

S/L 142(ML)
19.07.2022
Court. No. 19
GB

WPA 11949 of 2022

Sri Sambhu Nath Singh
VS
The State of West Bengal & Ors.

*Mr. Kushal Chatterjee,
Mr. Debrup Choudhury.*

...for the Petitioner.

Ms. Ankita Mitra.

...for the State.

*Ms. Puja Beriwal,
Mr. Sovan Bera.*

...for the Respondent No.5.

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

There appears to be a dispute between the petitioner and the respondent no.5 with regard to a particular plot of land. Such dispute with regard to the title, possession, etc., are sub judice before the learned Civil Judge (Junior Division), 2nd Court at Barrackpore, vide Title Suit No.101 of 2019. A learned advocate Commissioner was appointed by the learned court below, in whose presence the repairing work was to be undertaken by the petitioner.

Records reveal that the learned advocate Commissioner was resisted and he could not carry out the repairing work. The learned advocate Commissioner also approached the Officer-in-Charge, Titagarh Police Station for taking necessary steps, so that the order of the learned Civil Judge could be complied with. It is alleged that despite such request, the police authorities have not given any assistance to the Commissioner. The Commissioner is not before this Court.

It appears that the learned advocate Commissioner has filed a report before the learned civil court indicating that during the repairing work, 7 to 8 unknown persons forcefully resisted the repairing work and as such, the learned advocate Commissioner was compelled to stop the repairing work.

The remedy of the petitioner would be to approach the learned civil court for necessary orders upon the Officer-in-Charge, Titagarh Police Station.

It appears from the police report, that on the basis of the complaint lodged by one Bhola Shankar Tiwari, husband of Smt. Usha Tiwari (a co-owner of the property), alleging that one Sambhu Nanth Singh was raising an illegal construction on the property of Smt. Usha Tiwari, a specific case was started vide the Titagarh P.S. Case No.;411 of 2022 dated June 18, 2022 under Sections 448/427/506/34 of the Indian Penal Code. It also appears that one of the co-owners has made an allegation of encroachment against the petitioner. It is further submitted that after receipt of the letter from the learned advocate Commissioner, police assistance had been arranged, but on reaching the spot it was found that construction work was going on and there was severe law and order problems. To resist such unruly situation, the police authorities directed both the parties to maintain status quo and stop the construction work. The police enquiry reveals that the owners of the said plot are Smt. Usha Tiwari and Ashoke Kumar Pandey. That the construction work was going on without their knowledge and

hence, the complaint was lodged by the husband of Smt. Usha Tiwari.

The learned advocate for the respondent no.5 submits that the said respondent did not resist the repairing work. There appears to be rival claims to the property in question. A complaint had been filed by a co-owner who had allegedly been left out from array of defendants in the suit.

The learned advocate Commissioner has filed a report mentioning the resistance by 7 to 8 persons. It is not clear whether the learned civil court had passed appropriate orders upon taking into consideration the report of the learned advocate Commissioner. The learned civil court is competent to pass necessary orders for implementation of its own order.

Under such circumstances, it would not be possible for this Court to pass a mandatory order at this stage. However, if in future, the learned advocate Commissioner, who is not before this Court, approaches the police authorities on the strength of any order passed by the learned civil court for police assistance, the police authorities shall act and proceed in accordance with law. It is not within the domain of the police authorities to over ride and/or over reach the order of the learned civil court. The pending investigation over the complaint of the husband of Usha Tiwari, shall continue.

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.)