

**Form No. J(2).
Item No.09**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 18.08.2022

DELIVERED ON: 18.08.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.A. 3314 of 2018

With

I.A. No. CAN 1 of 2020 (not in file)

With

I.A. No. CAN 2 of 2021 (not in file)

Sudipta Bose

VERSUS

The State of West Bengal & Ors.

Appearance:-

Mr. Biswaroop Biswas

Ms. Madhumita Patra

Mr. Gautam Das

....for the Petitioner

Mr. Haradhan Banerjee

Mr. Sudip Banerjee

Mr. Sanjoy Kr. Das

.....for the respondent no. 4

Mr. Amitesh Banerjee

Ms. Ipsita Baner

... for the State

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioner has prayed for a writ in the nature of mandamus to command the police authorities to provide necessary police help/protection for construction of the boundary wall by the petitioner surrounding his property.

2. The petitioner filed a suit for declaration of title and for permanent injunction being Title Suit No. 73 of 2006 before the learned Civil Judge (Junior Division), 1st Additional Court, Alipore. The learned trial Judge by a judgment and decree dated February 21, 2014 passed a decree of declaration of the plaintiff's title in respect of the suit property and for permanent injunction. The petitioner claims that the said decree, which was carried upto this Hon'ble Court in second appeal stood confirmed as the second appeal stood dismissed for default. The petitioner alleges that for the purpose of protection of his property, he tried to construct a boundary wall surrounding his property but the private respondent is creating obstruction in raising the said boundary wall.

3. The petitioner claims to have lodged a complaint before the Officer-in-Charge, Parnasree Police Station alleging that

the members of the respondent/Club are creating obstruction in the matter of raising boundary wall by the petitioner. The petitioner alleges inaction on the part of the police authorities in not granting protection for construction of the boundary wall.

4. Mr. Haradhan Banerjee, learned advocate representing the private respondent submits that the second appeal is still pending before this Hon'ble Court after the same was restored to its original file and number and the submission made by the learned advocate for the petitioner that the said decree has been confirmed upto this Hon'ble Court is not correct.

5. Mr. Banerjee submits that the decree of permanent injunction can be executed in terms of the provisions of Order XXI Rule 32 of the Code of Civil Procedure and this Court in exercise of powers under Article 226 should not exercise its jurisdiction in view of availability of alternative efficacious remedy. He submits that there is a dispute with regard to the demarcation and/or boundary line of the property in question and as such, no direction can be passed upon the police authorities to render assistance to the petitioner in the matter of raising construction of boundary wall.

6. Mr. Amitesh Banerjee, learned senior counsel appearing for the State submits that the police authorities can only implement the orders passed by the Court but they lack

jurisdiction to decide any boundary dispute between the private parties.

7. Heard the learned advocates for the parties. Perused the materials on record. The petitioner obtained a decree of declaration of title and for permanent injunction. The operative portion of the decree dated February 21, 2014 passed by the Civil Court in T.S. 76 of 2006 is set out hereunder:

"It is ordered and decreed that the suit be and the same is decreed on contest without cost.

The plaintiff do get a decree for declaration that plaintiff is the owner of suit property and the defendants have got no right, title and interest over the same as well as a decree of permanent injunction whereby the defendants are restrained from creating any disturbance in peaceful possession of the plaintiff in suit property and from performing any celebration and/or function therein."

8. The decreetal property is a piece and parcel of land measuring about 3(three) cottahs be the same a little more or less lying and situated in Dag No. 96 under Khatian No. 49, Mouza-Ram Narayan Taluk, J.L. No.-4, Touzi No.-345, being scheme Plot No. -IX formerly under South Suburban Municipality at present under Kolkata Municipal Corporation under Ward No. 129, being Premises No. 251, Parui Kancha Road, P.S.-Behala, Kolkata-700061. The suit property, as it would appear from the decree is a vacant land, which is butted and bounded on three sides by house of several owners and on the Western side by the Corporation Road. The Civil Court passed a decree for

permanent injunction restraining the defendants from creating any disturbance in peaceful possession of the suit property and from performing any celebration and/or any function therein. The construction of the boundary wall was not the subject matter of the dispute in the civil suit. The petitioner has not prayed for implementation of the decree for permanent injunction through police help.

