

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**HON'BLE JUSTICE SUBRATA TALUKDAR
AND
HON'BLE JUSTICE KESANG DOMA BHUTIA**

**M.A.T. 832 of 2019
With
IA No. CAN 1 of 2019 (Old No. CAN 6768 of 2019)**

**Chandan Kumar Barik & Anr.
vs.
The State of West Bengal & Ors.**

For the Appellants	:	Sardar Amjad Ali, Sr. Mr. Bhaskar Chandra Manna
For the Private Respondent	:	Mr. Bibek Jyoti Basu
For the State Respondents	:	Mr. Ashim Kumar Ganguly Ms. Sukla Das Chanda
Heard on	:	30/09/2021
Judgment on	:	15/11/2021

Subrata Talukdar, J:

The Appellants are aggrieved by the Judgment and Order dated 10th June, 2019 passed in the Review Application, RVW 39 of 2019 (hereinafter

referred to as the said RVW) whereby and whereunder the Hon'ble Single Bench was pleased to dismiss the same with exemplary costs on the ground of suppression of material facts.

The Appellants, represented by Sardar Amjad Ali, Learned Senior Counsel, submit that the Hon'ble Single Bench fell into error by holding as such. Taking this Court to the writ petition, *i.e.* WP 26199 (W) of 2018, out of which the RVW came to be filed, it is submitted that the appellants at *Paragraph 23* of the writ petition had clearly stated regarding the pendency of Title Suit No. 17 of 2018 filed by and on behalf of the Respondent Nos. 8, 9 and 10 (for short *R8*, *R9* and *R10*) before the Learned First Civil Court, Senior Division, Purba Midnapore. The said suit for partition filed by *R8*, *R9* and *R10* as plaintiffs has been described by the appellants/the defendants to the suit as *false* meaning thereby to be without any basis.

It is submitted that reference has been also made in the said writ petition to similar cases having been filed in the Hon'ble High Court with the prayer for grant of police protection to protect the life and property of the appellants.

Mr. Ali submits that evidence of an order passed in a previous writ petition being WP 30746 of 2017 was also brought to the notice of the Hon'ble Single Bench. WP 30746 (W) of 2017 was not admitted by the Hon'ble Single Bench on the ground that it has not been clarified by the writ petitioners/the present appellants as to whether each of their complaints have been received by the respective authorities.

It is further submitted by Learned Senior Counsel for the appellants that the present writ petition containing a similar prayer for police protection has been necessitated by the fact that fresh complaints had to be filed by the appellants with the relevant District Police Authorities on the ground of fresh provocation and threats by *R8,R9* and *R10* and their men and agents.

Learned Senior Counsel submits that the Hon'ble Single Bench failed to appreciate the inactivity of the police in protecting the share of the appellants over the plots in issue namely, Plot Nos. 1306 and 1307 measuring in all 12 decimals. It is submitted that the Hon'ble Single Bench erred in assuming that the appellants claim ownership rights over the entire 12 decimals whereas protection has been claimed only in respect of their share as recorded in the Record of Rights (*RoR*) and, in respect of which partition has been sought by *R8,R9* and *R10*.

The Hon'ble Single Bench ought to have therefore appreciated that the documents brought on record in the said writ petition by way of fresh complaints filed before the District Police Authorities reflect the threat to their life and property to the extent of their respective shares in the plots in issue. It is accordingly submitted that the Judgment and Order dated 10th June, 2019 is harsh. The appellants are agricultural workers and shall suffer grave prejudice in the event they are directed to pay the hefty costs imposed by the Hon'ble Single Bench.

Arguing for the private Respondent Nos. *R8*, *R9* and *R10*, Mr. Basu, Learned Counsel, submits that the said writ petition is the second in the series of similar writ petitions whereby the appellants have prayed for similar reliefs, viz. that of police protection. It is submitted that the Annexures to the previous writ petitions, *i.e.* WP 306746 of 2017 and to the present writ petition, *i.e.* WP 26199 (W) of 2018, are identical. It is inconceivable that within the space of one year, the appellants should complain of development of circumstances identical to the circumstances which formed the basis of their challenge in the first writ petition, *i.e.* WP 30746 (W) of 2017.

