

22.09.2021

Sl. No. 7
Court No.8
B.M.

WPA 21908 of 2019

Modina Bibi
Vs.
The State of West Bengal & Ors.

(Via Video Conference)

Mr. Probal Sarkar ... for the petitioner

Affidavit of service filed be kept with the record.

In this writ application the petitioner has sought for direction upon the respondent authority particularly the respondent no.5 Officer-in-Charge, Ranitala Police Station, District-Murshidabad to act in accordance with law and for stopping the illegal construction work being carried on by the private respondents in Plot No.1688, Khatian No. 805 of Mouza- Pukuria, Police Station Ranitala, District- Murshidabad.

Learned counsel appearing for the petitioner submits that the petitioner is the owner of 21 1/5 decimal land out of 53 decimal land of undivided house land in the schedule land over which the respondents are trying to start construction work. In the Title Suit being No.156/2015 the petitioner impleaded the private respondent as defendant and an interim order of injunction has been granted by the learned Civil Judge directing the parties to maintain status quo in respect of

nature, character and possession of the suit property till 19.11.2015 vide the order dated 27.3.2015. The said order stood extended till 14.01.2020 which is reflected from the order sheet Annexure P-1. It is pointed out that despite the order of status quo the private respondents are carrying out work in the suit property and for which an application being 834 of 2019 under Section 144 of the Code of Criminal Procedure was preferred before the Sub-Divisional Executive Magistrate, Lalbagh, Murshidabad wherein the Executive Magistrate had directed the Officer-in-charge to enquire into the matter vide order dated 12.07.2019 and directed further to maintain peace but the respondents are bent upon to carry out the construction work on the rests portion of the undivided property causing injury to the petitioner's interest. Thus, the writ petitioner is seeking an appropriate order.

Upon hearing learned counsel for the petitioner and in consideration of the averments made in the petition itself together with the annexure, this Court is of the view that since the petitioner's suit is pending in the Civil Court, his remedy lies before the said Court. The step being taken by the writ petitioner before the Executive Magistrate is also not appreciated when the civil suit is pending inasmuch as case of violation of Civil Court's order is alleged.

The order of *status quo* passed by learned Civil Court if violated, the petitioner ought to have invoked application under Section 151 of the Civil Procedure Code for seeing to it that the parties regard the order.

That apart, it is open for the petitioner to seek relief in a proceeding under Order 39 Rule 2A of CPC.

In the context above, the writ application has no merit and is liable to be dismissed.

Accordingly, the writ application being WPA 21908 of 2019 is dismissed, however, there shall be no order as to costs.

(Shivakant Prasad, J.)