

31.8.2022
Sl.No.5
sn

WPA 7081 of 2022

**Manju Jaiswal & Ors.
Vs.
The State of West Bengal & Ors.**

**Mr. Dhiraj Trivedi
Mr. Subhranshu Trivedi
Mr. Bikash Singh
..for the petitioners
Mr. Sutanu Chakraborty
..for the State**

Despite service, none appears on behalf of the respondent nos.6 to 8. Let the affidavit of service be taken on record. The postal articles which were sent to the said respondents have come back with the endorsement "item refused". The writ petition is taken up in their absence.

It is the contention of the petitioners that from the observations made by the learned Civil Judge, Senior Division, Barasat, in the order of temporary injunction, it would be clear that the petitioners were joint owners of the "B" schedule property. Thus the police could not deny the petitioners their right of ingress and egress in respect of the property.

The petitioners are the proforma defendants in Title Suit No. 906 of 2008.

According to the petitioners, the police authorities under the garb of implementation of the order of injunction, harassed the petitioners and physically restrained the petitioners from the entering the premises in question.

The petitioners pray for an order upon the officials of the Bhatpara Police Station not to prevent the petitioners from entering into the “B” schedule property.

The police authorities have filed a report. It appears that on the allegation of violation of the ad-interim order of injunction, an altercation had taken place. Bhatpara Police Station Case No. 464 dated December 6, 2020 under Sections 447/427/506/34 of the Indian Penal Code was registered against Smt. Sanjukta Jaiswal, Rani Arya, Ravi Gupta, Udai Rai and others. After completion of the investigation, charge sheet has been filed. On the allegations made by the petitioners with regard to obstruction posed by the respondent nos. 6 to 8, alleging fixation of the padlock, an enquiry was made by the police authorities but the allegations could not be substantiated. Thereafter, the Security Manager of Titagarh Industries Limited lodged a complaint that some miscreants had broken the wall of Titagarh Industries. Bhatpara Police Station Case No. 665 of 2021 dated November 6, 2021 under Sections 447/427 of the Indian Penal Code was registered. Binod Gupta, one of the accused was arrested and another accused is absconding. A charge sheet was filed against Binod Gupta and Jagadish Gupta. Ajoy Kumar Yadav was shown as an absconder. The

investigation revealed that the two accused persons, were allegedly the agents of the petitioners.

The petitioners pray for a direction upon the police authorities, restraining them from interfering with the petitioners' entry into the "B" schedule property in terms of the order of the civil court. The petitioners are not the plaintiffs in the suit.

Learned Trial Judge had restrained the defendant no.1 from disturbing the peaceful possession of the plaintiffs in respect of the "B" schedule property. There is no reference in the said order with regard to the right and enjoyment of the "B" scheduled property by the petitioners. The petitioners are the proforma defendants in the suit.

Aggrieved by such order, the petitioners have allegedly filed a Misc. appeal, which is pending decision.

Under such circumstance, any order restraining the police authorities would be a modification of the order of the learned Trial Judge, which is not permitted under Article 226 of the Constitution of India. It will become an adjudication of the possession in respect of the property.

This writ petition is disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)