9. The police authorities cannot decide the extent of an immovable property which is a vacant land measuring about 3 cottahs more or less. Before the petitioner can construct the boundary wall surrounding the property in question, the exact boundary line of the property on all sides of the property is to be ascertained through which the boundary wall is to be constructed. Even if the claim of the petitioner is accepted that the decree of declaration of title and permanent injunction passed by the Civil Court has attained finality, the petitioner cannot be equipped with an order of police protection by this Court for construction of boundary wall until and unless the boundary line of the property is fixed by the competent authority. The police authority has not been vested with such power to ascertain either the extent of the property of the petitioner or its boundary line. The right of the petitioner to construct boundary wall do not get

crystallised until the boundary line of the said property is finally ascertained.

10. This Court under Article 226 of the Constitution of India can direct the police authorities to perform the duties vested upon them by the statute. Empowering the police authority to fix the boundary line of the property through which the boundary wall will be constructed will lead to disastrous result.

11. In view thereof, this Court is of the considered view that the petitioner is not entitled to any order from this Court allowing him to raise construction surrounding his property with police help.

12. Mr. Biswas, learned advocate appearing for the petitioner places reliance upon a decision of the Hon'ble Supreme Court of India in the case of **P.R. Murlidharan & Ors. vs. Swami Dharmananda Theertha Padar & Ors.** reported at **(2006) 4 SCC 501** in support of his contention that a writ for police protection is maintainable for protection of the rights declared by a decree or by an order passed by the Civil Court. The decree passed by the Civil Court is for declaration of title and for permanent injunction restraining the defendants from causing any obstruction in the possession of the property of the petitioner.

13. The petitioner has not obtained any decree from the Civil Court for the purpose of raising boundary surrounding the property. The right of the petitioner to raise a boundary wall surrounding the property and the demarcation of the said property and its boundary line has not been crystallised by the said decree. Therefore, the said decision is of no assistance to the petitioner in the instant case.

14. Mr. Biswas further referred to the decision of the Hon'ble Supreme Court in the case of **Howrah Mills Co. Ltd. & Anr. Vs. Md. Shamin & Ors.** reported at **(2006) 5 SCC 539** in support of his submission that the writ Court can direct the police authorities to give necessary protection to protect his property. The Hon'ble Supreme Court in the said decision granted protection to the petitioner company to repair or renovate its boundary wall and also for construction of separate boundary walls for the plot proposed to be sold under the supervision of the BIFR. The Hon'ble Supreme Court held that the assignees of undivided shares from a co-owner will also be benefitted if the property is protected from trespassers. The said decision is distinguishable on facts and is, therefore, not applicable to the case on hand.

15. Mr. Biswas also relied upon an order dated June 14, 2022 passed by a Hon'ble Division Bench in **F.M.A. 1218 of 2009 with I.A. No. CAN 5 of 2022** in the case of **Sri Nanigopal Das vs.**

Sri Debabrata Bhattacharya & Ors. in support of his contention that the writ Court can direct the police authority to put a party in possession of an immovable property.

16. In **Nanigopal Das (supra)** the possession of decreetal property was delivered in favour of the writ petitioner in execution of a decree. The writ petitioner/respondent no.1 in the mandamus appeal was dispossessed forcibly by the appellant and the said room was locked. The Hon'ble Division Bench after observing that the possession of the room was handed over on the basis of an order passed in an execution case refused to interfere with the order passed by the Hon'ble Single Judge wherein the police authority was directed to put the writ petitioner back in possession. The decision in **Nanigopal Das (supra)** is distinguishable on facts and as such is not applicable to the case on hand.

17. The issue of police inaction arises only if the police authorities fail and/or neglect to perform their statutory duties. This Court is of the considered view that the writ petitioner has failed to make out any case of failure on the part of the police to perform their statutory duties.

18. For the reasons as aforesaid, the writ petition along with the connected applications I.A. No. CAN 1 of 2020 (not in file) and I.A. No. CAN 2 of 2021 (not in file) stand dismissed. It would be open to the petitioner to approach the

appropriate forum in accordance with law for appropriate reliefs.

19. There shall be, however, no order as to costs.

20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Pallab, AR(Ct.)