion thereof. The State respondents also referred in this context to a letter dated 18th March, 2021 issued by some of the private respondents. A photocopy of such letter made over to Court is taken on record.

After considering the submissions by the parties and the materials on record, it appears that the encroachment of land and forcible construction of a mosque thereon as alleged by the petitioners is a dispute purely civil in nature, for which the petitioners' remedy lies elsewhere and not in a writ petition alleging police inaction.

So far as holding of the said mela is concerned, the petitioners have to take recourse of relevant provisions of law to safeguard their right, title and interest, if any, in the said plot of land. This also involves adjudication of civil rights for which the writ Court cannot come to any assistance of the petitioners. As regard the allegation that police authorities are not taking any step, I find that the same is not correct inasmuch as the police authorities have already registered a proceedings under Section 107 of Cr. P. C. The assurance given by some of the respondents as contained in the letter dated 18th March, 2021 for the time being also takes care of the petitioners' apprehension that the private respondents will organise the said mela on the said plot of land for this year.

The larger issue is elsewhere. There is every likelihood that the civil dispute inter se between the petitioners and the private respondents may cause breach of peace and tranquility in the locale. The police authorities have a bounden duty to ensure that there is no breach of peace or occurrence of any untoward incident giving rise to adverse law and order situation owing to any dispute, which may not be within the domain of adjudication by the police authorities.

The writ petition is thus disposed of by directing the police authorities to ensure that there is no breach of peace in and around the said plot of land owing to the disputes between the petitioners and private respondents.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Arindam Mukherjee, J.)