

18.08.2022
Sl. No.2(SL)
srm

W.P.A. No. 12721 of 2022

Annapurna Barai

Versus

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya,
Mr. Sujit Kumar Rath

...for the Petitioner.

Mr. Asish Kumar Guha,
Mr. Jayak Kumar Gupta

...for the State-respondents.

Mr. Bhaskar Chandra Manna

...for the Respondent Nos.8 to 12.

The petitioner alleges that the Officer-in-Charge, Marishda Police Station, had failed and neglected to take steps despite an order of injunction having been passed by the learned Civil Judge (Junior Division), 1st Court, Contai, in Title Suit No.26 of 2018. The petitioner, as plaintiff, filed Title Suit No.26 of 2018 claiming right, title and interest with regard to the 'Ka' schedule property, which the plaintiff had allegedly purchased from one Debabrata Basu by way of a registered deed of sale dated March 8, 2013. The plaintiff/petitioner got her name recorded in the record of rights. The allegation is that Debabrata Basu delivered possession of the 'Ka' schedule property to the plaintiff. After demise of the said Debabrata Basu, the defendants

were denying the plaintiff's right and were trying to dispossess the plaintiff from the 'Ka' schedule property. The plaintiff has also prayed for an injunction. Upon contest, the application for injunction was disposed of restraining the defendants in the suit, who are the respondent Nos.8 to 12 herein, from creating any obstruction in the peaceful possession of the plaintiff over the 'Ka' schedule property, till the disposal of the suit.

Mr. Kamallesh Bhattacharya, learned Advocate appearing on behalf of the petitioner, submits that the police authorities failed and neglected to implement the order of injunction. He further draws the attention of the Court to the order dated March 18, 2019 passed, in WP No.2559(W) of 2019. The said order was passed directing the police to ensure that the interim order dated January 10, 2018 restraining the defendants from disturbing the peaceful possession of the plaintiff over the suit property, should be implemented. The said order was passed in the presence of the respondent Nos.8 to 12.

Mr. Bhaskar Chandra Manna, learned Advocate appearing on behalf of the respondent Nos.8 to 12, submits that the said respondents have possessed the property since 1989. It is further submitted by Mr. Manna that the order of injunction was passed by the learned civil court being misled

by the contentions of the plaintiff. He also submits that finding no other way to evict the said respondents from their settled possession, the suit was filed with false statements.

The police authorities have filed a report. It appears that there has been a long standing dispute between the petitioner and the respondent Nos.8 to 12 with regard to the possession of various plots, namely Plot Nos.55, 56, 57, 58, 59 of mouza Kharizbar under Marishda Police Station. On October, 9, 2018, a complaint was received by the police authorities from the petitioner that one Himangshu Jana along with others, threatened the petitioner over the disputed land. A general diary was registered and prosecution under Section 107 of the Code of Criminal Procedure was submitted against Himangshu Jana and three others.

On September 20, 2020, another complaint was received from the petitioner that one Dibakar Jana and four others were creating disturbance in her possession in respect of the disputed plots. The allegation was that fish from the pond had been stolen. Based on the complaint, Mahishda PS Case No.191 of 2020 dated September 20, 2020 under Sections 447/427/379/506/34 of the Indian Penal Code was registered against the accused persons and after completion of the investigation, charge sheet bearing No.153 of 2020 dated

September 25, 2020 under Section 447/427/506/34 of the Indian Penal Code was filed against the said Dibakar Jana and four others. On the last complaint dated April 29, 2022 with regard to the similar allegations, a general diary was recorded. Such allegations were with regard to the pond situated at Plot Nos.55, 56, 57 and 58 of mouza Kharizbar. The police authorities went to the spot to make an enquiry. On perusal that the order of the learned civil court which was with regard to the Plot No.59 alone, the police authorities did not take any further steps with regard to the allegations in respect of the Plot Nos.55, 56, 57 and 58. The petitioner also could not produce any documents of ownership with regard to the Plot Nos.55, 56, 57 and 58 of mouza Kharizbar.

Having heard the learned Advocates for the respective parties, it appears that the police authorities have acted on the basis of the complaint lodged by the petitioner. On all occasions, the police authorities enquired into the matter. It is admitted position that the order of injunction, which has attained finality, is only with regard to the 'Ka' schedule property, i.e., Plot No.59. The deed of sale, which has been annexed to the writ petition by the petitioner, and on the basis of which the ownership is being claimed, also relates to only Plot No.59. Thus, the allegations with regard to the

disturbance of possession in respect of Plot Nos.55, 56, 57 and 58 cannot be entertained and there is no interim order in respect of the said plots. The police enquiry indicates that the petitioner could not produce any document in respect of the said plots. The petitioner could not establish any *prima facie* right with regard to the said plots. In the opinion of the Court, the writ cannot go beyond the said obvious facts. Admittedly, there is no order of injunction with regard to the Plot Nos.55, 56, 57 and 58 in respect of which, Mr. Manna claims that his clients are in possession.

The writ petition is disposed of without any orders.

The police authorities shall continue to implement the order of injunction in respect of 'Ka' schedule property and maintain peace.

The observations made in this writ petition are restricted to the disposal of this proceeding and the same shall not have any impact in any other proceeding.

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.)