

S/L 110(ML)
12.08.2022
Court. No. 19
GB

WPA 14177 of 2022

Atanu Ghosh
VS
The State of West Bengal & Ors.

*Mr. Prasanta Kumar Banerjee,
Ms. Indrani Nandi.*

...for the Petitioner.

*Mr. Santanu Kumar Mitra,
Mr. Subhabrata Das.*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

Having gone through the pleadings and upon perusal of the order passed by the learned Civil Judge (Senior Division), Additional Court at Hooghly in Title Suit No.135 of 2021, it appears that the petitioner and the respondent no.8 along with others claim to be co-shares of the property in question. The property is the subject matter of a civil suit.

It is alleged that in violation of the order of status quo, the petitioner was dispossessed by the plaintiff. On the prayer of the respondent No.8/plaintiff in the suit, the learned civil court had directed the parties to maintain status quo with regard to the nature, character and alienation of the property in question.

The police report indicates that on the basis of two written complaints filed before the learned Chief Judicial Magistrate, Hooghly under Section 156(3) of the Code of Criminal Procedure, Dhaniakhali Police Station Case no.130 of 2021 and Dhaniakhali Police Station Case No.185 of 2021 were registered against the petitioner. After completion of

the investigation in both the cases, charge-sheets have been filed. Thereafter, the wife of the petitioner, Tumpa Ghosh filed a complaint against the respondent no.8 before the learned Chief Judicial Magistrate, Hooghly at Chinsurah under Section 156(3) of the Code of Criminal Procedure. On the basis of the complaint of the petitioner's wife, Dhaniakhali Police Station Case No.175 of 2021 dated July 31, 2021 was registered. Upon completion of the investigation, charge-sheet has been filed. The police authorities have found that the disputes between the parties to be civil in nature and a civil suit is also pending.

The petitioner prays for restoration of possession, alleging subsequent dispossession. This is a matter of evidence. The plaintiff's contention before the learned court at the stage of ad interim injunction was that the petitioner and his sons (defendants) tried to grab the major portion of the undivided property, beyond their specific share and had wrongfully restrained the plaintiff from entering into the kitchen. That the said defendants were running a business from the property, without any permission.

Thus, this court finds that unless the extent of occupation of the parties are available from the documents, the allegation of dispossession and prayer for re-possession cannot be adjudicated. These are matters of evidence.

Under such circumstances, the writ court is unable to pass any orders for restoration of possession to the petitioner, although the petitioner claims to be a co-sharer of the property in question. The allegation of dispossession in

violation of the order of status quo has to be raised before the appropriate civil court and the petitioner shall be at liberty to do so. Once such application is filed, the same shall be disposed of expeditiously on contest.

The police authorities shall maintain peace and tranquility and ensure that the order of status quo with regard to nature, character and alienation is implemented by the parties.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)