It is pointed out that WP 30746 (W) of 2017 was dismissed on merits on 23rd of August, 2018. No leave was sought from the Hon'ble Court to file a fresh writ petition. The present writ petition, *i.e.* WP 26199 of 2018, was affirmed soon thereafter on the 20th of December, 2018. The complaints filed before the District Police Authorities and forming part of the first writ petition were simply recast by including the word *fresh* to signify that a new cause of action has arisen necessitating the filing of a similar writ petition.

Mr. Basu submits that although the appellants were represented before the Learned Civil Court at the hearing of the application for injunction under Order 39 Rules 1 and 2 read with Section 151 the Code of Civil Procedure whereby both the parties, *i.e.* the plaintiffs/ the present *R8*, *R9*, *R10* and the defendants/the present appellants were directed to maintain *status quo* in respect of the nature, character and possession over 'Ka' and 'Kha' schedule

suit property till disposal of the suit, the said solemn order of the Learned Civil Court dated the 25th of July, 2018 was not pleaded in the said writ petition and neither brought to the notice of the Hon'ble Single Bench at the hearing. It is admitted that the schedule of the plaint comprising 'Ka' and 'Kha' schedule properties corresponds to Plot Nos. 1306 and 1307, *i.e.* the subject plots in the two writ petitions under discussion here. It is submitted that the appellants could not satisfy the Hon'ble Single Bench with regard to service of the present writ petitions along with its annexures upon *R8, R9 and R10*.

Behind the back of *R8, R9 and R10* the appellants attempted to walk away with an order dated 5th of February, 2019 in the present writ petition wherein the Hon'ble Single Bench was pleased to take notice of a document dated 4th January, 2018 requiring the appellants/ the writ petitioners to deposit costs of Rs. 11,768/- for police assistance. The undertaking of the present appellants was obtained by the Hon'ble Single Bench to the effect that the writ petitioners are ready and willing to deposit such costs and, in the event such costs are deposited, necessary police protection shall be extended to them. It is against the order dated 5th February, 2019 extending police protection to the appellants/ the writ petitioners that the instant Review Application has been filed by *R8, R9 and R10*.

Mr. Ashim Kumar Ganguly, Learned Senior Government Advocate, takes this Court to a Report dated 18th of April, 2019 of the Officer-In-Charge, of Marishda Police Station, District Purba Medinipur addressed to the Learned

Government Pleader, High Court at Calcutta with reference to RVW 39 of 2019 arising out of the present writ petition. The relevant portion of the said report, as relied upon by Learned State Counsel, is quoted hereinbelow for the benefit of this discussion:-

“In this context, I would like to kindly inform that, in the year 2017 one Smt. Satadal Giri W/O-Lt. Sreesh Chandra Giri & Others of Barhchunpara, PS-Marishda, District-Purba Medinipur filed a Writ Petition vide W.P. No. 26906 (W) of 2017 before Hon’ble High Court, Calcutta regarding their land dispute against Plot No. 442,443 and 444 under Mouza-Marishda, PS- Marishda. On 27.11.2017 after hearing Hon’ble Justice Debangsu Basak. J, High Court Calcutta was kindly pleased to pass a direction that, “... it could be appropriate to permit the petitioners to apply to the appropriate police authorities for police assistance. The petitioners will deposit such costs. Upon such costs being deposited, requisite police assistance be rendered to the petitioners...”

A copy of the said order dated 27.11.2017 in W.P. No. 26906 (W) of 2017 is enclosed here with.

In compliance to the above order, the then O/C Marishda P.S. sent prayer address to then S.P. Purba Medinipur with a prayer to allow to deposit Police cost, vide Marishda P.S. DR No. 4636 dated – 28.12.17. Accordingly after assessing the posice cost is Rs. 11,768/- the office of the SP, Purba Medinipur sent mail to O/C, Marishda P.S. vide Org. No.24/CA-1 dtd. 04.01.2018 with a direction to deposit police cost in local treasury and accordingly deposited the same by the petitioner. Later the process of execution has already been completed on 06.02.2018 by the Police authority to comply with the solemn order of the Hon’ble High Court, Calcutta. The copy of message dtd. 04.01.18 of the

office of SP, Purba Medinipur and copies of letters are enclosed here with.

