

23.8.2022
Sl.No.2
sn

WPA 14595 of 2021

**Swapan Kumar Bhowmick
Versus
The State of West Bengal & Ors.**

Mr. Arun Naskar ...for the petitioner

**Mr. Subhabrata Datta
Mr. Banibrata Datta ..for the State**

Mr. Avijit Chakraborty ..for the respdt.4

**Mr. Mukteswar Maity
Ms. Soma Pal ..for the respdts.5&6**

The petitioner alleges police inaction.

It is the contention of the petitioner that in collusion with the police authorities the respondent nos. 4 to 6 have continuously disturbed the petitioner's construction. Allegedly such construction was being made on the permission granted by the Domjur Gram Panchayat on October 26, 2018 in the name of one Rajesh Pandit.

The petitioner states that the petitioner had purchased the said land from one Rajesh Pandit. The petitioner claims to have right, title, interest and possession in respect of 20 decimal of the land in Dag Nos.1008 and 1009 pertaining to Khatian no. 7931, mouza Domjur.

In paragraph 3 of the writ petition, the petitioner has pleaded that certain persons appeared at the location when the petitioner was going to construct a boundary wall on March 14, 2021 and

obstructed the said construction work. They demanded money. On enquiry, the petitioner came to learn that the said obstruction was posed on the instructions of the respondent no.6.

The petitioner has relied on the decision of the Hon'ble Division Bench in the matter of ***Smt. Kalyani Mukherjee & Anr. Vs. State of West Bengal & Ors. reported in (2013)3 WBLR(Cal)639.***

Mr. Maity, learned advocate for the respondent nos. 5&6 submits that the petitioner and the respondent nos. 4 to 6 are the co-sharers in respect of the said dags and there has not been any partition. According to Mr. Maity, the petitioner was trying to construct the boundary wall on a common passage which had been declared to be so, in a deed of declaration submitted before the Domjur Gram Panchayat.

Learned advocate for the respondent no.4 also submits that the boundary wall of the petitioner cannot be permitted to be constructed in the absence of specific demarcation on the basis of deeds of purchase. He further submits that the contention of the petitioner that permission was granted by the panchayat authorities cannot be accepted. According to him, the Zilla Parishad was the sanctioning authority.

Learned advocate for the police authorities have filed a report. It appears that the disputes are between the parties with regard to the boundary wall as the private respondents contend that the common passage was being encroached by the petitioner during construction of the wall. Apprehending breach of peace, prosecution under Section 107 of the Code of Criminal Procedure was submitted against the private respondents. The said respondents were directed to maintain peace and tranquility.

Under such circumstances, the petitioner cannot be granted police protection to raise the construction as there are rival claims. The area over which the construction of the boundary wall was going on, is disputed. Such boundary dispute cannot be resolved by the police.

There is also a dispute with regard to the demarcation of the boundaries. The respondents have also questioned the alleged sanction which was granted to one Rajesh Pandit by the Domjur Gram Panchayat, but such fact does not appear in the pleadings.

It is not for the police authorities to act on the basis of the request of the petitioner and take steps to protect the construction, when there is a boundary dispute.

The police authorities shall keep a vigil and ensure that no untoward incident takes place and the petitioner and his family members are not harassed by the private respondents in any way.

The decision of Kalyani Mukherjee & Ors.(supra), is not applicable in this case as there are disputes with regard to the permission granted for the alleged construction and also over encroachment on an alleged common passage.

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)