

22.07.2022
Sl.No.4(SL)
srm

W.P.A. No. 11861 of 2022

Sk. Sakhayet Hossain

Versus

The State of West Bengal & Ors.

Syed Nurul Arefin,
Mr. Rahul Sinha

... for the Petitioner.

Mr. Ansar Mandal,
Mr. Suprabhat Bhattacharya

...for the State-respondents.

Mr. Sujay Bandyopadhyay,
Md. Basir Layek

...for the Respondent Nos.7 to 9.

The petitioner alleges that the Officer-in-Charge, Khandaghosh Police Station, has failed and neglected to grant police protection to the petitioner when the petitioner tried to raise a boundary wall around Plot Nos.425 and 431 of Mouza Amela. It is further submitted by the petitioner that the respondent Nos.7 to 9 do not have any right, title and interest with regard to the plots in question, but the said respondents were trying to illegally construct a culvert between the two plots by claiming that there was a common passage between the plots.

The petitioner has already filed a civil suit being Title Suit No.110 of 2021. It has been alleged before the learned civil court that the respondent Nos.7 to 9, who

were the owners of an adjacent plot, were trying to construct a passage and a culvert across Plot Nos.425 and 431. An injunction was prayed for. An ad interim order was passed by the learned Court below against the respondent Nos.7 to 9, who were the defendants in the suit. They were restrained from interfering with the possession of the petitioner in respect of the lands situated at Plot Nos.425 and 431, being schedule-A of the plaint.

Today, the petitioner submits that permission had been granted by the panchayat authorities to construct a boundary wall. Such right of the petitioner to construct such wall, must be protected by the police authorities and a police posting at the petitioner's own cost, has been prayed for.

It appears that the permission was granted on April 26, 2022 by the Pradhan, Sagrai Gram Panchayat, Purba Burdwan, after the order of the civil court.

An application has also been filed before the Superintendent of Police, Purba Burdwan with a request for police posting at the time of construction of the boundary wall.

It is alleged that as the learned Court below had restrained the defendants in the suit, from creating any disturbance with regard to the plaintiff's possession over

the plots in question, the plaintiff should be at liberty to construct the wall and enjoy the property, on the basis of his exclusive right.

The representation before the Superintendent of Police, Purba Burdwan, which has been annexed to the writ petition, does not indicate whether the lands in question, have been converted from '*sali*' to '*bastu*'. Although, it is submitted by Mr. Arefin, learned Advocate appearing on behalf of the petitioner, that the permission given by the panchayat authorities would indicate that such conversion was granted, yet the writ petition does not contain any such document.

Mr. Bandyopadhyay, learned Advocate appearing on behalf of the respondent Nos.7 to 9, submits that the prayers made in the writ petition should have been made before the learned civil court before which the suit is pending. It is further submitted that the dispute is with regard to a common passage between the Plot Nos.431 and 425. The respondent Nos.7 to 9 use the same as a pathway. Thus, according to Mr. Bandyopadhyay, if the petitioner is allowed to construct the boundary wall around Plot No.431, the pathway shall be covered by such boundary wall and the dispute, which is pending before

the learned civil court, shall not be adjudicated in the proper manner.

The police report is taken on record. It appears that there are disputes with regard to the common pathway. A civil suit is pending and the claim of the petitioner to be the exclusive owner of the Plot No.431 and right asserted by the petitioner to construct the boundary wall with police protection, cannot be determined by the police authorities in view of the rival claims and also because the matter is *sub judice* before the learned civil court.

Having considered the rival contentions of the parties, this Court is of the view that the remedy of the petitioner would be to approach the learned civil court for further orders, on the basis of the permission granted by the panchayat authorities. The respondent Nos.7 to 9 are also at liberty to take adequate steps, with regard to the issues involved, before the appropriate forum. However, as there are disputes with regard to possession and the police authorities have found in the past that there had been altercation between the parties, the police authorities shall keep a strict vigil in order to prevent further untoward incident.

This order shall not be construed as a decision on the correctness of the contentions of the petitioner and the

validity of the permission given by the panchayat authorities.

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.)