

29.08.2022
Sl. No.552(ML)
srm

W.P.A. No. 253 of 2022

Nasim Ara Begum

Versus

The State of West Bengal & Ors.

Mr. Soumya Banerjee

...for the Petitioner.

Mrs. Sipra Mazumder,
Ms. Prativa Ghatak

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the respondent Nos.5 to 8.

The petitioner alleges that the police authorities of Uluberia Police Station, have failed and neglected to protect the peaceful possession of the petitioner in respect of the land in question. The petitioner alleges that the respondent Nos.5 to 8 had been disturbing the peaceful possession of the petitioner in respect of the lands in question. Reliance has been placed on an order of ad interim injunction passed by the learned Civil Judge (Junior Division), 1st Court at Uluberia, Howrah. The defendants in the suit were restrained from disturbing the peaceful possession of the petitioner in respect of the schedule property. It is submitted that the ad interim order of injunction has been extended from time to time.

There is nothing on record to indicate that the petitioner had ever approached the police authorities to lodge a complaint indicating commission of any offence by the respondent Nos.5 to 8. It appears that the police authorities made several enquiries as per the direction of the learned Sub-Divisional Executive Magistrate and submitted prosecution under Sections 107 and 116(3) of the Code of Criminal Procedure. It also appears that, upon enquiry, the police authorities submitted a non-prosecution under Section 323 of the Indian Penal Code against the respondent Nos.5 to 8.

On the contrary, on the complaint filed by the respondent No.8 against the petitioner's husband and her son, Uluberia Police Station Case No.13 of 2022 dated January 15, 2022 under Sections 341/323/354/506/34 of the Indian Penal Code was registered.

Having perused the police report and having heard the learned Advocates for the respective parties, this Court is of the view that the allegations with regard to the alleged threats of dispossession and violation of the ad interim order of injunction, must be adjudicated by the learned civil court under Order XXXIX Rule 2A of the Code of Civil Procedure. It also does not appear from the record that the petitioner had ever approached the learned civil court for

implementation of order of injunction by the police. The enquiry of the police authorities reveal that the land was used by the children in the locality as a park and the petitioner was not in possession.

Thus, there are disputed questions of facts and the police authorities cannot be directed to make a further enquiry. The police authority cannot be vested with the powers of the civil court. The learned civil court must decide the issues of title and possession, as also the allegation of violation of the ad-interim order.

Under such circumstances, the writ petition is disposed of without any order. However, as it appears that there has been breach of peace, the police authorities shall continue a vigil and maintain peace. The remedy of the petitioner before the learned civil court is kept open. The observations in this order and the contents of the police report shall not have any impact in any other proceeding.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)