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05.02.2021
Mithun

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 101/2021

Pinki Das

-versus-

The State of West Bengal & Ors.

Mr. Biplab Sengupta, , Adv,
Mr. Biswajit Biswas, Adv.

...For the Petitioner.

Mr.Hillol Saha Podder, Adv.

... for the O.P.Nos.3 to 6.

Mr.Subir Kumar Saha, A.G.P.,
Mr.Bikramaditya Ghosh, Adv.

... for the State.

The petitioner has made out a grievance against police inaction and prayed for remedy under constitutional writ jurisdiction.

It is the case of the petitioner that she is the owner of a piece of land specifically described in the body of the writ petition as well as the deed of sale by virtue of which she purchased the said land which is annexed to the writ petition as Annexure P-1.

It is the grievance of the petitioner that the private respondents No.4 to 9 are illegally obstructing the petitioner from enjoying the said land. They are trying to grab the land of the petitioner by various means and ways. The petitioner initially moved before the jurisdictional Executive Magistrate and lodged her grievance invoking Section 144 of the Code of Criminal

Procedure. The order was passed directing the police authority to see that the petitioner's possession over the said property may not be disturbed. A report was also called for from the office of the B.L. & L.R.O. and the Revenue Inspector submitted a report affirming the ownership of the petitioner in respect of 12 decimals of land which was purchased by her. She also filed a suit for declaration of permanent injunction in the Court of the learned Civil Judge (Junior Division) at Siliguri. The said suit was registered as Title Suit No.136 of 2019. On the prayer of the petitioner, a temporary order of injunction was passed by the learned Civil Judge (Junior Division) restraining the private respondents from disturbing the peaceful possession of the plaintiff over the suit land up to a specific period of time. In spite of the order of the Civil Court, the respondents went on disturbing the possession of the petitioner over the said property. She tried to lodge series of complaint against the private respondents but the police attached to Phansidewa Police Station did not take fruitful action against the private respondents. So is the instant writ petition praying for direction upon the police authority to secure legal right of the petitioner.

Learned Advocate for the private respondents, on the other hand, submits that they have not been served with a copy of the application for injunction and

the plaint of Title Suit No.136 of 2019 as yet. The petitioner has efficacious remedy by filing an application for violation of injunction order against the respondents.

Learned Advocate for the State respondents also submits that the dispute is essentially civil in nature.

It is an established principle of law where alternate efficacious relief is available, the aggrieved person must take recourse of such legal procedure. The real remedy of the petitioner lies in civil suit which she has already filed and obtained an order of injunction. If the respondents violate the injunction order passed by the learned Civil Judge (Junior Division) at Siliguri, she could have filed an application for violation of the order of injunction under the specific provision contained in the Code of Civil Procedure.

In view of such circumstances, since the dispute between the petitioner and the private respondents is absolutely civil in nature and the petitioner has already taken recourse by filing a suit for declaration and permanent injunction, she is at liberty to file a Misc. Case for violation of order of injunction.

As this Court holds that efficacious relief lies in the Civil Court, the instant application under Article 226 of the Constitution of India is not maintainable.

However, the petitioner is at liberty to take necessary action against the respondents available in accordance with law.

(Bibek Chaudhuri, J.)