

19.07.2022
Sl.No.6(SL)
srm

W.P.A. No. 11137 of 2022

Palash Das

Versus

State of West Bengal & Ors.

Mr. Biswaranjan Bhakat,
Mr. Samar Kumar Pal

... for the Petitioner.

Ms. Kakali Naskar

...for the State-respondents.

Despite service, none appears on behalf of the respondent No.5.

The petitioner alleges overt act by the police authorities of Joynagar Police Station. According to the petitioner, the police authorities were trying to convince the petitioner to stop the construction of a soak pit. This Court has been approached for necessary orders, restraining the police authorities from harassing the petitioner.

It appears that the petitioner had lodged a case under Section 144(2) of the Code of Criminal Procedure before the learned Executive Magistrate, Baruipur and the learned Executive Magistrate had directed the police authorities to enquire and state whether there is any chance of breach of peace in connection with the instant

case. During enquiry, it was found that the petitioner and the respondent No.5, were step brothers, and there was a long standing dispute between the two, over a common drain. As there was a possibility of breach of peace, both the parties were directed to stop work and to maintain peace in the locality. Prosecutions under Section 107 and 116(3) of the Code of Criminal Procedure had been submitted against the petitioner and the respondent No.5. According to the police authorities, the enquiry was made on the direction of the learned Executive Magistrate and the parties were directed to stop the construction in apprehension of breach of peace.

However, this Court is of the view that the police authorities do not have any jurisdiction to decide whether the soak pit should be constructed or not unless a competent court or authority directs the police authorities to do so. It is submitted that the construction was being done on the basis of a sanction plan. The dispute, if any, is civil in nature and the police authorities shall not interfere with the construction of the soak pit. However, the police authorities shall keep a strict vigil in order to ensure that the parties do not commit breach of peace. In case of breach of peace, the police authorities may take steps.

This order shall not be construed as a declaration of the right, title and interest of the petitioner to construct the soak pit. Such issue shall be decided by a separate forum.

The writ petition is, thus, 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.)