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08.02.2021
Mithun

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

WPA/128 /2021

Elyssia Developers LTP
-versus-
The Union of India & Ors.

Mr. Amales Roy, Adv,
Mr. Arnab Sengupta, Adv.
Mr. Deborshi Dhar, Adv.

...For the petitioner.

Mr. Bikramaditya Ghosh, Adv,
Mr. Momenur Rahman, Adv.

...for the State respondent.

Mr. Sudipta Muzumdar, Ld. A.S.G.,
Mr. Ashok Kumar Ghosh, Adv.
Mrs. Swarnali Ghosh (Sengupta), Adv.

... for Union of India.

Affidavit-of-service be kept with the record.

In the instant writ petition, the petitioner has raised dispute as to whether an act of trespassing by the defence/military personnel into the landed property admeasuring 2.49 acres belonging to the petitioner and restraining the petitioner from raising any construction of boundary wall around his own land is illegal, arbitrary and violative of the provisions of law.

It is alleged by the petitioner that a plot of land measuring about 13.69 acres being a portion of R.S. Plot No.34, corresponding to L.R. Plot No.203 situated within Mouza Dabgram within Police Station

Bhaktinagar, Jalpaiguri was acquired for the purpose of setting up of a defence base under Section 6 of the Land Acquisition Act on 15th January, 1973.

The petitioner, a Partnership Firm purchased 2.49 acres of land being part of L.R.Plot No.203 within Mouza Dabgram, Police Station Bhaktinagar by virtue of registered deed of purchase. The petitioner tried to construct boundary wall around the said land but it was restrained by military personnel on 21st September, 2020. In order to protect its right, the said partnership firm made representations before the respondent Nos.7 and 8 but they did not take any action for protection of the right of ownership and possession of the petitioner's-firm. So is the instant writ petition.

I have heard Mr. Amales Roy, learned Advocate for the petitioner and the learned Counsel for the Union of India. In course of argument Mr. Roy draws my attention to Annexure P-8, viz copy of the L.R. record of rights wherefrom it is ascertained that a piece and parcel of land admeasuring 2.49 acres is recorded in the name of the petitioner. It is also pointed out by Mr. Roy that the land was surveyed by the local B.L. & L.R.O. and he submitted a report that the petitioner is in actual possession of 1.38 acres of land, out of said 2.49 acres of land and in remaining 1.11 acres of land, pipe line of Indian Oil Corporation is laid.

It is urged by the learned Advocate for the petitioner that the Indian Oil Corporation did not raise any objection against the petitioner's attempt to raise boundary wall around 2.49 acres of land. Admittedly the military personnel have no authority to restrain illegally the petitioner from raising construction over entire 2.49 acres of land.

Learned Advocate for the Union of India submits that admittedly Indian Oil Corporation pipe line is laid on 1.11 acres of land. The said land is under the possession of the Indian Oil Corporation. The petitioner cannot raise any boundary wall including the said land.

Having heard the learned Counsels for the petitioner and the respondents and on perusal of entire materials on record, I find that the dispute involved in this case is absolutely civil in nature. According to the petitioner, the respondents having no ownership or authority are restraining the petitioner firm from raising boundary wall in the said land.

If the petitioner is illegally restrained by the respondents, proper and efficacious remedy lies in filing a suit for permanent injunction by the petitioner.

The Writ Court cannot grant an order of injunction restraining the respondents from interfering with the possession and user of land of the petitioner.

The learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in ***D.B.Basnettt (Dead) through Legal Representatives Vs. Collector, East District, Gangtak, Sikkim and another*** reported in ***(2020) 4 SCC 572***.

I have gone through the said decision , the principle laid down in the aforesaid decision is in no way relevant in the facts and circumstances of the instant case.

For the reasons stated above, I do not find any merit in the instant writ petition and accordingly, the writ petition is dismissed on contest, however, without costs.

The petitioner is at liberty to take step according to law on the self same cause of action.

(Bibek Chaudhuri, J.)