The documents dated January 4, 2018 which was attached with the Writ Petition No.- 26199 (W) of 2018 was not related with this writ petition rather it was the document related to the Writ Petition No.- 26906 (W) of 2017 and the Plot numbers and mouza of the two Writ Petitions are separate. It is also kindly inform that W.P. No. 26199 (W) of 2018 was filed on 20.12.2018, but documents reflected on the date of 04.01.18.

So, it is presumed that documents dated January 4, 2018 regarding depositing Police cost which was annexed with the Writ Petition vide WP No. 26199 (W) of 2018 is not analogous to this writ petition rather it was the documents related to the WP No. 26906 (W) of 2017.”

On the basis of the Police Report (*supra*), it is submitted that the present appellants misled the Hon'ble Single Bench into passing the order dated 5th February, 2019. It is submitted that it is evident from the Police Report, which stands uncontroverted, that the appellants have relied on a document for depositing costs for police protection which belong to another case involving other parties and different plots of land.

It would be also relevant to now refer to the document dated 4th January, 2018 which reads as follows:-

“NR-127 A-17

To: O/C Marishda PS (.)

From: S.P. Purba Medinipur (.)

Org No. 24/CA-I

Dated:04/01/18

Sub: Police Cost.

Ref. Your PS DR-4636 dtd. 28/12/17

--- This is to infor you that the Rs. 11,768/- (Eleven thousand seven hundred sixty eight) only will be the probable cost of police party consisting 01 (one) SI, 01 (one) ASI, 05 (Five) Constable, 03 (Three) Lady Constable for a day (.) the party concerned may please be directed to deposit the said amount in local Treasury through the challan under the head "0055-00-101-00-310". After depositing the police cost O/C Marishda PS. Please deput Police party for peacefull execute the Hon'ble Court order (.)---

Thi 1800/04

S/By-Ganesh Ch. Sau"

Having heard the parties and considering the materials placed, this Court finds that the appellants misled the Hon'ble Single Bench into issuing the order dated 5th February, 2019. It is clear from the uncontroverted Police Report (*supra*) and the document dated (*supra*) 4th January, 2018 that the assessment of costs of police protection of Rs. 11,768/- relate to an altogether different writ petition involving different parties and plots other than the parties and plot numbers in issue in this appeal.

This Court also finds that the appellants were represented before the Learned Civil Court in the proceedings for partition of the suit property which includes the present Plot Nos. 1306 and 1307. The appellants were represented as defendants before the Learned Civil Court on the 25th of July, 2018 when the order was imposed directing the parties to maintain *status quo*. However, it

does not appear anywhere from the pleadings and the materials brought to the notice of the Hon'ble Single Bench, that any mention was made of the pendency of the said order of *status quo*.

The Hon'ble Single Bench therefore correctly held that the non-disclosure of such vital fact amounts to suppression. This Court further finds that upon the first writ petition being dismissed on 23rd of August, 2018, the second writ petition was filed soon thereafter in December, 2018 and, without any reflection of a material change in circumstances.

It is accordingly directed that the appellants **shall pay the costs of litigation** as directed to be paid by the Hon'ble Single Bench.

However, in view of the fact that the appellants are already represented before the Learned Civil Court in the partition suit, it would be onerous on the part of the Writ Court to take away their defence by imposing conditions. Accordingly, the condition putting the appellants to terms by way of costs payable to the West Bengal State Legal Services Authority stands modified to the extent that it will open to the Learned Civil Court to assess such costs, if and as necessary to be payable from time to time, having regard to the conduct and carriage of their defence in the partition suit.

M.A.T. 832 of 2019 with **IA No. CAN 1 of 2019 (Old No. CAN 6768 of 2019)** stands accordingly **disposed of**.

There will be no order as to costs.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities

I agree.

(Kesang Doma Bhutia, J.)

(Subrata Talukdar, J.)