

S/L 27(ML)
03.08.2022
Court. No. 19
GB

WPA 11482 of 2022

Sk. Abdul Rafik & Anr.
VS
The State of West Bengal & Ors.

Md. Mansoor Alam,
Sk. Anwar Ali.

...for the Petitioners.

Mr. Amitesh Banerjee,
Ms. Ipsita Banerjee.

...for the State.

Mr. Lalratan Mandal.

...for the Respondent Nos.7 & 8.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioners allege that the respondent nos.7 and 8 had forcefully tried to evict the petitioners from plot no.871 of Mouza-Dewanbheri. The petitioners allege that the said respondents prevented the petitioners and their family members from enjoying the common undivided property. When the petitioners protested, the said respondents threatened the petitioners with weapons. The petitioners initiated proceeding under Section 144(2) of the Code of Criminal Procedure before the learned Executive Magistrate. Further allegation is that, despite a complaint having been filed before the police authorities, the police authorities did not take any steps.

The learned advocate for the respondent nos.7 and 8 denies the allegations. According to him, the petitioners had already constructed a concrete structure on the said plot and were residing there. Reliance has been placed on the complaint itself. He next submits that three partition suits

had been filed in respect of the self-same property. Yet, no order of injunction had been passed.

It is an admitted position that the property is undivided and the petitioner no.1 and the respondent no.7 are brothers. Copies of the plaint have been handed over to the Court in support of such contention.

Mr. Banerjee, learned senior standing counsel submits that an enquiry was made by the police authorities and apprehending breach of peace, prosecution under Sections 107/116(3) of the Code of Criminal Procedure had been submitted against the respondent nos.7 and 8 vide Singur Police Station NCR No.681 of 2022 dated May 23, 2022. Specific directions were given by the police authorities to the said respondents to maintain peace and tranquility.

Having considered the rival claims of the parties and having perused the plaints of the partition suits, it appears that the dispute between the parties are over use and enjoyment of an undivided property.

The parties are at liberty to proceed before the learned civil court, in accordance with law. The question whether the three suits would be maintainable on the self-same cause of action, is not gone into and the respondent nos.7 and 8 can pray for necessary orders before the learned civil court. As it is an undivided property, it is an admitted position that all the heirs are entitled to enjoy the same.

The police authorities shall keep a vigil in order to ensure that law and order is maintained.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)