

Sl.25.
February 15, 2021
SG
Ct.8.

WPA 22628 of 2019
with
CAN 1848 of 2020

Bikash Narayan Bhuti
-versus-
The State of West Bengal and others

Mr. Tulshidas Ray,
Mr. Tirthankar Roy,
... Advocates for the petitioner.

Mr. Bibek Jyoti Basu,
Mr. Munshi Mijanur Rahaman,
... Advocates for the State.

This is a writ petition alleging inaction on the part of the respondent police authorities by not taking any step against the private respondents, who are the alleged encroachers or creating disturbance in the peaceful possession of the writ petitioner on his property situated at Mouza Rangavita, J.L. No.84, Police Station-Gajol, District Malda, as more fully described in the first paragraph of the writ petition.

The writ petitioner states that, there is a longstanding land dispute between the writ petitioner and the private respondents. The writ petitioner filed a civil suit being Title Suit No.8 of 2020 (for short, the T.S.) pending before the learned Civil Judge (Junior Division), 2nd Court, Sadar Malda against the same private respondents as the defendants therein. In the said civil suit of January 9, 2020 an order of injunction was passed ex parte whereby the defendants therein being the private respondents

herein were directed not to create any obstruction in the peaceful possession of the writ petitioner.

The writ petitioner submits that such interim order was then extended from time to time. The present writ petitioner was the first plaintiff in the said title suit. The writ petitioner then submitted that, a dispute regarding acquisition of land qua the same property is also pending between the land owners, namely, the writ petitioner and other owners and the State in a writ petition being WP No.18523 (W) of 2019 before this court.

The writ petitioner now alleges that despite repeated complaints being made from time to time the respondent police authorities failed and neglected to take any steps in the matter by desisting the private respondents from creating obstruction or hindrance on the writ petitioner's property.

Mr Bibek Jyoti Basu appearing with Mr. M.M. Rahaman for the State submits that the subject matter in dispute in the present writ petition is an immovable property which is also the subject matter in the said title suit and the civil court is in seisin of the disputes between the writ petitioner and the private respondents herein who are the defendants in the said civil suit qua the same property. The dispute being civil in nature and that being under consideration before a civil court, the police authority cannot investigate with regard to the same. He further submitted that on December 12, 2019 the police authority had already started proceeding under Section 107 of the Criminal Procedure Code and FIR has been lodged. The concerned FIR is already

registered being FIR – PR No.702/19 dated December 12, 2019. The police authority had also directed the parties concerned to maintain peace at the locale. The learned junior counsel for the State present in court, had placed a written communication made by the Officer-in-Charge, Gajol Police Station, Malda dated December 16, 2019 written to the learned State advocate in this regard. The same is kept on record.

After hearing the learned counsels for the parties and after considering the material before this court, this court is of the considered view that the subject matter of the dispute in the present writ petition is an immovable property which is also the subject matter of the said pending title suit being Title Suit No.8 of 2020 pending before the Civil Judge (Junior Division), 2nd Court, Malda. Orders had also been passed therein including the restraint order against the private respondents who are the defendants in the said title suit, whether the said interim order still exists or not has no material bearing. It is true that, the civil dispute is pending before the civil court concerning the self-same piece of land between the same parties.

Insofar as the writ proceeding pending before this court between the writ petitioner and the State, questioning the acquisition of land qua the same property has no relevance in adjudication of the present writ petition. It is an independent proceeding on an independent cause of action and the same will be decided in accordance with law.

The police authority had already taken steps as indicated above. From a perusal of the reliefs claimed

in the writ petition, it appears to this court that, necessary direction qua such relief, if granted upon the State police authority, the same would involve a detailed fact finding inquiry as regards the question of title, possession and right on the self-same piece of land which is the subject matter in the pending civil suit. Such an exercise is not permitted in law in the writ jurisdiction. The writ court cannot go for any fact-finding inquiry, more so when the issue is pending before the civil court.

In view of the above discussions and the reasons stated hereinabove, the present writ petition being WPA 22628 of 2019 and CAN 1848 of 2020 stand dismissed.

This order, however, will not preclude the writ petitioner to take appropriate steps against the private respondents being the defendants in the said title suit before the civil court in accordance with law.

There shall, however, be no order as to costs.

(Aniruddha Roy, J.)

