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01.03.2022
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WPA No.14422 of 2021

Rustom Khan
Vs.
The State of West Bengal and others

(Via Video Conference)

Mr. R. N. Mahato,
Mr. A. S. Ray

.... for the petitioner

Ms. Chama Mookherji,
Ms. Manika Pandit

.... for the State

Mr. Sukanta Das

.... for the respondent no.4

Learned counsel for the petitioner submits that, in the suit for declaration and permanent injunction filed by the writ petitioner against the predecessor-in-interest of the private respondent, an *ex parte* decree was passed, thereby declaring that the petitioner has right, title, interest and possession over the suit property and granting permanent injunction restraining the defendants, including the predecessor-in-interest of the private respondent, from disturbing the peaceful possession of the plaintiff, that is, the present writ petitioner, in the suit property. The suit

property, *inter alia*, included plot no.557, which is also a subject-matter of the present writ petition.

Learned counsel for the petitioner contends that subsequently, at the instance of the private respondent, a fresh suit was filed, thereby seeking declaration of the private respondent's alleged title and permanent injunction against the writ petitioner in respect of the same plot.

Initially the private respondent obtained an *ex parte* order of injunction against the writ petitioner, which was subsequently vacated on the prayer of the writ petitioner.

In spite of such scenario, the police authorities, upon being approached by the petitioner, it is alleged, are not granting adequate assistance to protect the petitioner from cultivating the said plot.

Learned counsel appearing for the State-respondent submits that, in view of the contradictory orders and statements on record, the police was in a quandary as to what to do. It is submitted that, even apart from the *ex parte* injunction order passed in the subsequent suit, a representation of the petitioner itself indicated that the concerned *Dag*, that is, plot no.557, had been wrongly recorded in the name of the private respondent.

As such, it is submitted, in the absence of any specific order being passed by the civil court or the executing court, the police could not take any specific action on the basis of the petitioner's grievance.

Learned counsel appearing for the private respondent submits that the remedy of the petitioner is before the executing court, by levying execution of civil court's decree in the first suit.

In support of such proposition, learned counsel for the private respondent cites *Durga Prasad vs. Naveen Chandra and others*, reported at (1996) 3 SCC 300.

A perusal of the said judgment shows clearly that the matter had gone up to the Supreme Court against an order challenging the rejection of an application regarding maintainability of an application under Order IX Rule 13 of the Code of Civil Procedure (CPC).

In such circumstances, the Supreme Court held that the adequate remedies open to the appellant under the CPC were a right of appeal under Section 96 or appeal under Order XLIII read with Section 104 or a revision under Section 115 of the CPC.

Hence, in such circumstances, the Supreme Court observed that the application under Article 226

of the Constitution of India was not maintainable in the said case.

However, the facts of the said case and the context of the ratio laid down therein are completely different and distinct from the present case.

The writ court is not powerless to deal with police inaction in the matter of affording protection to citizens. Mere availability of an alternative remedy by way of execution before the civil court does not operate as a complete bar to the exercise of jurisdiction by the writ court for ensuring the fundamental rights of citizens of India as enshrined in the Constitution.

There is no specific provision in the Constitution, under which the Civil Procedure Code is a subordinate statute, preventing an aggrieved person from approaching the writ court in the event of any instance of police inaction.

The same is precisely the case in the instant matter.

As of today, the petitioner's name has been recorded in the records of right, as reflected from the documents annexed to the writ petition, irrespective of whatever the petitioner had previously written in his representation, the latter being relied upon by learned counsel for the State.

That apart, the ad interim *ex parte* injunction passed against the petitioner in the second suit filed by the private respondent has since been vacated on the prayer of the writ petitioner.

Over and above, the civil court's decree passed in the first suit instituted by the writ petitioner, which was decreed against the predecessor-in-interest of the private respondent, still remains in force.

Moreover, since it is the duty of the police to give protection to citizens of India, there is no particular reason as to why such ratio should not be extended to a case where the petitioner is further strengthened by a decree of the civil court, apart from having fundamental rights under the Constitution of India.

As has been well-settled by the Supreme Court in several judgments, which need not be repeated here unnecessarily, the availability of an alternative remedy is not an absolute bar to the exercise of jurisdiction by the writ court under Article 226 of the Constitution of India.

The present case is an exceptional one inasmuch as the writ petitioner is armed with the decree of the civil court and even the records of rights, as annexed to the writ petition, which indicate that the petitioner is in possession of the plot no.557 as well as

the other portions of the decretal property in the first suit.

In such factual matrix, there is no reason why the police should not extend adequate assistance to protect the petitioner in cultivating the land-in-question.

However, it would only be appropriate if the petitioner pays the necessary costs for affording police protection to the petitioner in so cultivating, since the remedy of the petitioner, in view of the civil court's decree, is in the nature of a civil right and not a mere criminal infringement.

Insofar as the criminal infringement of the legal rights of the petitioner is concerned, the police authorities have taken adequate steps by initiating proceedings under Section 107 of the Indian Penal Code against both the parties, in view of the prevailing circumstances in the locale.

WPA No.14422 of 2021 is, thus, disposed of by directing the respondent no.3, that is, the Officer-in-Charge of the Debra Police Station to grant adequate police assistance to the petitioner in cultivating his land, as per the petitioner's representation.

However, upon a legitimate bill being raised by the police, as regards the necessary costs for granting such police protection, the petitioner shall pay such

amount to the police authorities for the purpose of getting the police help.

It is, however, made clear that the respective rights and contentions of the private parties in the pending (second) civil suit shall not be prejudiced by any of the observations made herein and the civil court will proceed with the hearing of the suit and to adjudicate the same independently on its own merits without being influenced by any of the observations made herein.

Leave is granted to the petitioner to make a specific, fresh application for police help before the respondent no.3, disclosing specific details of about how many days' and what nature of protection is required by the petitioner in the context. Only if such application is filed within three days by the petitioner, the rest of this order will come into operation. Otherwise, this order shall automatically stand vacated, without further reference to this court.

The above order is passed independent and irrespective of the fate of the pending title execution case at the instance of the writ petition.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)