

4.8.2022
Sl.No.3
sn

W.P.A. No.3642 of 2020

Seshnath Singh

Versus

The State of West Bengal & Ors.

Mr. Prasanta Kumar Banerjee

Ms. Indrani Nandi

... for the Petitioner.

Mr. Subhabrata Datta

Mr. Benazir Ahmed

...for the State-respondents.

Despite service, none appears on behalf of the respondent nos. 7 to 12. Let the affidavit of service be taken on record.

The petitioner prays for a direction upon the Inspector In Charge, Serampore Police Station to demolish the illegal “Chaityana Statue”, which has allegedly been constructed by the respondent nos.7 to 12 on ‘ka’ schedule property of the petitioner corresponding to Dag No.2090, in mouza Baidyabati. The petitioner claims to be the owner of 0.518 acres of land in the said plot. A civil suit was filed by the petitioner before the learned Civil Judge, Junior Division, 2nd Court, Serampore, Hooghly, which was registered as Title Suit No. 01 of 2019. The petitioner claims to be one of the plaintiffs in the suit.

It is the specific contention of the petitioner that the owners of ‘ka’ scheduled property, which is a brick field, filed a suit. The allegation is that the

defendants in the suit were threatening to make construction on the property of the petitioner and other plaintiffs. An order of injunction had been passed by the learned civil court against the respondent Nos. 7 to 12. Upon perusal of the materials on record, the record of rights and the municipal tax receipts etc. the learned Civil Court found that the plaintiff had a good prima facie case and the balance of convenience and/or inconvenience was in favour of passing the order of injunction. It was ordered that the defendants be restrained by an ad-interim order of injunction from disturbing the peaceful possession of the plaintiffs with regard to 'ka' scheduled property and from making any unauthorised construction in respect thereof or from changing the nature and character of the property. Such order was passed on January 2, 2019.

By an order dated February 28, 2019, the learned Civil Court directed the Inspector In Charge, Serampore Police Station to ensure that the order of ad-interim injunction dated January 2, 2019 is carried out and implemented properly in its true spirit and sense. The allegation was that the defendants had tried to encroach the 'ka' scheduled property with an intent to make illegal construction, by violating the order of injunction.

It appears that the petitioner also prayed for Commission by filing an application under Order 39 Rule 7. The said Commission was allowed by the learned civil court. An Advocate Commissioner was appointed for holding an inspection of the suit property. The Commissioner was directed to file a report before the learned civil court.

By an order dated December 18, 2019, the ad-interim order was made absolute. It is alleged that thereafter the statue has been constructed on 'ka' scheduled property. The contention of the petitioner is that the Officer In Charge, Serampore Police Station has failed and neglected to comply with the order of the learned civil court and take necessary steps for implementation of the order of injunction.

The learned advocate for the petitioner submits that the construction of idol had taken place after the order of injunction had been passed. The report of the learned Advocate Commissioner is not before this Court and as such the Court is not in a position to ascertain whether the allegation of construction of the idol is correct or not. The petitioner has not filed any application before the learned Civil Court alleging violation of the order of injunction. The suit proceeded ex parte. The prayer for demolition of unauthorised construction which has allegedly been constructed within 'ka' scheduled

property can only be allowed by the learned civil court upon ascertainment of the actual facts on evidence, provided the petitioner approaches the civil court alleging violation of the order of injunction and prays for mandatory directions. This is a matter of evidence.

The police report is taken on record. It appears that after the construction of the statue, altercation took place and a prosecution under Section 107 and 116(C) of the Code of Criminal Procedure was submitted against the respondents.

It is the specific contention of the police authorities that the allegation of the petitioner was not correct. The statue of the idol was placed in the middle of the ghat which is on the river Ganges. Celebration has been going on in the month of Sraban every year since long, on the said ghat. There is also a 'fair' organised on the ghat.

It is the specific contention of the police authorities that the construction of the idol is apparently on the ghat.

Under such circumstances, this Court is of the view that the question whether the statue had been constructed within 'ka' scheduled property or not, cannot be determined by the Civil Court.

The police authorities will implement the order of injunction to the extent that no disturbance shall

be caused in respect of the land of the petitioner and other plaintiffs.

The police authorities shall ensure that the devotees and other persons who go to the ghat to worship, do not encroach into the land of the petitioner or create any disturbance thereon.

The order of the learned Civil Court shall be complied with in its letter and spirit by the police authorities.

This writ petition is disposed of.

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.)