

10.08.2022
Sl. No.82(ML)
srm

W.P.A. No. 13570 of 2022

Dayal Halder

Versus

The State of West Bengal & Ors.

Mr. Gouranga Kumar Das

...for the Petitioner.

Mr. Amal Kumar Sen,
Mr. Jaladhi Das

...for the State-respondents.

Affidavit-of-service is taken no record. Despite service, none appears on behalf of the respondent Nos.5 to 14.

The petitioner alleges that the Inspector-in-Charge, Kultali Police Station assisted the respondent Nos.5 to 14 in the harvesting of the crops on the entire disputed suit land by violating the order of injunction. It is the specific contention of the petitioner that by an order dated August 28, 2021 passed in Title Suit No.372 of 2022, the learned Civil Judge (Senior Division), 2nd Court, Baruipur had restrained the defendant No.1 in the said suit from disturbing the petitioner's peaceful possession in the suit property and had further directed that *status quo* be maintained with regard to the nature, character and respective physical possession over

the suit property as on June 22, 2022. The petitioner claims 82 decimals and the private respondents claim 31 decimals of the same plot. Strangely, neither the order dated August 18, 2021 nor the order dated June 22, 2022, have been annexed to the writ petition. The petitioner further alleges that there was a direction upon the Inspector-in-Charge, Kultali Police Station, to ensure that the order of injunction is maintained by the parties. The complaint of the petitioner against the police authorities and the violation of the order by the respondent Nos.5 to 14 have not been considered by the administration.

The police authorities have filed a report with certain documents. It appears that there is a long standing dispute over a piece of agricultural land between the family of the petitioner and the family of the respondent No.5. During enquiry, it was revealed that the land was initially owned by the predecessor-in-interest of the respondent Nos.5 to 14. Later, the petitioner purchased some portions of the land from the predecessor of the respondent Nos.5 to 14.

The allegation of the respondent Nos.5 to 14, is that the petitioner was occupying more than the area purchased by him. The respondent No.5 filed a title suit being Title Suit No.177 of 2017 before the learned Civil Judge, 3rd Court at Baruipur. The learned Civil Judge directed the parties to

maintain *status quo* with regard to the nature, character and possession. On the other hand, the petitioner and his brothers also filed a title suit being Title Suit No.372 of 2021 before the learned Civil Judge, 2nd Court at Baruipur.

On April 25, 2022, at about 7:05 hours, an information was received by the police authorities with regard to some altercation over the issue of harvesting on the land in dispute. The police authorities went to the spot. Both the parties claimed that the crops, which had been harvested, belonged to them. Serious altercation took place. The police directed the parties to stop the harvesting work in order to maintain peace and to control the situation. Four general diaries were entered on such issue. On April 26, 2022 at about 7:25 hours, again the parties gathered in their lands to harvest crops and they created further chaos. The parties were out of control and were fighting with each other. Finding no other alternative, but to prevent the commission of any cognizable offence and also apprehending serious injury, the police authorities had to cut and seize the crops from the land in presence of local witnesses. A seizure list was prepared. 12 sacks of hybrid paddy each measuring 50 Kgs. were seized and were brought to the police station and were kept at '*malkhana*'. Proper seizure list was prepared and supplied to the parties. The entire fact was again diarised by

two GD entries. Saiful Molla, the respondent No.5, initiated a proceeding under Section 144(2) of the Code of Criminal Procedure before the learned Executive Magistrate, Baruipur. The order of the learned Executive Magistrate was served upon both the parties. On the complaint of the petitioner, enquiries were further made and general diaries have been entered. A report narrating the entire incident was also filed before the learned Executive Magistrate.

Under such circumstances and in the facts narrated by the police authorities, this Court is not in a position to pass any order with regard to the seized paddy as the learned civil court is in seisin of the matter. The allegation of violation of the order of injunction and non-cooperation and alleged activities of the police authorities have to be raised before the learned civil court as the petitioner has alleged violation of the order of the learned civil court. The police authorities submit that in compliance of the order of injunction, by which the parties were directed to maintain *status quo*, the police had taken the initiative to ensure that the crops were not wasted but cultivated and preserved. They have kept the crops in proper custody in the '*malkhana*' awaiting orders of the civil court. The police authorities submit that if such action was not taken, the situation would have been out of control and there would be serious law and

order problem resulting in bloodshed. The crops would also be damaged.

Thus, this Court does not find that the police authorities had removed the crops for their own use. Rather, the police authorities have seized the crops and kept the same in safe custody, by issuing proper seizure list. They have controlled the violent situation which was brewing for two days between the parties, over the cultivation. Moreover, from the records before this Court, neither the order of *status quo* nor the possession of the parties can be ascertained. The learned civil court shall pass necessary orders with regard to the crops upon hearing the parties. The police authorities shall file a report before the learned civil court narrating the entire incident and shall await necessary orders from the learned civil court. The petitioner, who has alleged violation of the order of injunction, overt act of the police and non-compliance of the direction upon the police by the civil court, shall approach the learned civil court by submitting necessary application and if such application is filed, the same shall be disposed of in accordance with law, on contest.

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.)