

S/L 31(ML)
05.07.2022
Court. No. 19
GB

WPA 15476 of 2021

Sk. Abbasuddin & Ors.
VS
The State of West Bengal & Ors.

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray.

...for the Petitioners.

Ms. Chama Mookherji,
Ms. Paramita Pal.

...for the State.

Affidavit of service is taken on record. None appears on behalf of the respondent Nos. 4 to 6.

The petitioner alleges that the police authorities under the garb of implementing the order of status quo have been preventing the petitioners from using their property, measuring about 3 cottah, 10 chittaks, 27 square feet situated at Mouza-Shib Hooghly, pertaining to L.R. Khatian No.4051 and L.R. Dag No.334, J.L. No.21, Touji No.29. According to the petitioners, a civil suit was filed by Sarafat Ali Molla and others against Sajahan Molla and others before the learned Civil Judge (Junior Division), 6th Court at Alipore, which was registered as Title Suit No.603 of 2020.

On September 15, 2020 the learned civil court passed an ad interim order of injunction directing both the parties to maintain status quo in respect of the nature, character and possession over the suit property. The plaintiffs in the suit, who are the respondent nos.4 to 6 claimed title with regard to 20 decimals of land with pucca building on L.R. Dag No.334, pertaining to L.R. Khatian Nos.4097 and 4062.

It is the specific contention of the petitioners that the order of ad interim injunction between the respondent nos.4 to 6 and the defendants in the suit, should not be implemented in respect of the area owned and occupied by the petitioners. The petitioners must not be disturbed by the police authorities from enjoying the same in a manner permitted by law.

When the petitioners were disturbed by the police, the petitioners filed an application before the learned Civil Judge (Junior Division), 6th Court at Alipore, to intervene in the suit. The learned civil judge found that the property of the petitioners and the suit property, in respect of which the order of injunction had been passed were different and as such, there was no need to permit the petitioners to intervene in the suit. Such order was passed on March 10, 2021. Relevant portion of the order is quoted below:-

“Opposing the instant application of the intervenor/petitioner plaintiffs have filed their written objection against the same contending it to be not maintainable, malafide, motivated, misconceived, false, frivolous and barred by principles of waiver, estoppel and acquiescence, law of limitation and other provisions of law. The plaintiff denied each and every allegation in the instant application save and except those matter of records terming the same as nothing but concocted and moonshine. As such the plaintiff have prayed for rejection of the instant application of the intervenor/petitioner.

Considering the submissions of the plaintiff and more particularly the assertion of the intervenor/petitioner themselves in paragraph 9 of

their petition that “suit property has no relation or nexus with the their aforesaid property and as such the exparte ad interim order passed on 15/09/2020 has no application over property of the intervenor/petitioner” this court finds no justification to allow the prayer of the instant petition of the intervenor/petitioner. Therefore, the instant petition deserves to be rejected being found to be devoid of any merit.”

The police report which has been filed before this Court, indicates that on the basis of the ad interim order of injunction and apprehending breach of peace in the subject plot, namely L.R. Dag No.334, the police authorities had intervened and had directed the parties to maintain status quo. Subsequent thereto, no further action had been taken by the police authorities and the allegation of the petitioners do not survive.

Be that as it may, it appears from the order of the learned civil court that the property belonging to the petitioners is separate and distinct from the suit property. This Court is of the view that the police authorities are not required to implement the order of injunction in respect of the property, which is not the subject matter of the suit. However, this order shall not prevent the plaintiffs from taking recourse to law, if there is any disturbance with the peaceful enjoyment of the property, which is the subject matter of the suit as per the schedule of the plaint. The schedule of the plaint is quoted below:-

“SCHEDULE

All That piece and parcel of 20 decimals of lands with pucca building as residential house on a demarcated area at Mouza-Shiv Hooghly, J.L. No.21 under L.R. Khatian No.4097,4062 on L.R. Dag Nos.334 within P.S. Maheshtala under Chatta Gram Panchayat,, in the District of South 24 – Parganas.”

However, the police authorities shall keep a vigil and see that law and order is maintained.

This order shall not have any impact on the pending proceedings and/or on the applications pending before the learned civil court.

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.)