

01.08.2022
Court No. 19
Item no.331
CP

W.P.A. No. 1572 of 2020

Tinkari Baidya
Vs.
The State of West Bengal & ors.

Mr. Dhananjay Banerjee
Ms. Oindrila Ghosh
Ms. Ankita Maji
...for the petitioner.

Mr. Bibek Jyoti Basu
Mr. U. K. De
...for the State.

Mr. Raghunath Adhikary
Ms. T. Banerjee
...for the respondent nos. 5 to 8.

The petitioner alleges that the respondent nos. 5 to 8 have once again tried to repossess the land and the brick structure of the petitioner, thereby violating the decree of the civil court which they had suffered.

Records reveal that the petitioner filed a suit for declaration, permanent injunction and recovery of khas possession against the said respondents. The suit was registered as Title Suit No. 88 of 2014. The suit was decreed on September 10, 2015. Police cost was deposited as per the assessment of the Superintendent of Police, Hooghly for execution of the decree with police help. The process server had also filed a report sometime in 2018, inter alia,

stating that the delivery of khas possession was handed over to the petitioner. The decree holders also signed all relevant document with regard to delivery of possession.

It is contended that the said respondents once again tried to take possession of the land and the brick structure. On the basis of the complaint of the petitioner, Serampore Police Station Case No. 474 of 2018, dated October 1, 2018 under Section 447/379/506/34 of the Indian Penal Code was started. After completion of the investigation charge-sheet has been filed vide Serampore Police Station Charge Sheet No. 504 of 2018, dated October 31, 2018. On receipt of a telephonic information on September 6, 2019 that the respondents were trying to repossess the property of the petitioner, the police authorities rushed to the locale and restrained the said respondents from committing any illegality. Prosecution under Section 107 read with Section 116(c) of the Cr.P.C. was also submitted against the said respondents. Again on October 10, 2019 at about 8.30 pm, the petitioner went to the Pearapur Out Post and complained that the respondents were trying to repossess the peaceful possession of the petitioner. Prosecution under Section 427 of the Indian Penal Code was submitted against Sk. Ansar, Manab Pal and Swapan Mondal after obtaining an

order of learned Additional Chief Judicial Magistrate, Serampore. On December 8, 2019, on the basis of the complaint of the petitioner over the issue of damage to the property and outraging the modesty of the petitioner's wife and daughter, Serampore Police Station Case No. 551 of 2019, dated December 8, 2019 under Sections 341/323/325/354/506/427 and 34 of the Indian Penal Code was registered. Upon investigation, charge-sheet has been filed against 6 accused persons. Enquiry reveals that the property is under lock and key and there was no obstruction from any corner.

Learned advocate for the respondent nos. 5 to 8 submits that the property was under the possession of a club since long. The petitioner had purchased the property much later when the club was in possession of the property and was enjoying the same. The decree passed by the learned civil court indicates that the defendants in the suit had rented out the structure to a Government organization.

In any event, there is nothing on record to show that the respondent nos. 5 to 8 had challenged the *ex parte* decree or had obtained any order in their favour with regard to grant of stay of the decree. The police authorities have stated that the property is lying under lock and key and there is no obstruction,

for the time being. In case of forceful dispossession of the petitioner no order permitting the petitioner to enter the premises with police help can be passed, as the remedy of the petitioner would be before the executing court.

If the petitioner complains of further disturbance or obstruction, the police authorities shall act and proceed in accordance with law. The police authorities shall keep a vigil, so that law and order is maintained.

The remedy of the respondents Nos. 5 to 8 before any court of law with regard to the ex-parte decree is kept open.

The writ petition is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)