

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 8289 of 2020

Gautam Maity & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Debasish Das
... For the petitioners

Mr. Ranjit Rajak
... For the State

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

The petitioners approached this Court by filing a writ petition, being WP No.14221 (W) of 2018, which was disposed of by an order dated 18th March, 2019, directing the police authorities to complete the investigation in a fair and impartial manner and to submit a report as expeditiously as possible. Prior to such order, it appears that the police authorities had informed the Magistrate on 13th August, 2018 about petitioners' complaint under Sections 506/34 of the Indian Penal Code, 1860 (in short "IPC"). The police authorities subsequent to such order had issued a notice on 1st June, 2019 and a land demarcation exercise in the presence of the officials of the Block Land and Land Reforms Department was also conducted on 4th June, 2019.

The petitioners, in the instant writ petition, allege police inaction on the ground that the petitioners had, by

a letter dated 11th March, 2020, sent through post to the Officer-in-Charge, Sabang Police Station, requested the said Officer-in-Charge to facilitate free ingress and egress from the petitioners' property and to start criminal case as per the law against the respondents no.7 to 10 (private respondents).

Advocate for the State has produced an instruction received by him from the Officer-in-Charge, Sabang Police Station, a copy whereof is also given to the advocate for the petitioners. The said instruction/report is taken on record. It appears from the said report that the police authorities have submitted NCR no.750/18 dated 13th August, 2018 under Sections 506/34 of IPC against the private respondents. The police authorities have also indicated that the petitioners should make necessary arrangement to take possession of the land occupied by the private respondents and during execution, all sorts of police assistance will be provided by Sabang Police Station to maintain law and order.

The recovery of possession by the petitioners is dependent on an order of a competent court. The police authorities cannot decide as to the title and give possession of a property or remove someone therefrom which is said to have been encroached or trespassed into as in the instant case as alleged by the private respondents. The police authorities have only expressed their view to give all assistance during execution which

obviously means execution of an order of a competent court.

So far as the investigation part is concerned, the police authorities have already filed their report on 13th August, 2018 on basis whereof a criminal case has been registered. Any criminal case to be proceeded with pursuant to a report being filed before the learned Magistrate is dependent on the said court. The petitioners, therefor, cannot allege police inaction in the matter as of now.

The writ petition is disposed of granting the petitioners liberty to approach the concerned Magistrate wherein the case is pending pursuant to the report filed by the police on 13th August, 2018 as against the private respondents under Section 506/34 of the IPC.

Nothing further remains to be adjudicated in this writ petition.

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, is to be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)