

07.07.2022

302
Court No.1
PA(BS)

**FMA 69 of 2022
With
CAN 1 of 2021**

**Kajal Roy & Ors.
Vs.
The State of West Bengal & Ors.**
(Through Video Conference)

Md. Sarwar Salam
....for the Appellant

Mr. Amitesh Banerjee, Sr. Adv.
Ms. Ipsita Banerjee, Advocate

...for the State

Mr. Prosenjit Mukherjee,
Mr. Arghya Kamal Das,
Ms. Paulami Dutta, Advocates

.... for the Respondent/Writ Petitioner

Rajarshi Bharadwaj:

By this appeal, correctness of the order of the learned Single judge dated 30.07.2021 passed in W.P.A. No. 2595 of 2021 (Gopal Chandra Roy-versus- The State of West Bengal & Ors.) has been questioned by the appellant.

The learned Counsel for the writ petitioner/respondent had submitted that there subsists a decree passed by a Civil Court in Title Suit Nol. 77 of 1993 and contended that despite the court directing the police to ensure that the right, title and interest of the respondent/writ petitioner declared by the Civil Court in respect of the plot of land in question is protected, the police were inactive. It was also submitted that the appellants are continuing to disturb the possession of

the respondent/writ petitioner in respect of the suit property.

As per the Learned advocate for the State, all complaints received by the police relating to the immovable property concerned, were investigated into by registering the same as First Information Report.

The learned advocate for the appellant however, contended that the writ petitioner was guilty of suppression of material facts since the appellant had applied for recalling of the ex-parte decree and the same along with a suit of declaration is pending. It was also submitted that an appeal challenging the proceedings in respect of the record of rights was preferred and an order of status quo was granted on May 7, 2014. According to the appellant, such order of status quo is still continuing and relied upon an order passed in a review petition on September 28, 2016. According to the appellant, another writ petition by the writ petitioner was dismissed by an order dated 28th September, 2016.

In the instant case the Learned Single Judge held that there subsists a decree passed by a Civil Court which is binding on both the parties and appellants herein are obliged to abide by and adhere to the same. As long as a decree is not recalled, the same remains binding upon the parties to such suit, even though an application for recalling of the decree is pending.

The Learned Single Judge further held that the police were obliged to ensure that the parties governed by a decree passed by the Civil Court abides by the same. Therefore, at any point of time when the police receives a complaint that any person is acting contrary to the decree of the Civil Court, the police must act and ensure that the parties governed by the decree act in terms therewith.

The writ petitioner had filed another writ petition being W.P.21069 (W) of 2016, which was dismissed on September 28, 2016. However, the Learned Single Judge correctly held that the dismissal of such writ petition does not invalidate the subsisting decree of the Civil Court and the right of the petitioner in respect of the immovable property through subsisting decree of the Civil Court. The fact that there is a decree governing an immovable property subsisting cannot be disputed even though there may be diverse proceedings pending between the private parties in different forai.

Having heard the counsel for parties and on perusal of records, this Court is of the same view as that of the Hon'ble Supreme Court in Murlidharan & Ors. versus Swami Dharmananda Theertha Padar & Ors, (2006) 4 SCC 501 in stating that in a given case, a person may be entitled to police protection having regard to the threat perception to his life and liberty or for protection of rights declared by a decree or order passed by a civil court. As was held by the Hon'ble apex court, "A writ for "police protection" so called, has only a limited scope, as, when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order."

In such case, it is most appropriate to direct the police to ensure that the respondent/writ petitioner is able to enjoy the immovable property as decreed by the Civil Court to its fullest-without any hindrance and obstruction from any person unless such a decree is recalled, set aside or dealt with by an appropriate forum.

Therefore, till such time the decree passed by the Civil Court subsists, the police shall ensure that there is no breach of peace in the suit property as described in the decree passed by the Civil Court.

Thus, no case is made out to interfere in the order of the Learned Single Judge.

For the foregoing reasons, the appeal is dismissed. All pending application are accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)