

29.09.2021
Ct. No.8
S/L No.4
KS

(Via Video Conference)
W.P.A. 14926 of 2021
Tushar Naskar
-Vs.-
State of West Bengal & Ors.

Mr. Saibalendu Bhowmick
Mr. Biplab Guha
Mr. Rajsekhar Basu
.....For the Petitioner
Mr. Ashim Kumar Ganguly
Ms. Karabi Roy
.....For the State
Mr. Kallol Basu
Mr. Samik Sarkar
.....For the Respondent Nos.5 to 12

Affidavit of service filed in Court be kept on record.

The petitioner has sought for writ in the nature of mandamus on the ground of inaction on the part of the police authorities to provide protection of life and property of the petitioner and his family despite several representations made before the police authorities. It is pertinent to note that the Civil Court has passed an order of injunction restraining the private respondents not to disturb the possession of the petitioner from the suit property as well as Durga Puja area or 'Devbhumi' but the private respondents after knowing everything well are creating disturbance over the suit property and so that the petitioner cannot perform any Durga Puja. The petitioner has been performing Durga

Puja for the last 150 years on his own property. Despite several complaints made before the police authority no action has been taken and the private respondent with hooligans of the locality are disturbing the petitioner. My attention is invited by learned counsel for the petitioner to an order dated 26.09.2019 passed in Petition No.71/2020 arising out of Title Suit No.297 of 2019 passed by the Learned Civil Judge (Junior Division) 2nd Court, Diamond Harbour, South 24 Parganas and points out that from the tenor of the order it would reveal that the property as recorded in R.S. Khatian No.371 is in the name of father of the plaintiff and the L.R. Record of Right is in respect of Khatian No.828 which reveals that the name of the father of the petitioner accorded in respect of the suit property and thus the learned Judge came to a prima facie finding that the suit property is recorded as 'Devasthan' and accordingly, the defendants were restrained from disturbing the peaceful possession of the plaintiff and the next date was fixed on 19.11.2019 and further learned counsel for local inspection was appointed to hold local inspection at the locality. Further steps made in the suit is not available on the record, simply the petitioner claim is that since he is the owner of the suit property, the defendant/private respondent has no right to participate in the Puja performance. It is not understood from any materials on record as to why the private respondents would disturb the plaintiffs possession in performance of Puja.

In this context, my attention is invited to an order passed by a Coordinate Bench of this Court in *W. P. No.20089 (W) of 2018* wherefrom it would reveal that the petitioner and the private respondents had amicably settled the dispute and in terms thereof the writ application was disposed of.

Mr. Kallol Basu, learned counsel appearing on behalf of the private respondents submits that the petitioner has not come before the Court with clean hand as certain facts have been suppressed and even before the Suit Court there was suppression of real facts and it is submitted that an application under Order 39 Rule 4 of CPC has been filed before the Suit Court for modification and vacating of the contention that the private respondents has also right in the suit property. In my view issue regarding right, title, interest can be decided in finality of the suit before the Suit Court only on the evidence to be adduced by the parties to the suit but that cannot be the guiding factor before this Court right now. This Court finds that on a copy of the settlement which were arrived in *W. P. No.20089 (W) of 2018* being pressed in service by Mr. Basu that the party had agreed to organize the Puja at the suit premises with certain conditions embodied therein.

Therefore, this writ application be disposed of on the similar terms. This Court takes note of the submission made by Mr. Ashim Kumar Ganguly, learned counsel for the State that there is no inaction on the part of the police authorities in granting the

permission for organizing the Puja. On this submission made Mr. Biplab Guha, learned counsel for the petitioner submits that a complaint dated 26.08.2021 has been filed before the Officer-in-Charge, Falta Police Station for appropriate protection to complete the upcoming Durga Puja so that the private respondents and their men and agents do not disturb in carrying out such Puja. In my opinion if the petitioner had any grievance in respect of non-compliance of the Court's order passed by the Suit Court, he was at liberty to seek redressal for police assistance before the Trial Court under Section 151 of CPC for seeing to it that the interim order passed by the Civil Court is regarded by the parties. But, in the given facts of the case discussed above, this Court prima facie finds that there is real dispute between the petitioner and the private respondent pertaining to the right, title, interest and possession in the suit property which can be gone through by the learned Trial Court on evidence and not otherwise.

At this point of time, this Court finds that in order to tide over the situation the petitioner and the private respondent would perform Puja at the premises on the similar terms of the settlement arrived at by and between them in 2018 as reflected from the order in *W. P. No.20089 (W) of 2018*.

In the context above, W.P.A. 14926 of 2021 is disposed of with a direction that the petitioner and the private respondent do carry out the Puja performance on the basis of the terms as had

been arrived by them during 2018. The respondent/police authority would see that the order passed by this Court is regarded by the parties. This order is passed without prejudice to the right and contention of the parties to the suit pending before the Civil Court.

Terms of settlement filed in Court be kept with the Court.

Since no affidavit on behalf of the private respondents has been called for, the averments made in the writ application be treated as denied and disputed.

All parties are to act on the server copy downloaded from the Official Website.

(Shivakant Prasad, J.)