

05. 18.08.2022
Ct. No.19
Tanmoy

W.P.A. 15740 of 2022

**Sree Sree Shib Durga Thakur, a deity, represented by its
managing Sebait Sri Ranjit Kumar Sapui
-Versus-
The State of West Bengal & Ors.**

Mr. S.N. Pyne, Adv.,
Mr. Yash Vardhan Deora, Adv.,
Mr. Arijeet Doss Mullick, Adv.,
Mr. Subhasis Pyne, Adv.

...for the petitioner.

Mr. Asish Kumar Guha, Adv.,
Mr. Joyak Gupta, Adv.

...for the State respondents.

Affidavit of service is taken on record.

The petitioner alleges that the Officer-in-Charge, Garfa police station, failed and neglected to take into consideration the complaint lodged by the petitioner with regard to the violation of the *ad interim* order of injunction passed by the learned civil Court in Title Suit no. 1191 of 2019. Such order was passed on August 21, 2019. The defendants in the suit (who have not been impleaded in this case), were restrained from dispossessing the plaintiff from the suit property. It is submitted that the said *ad interim* order of injunction was extended from time to time as the petitioner found that the defendants, with their men and agents, were trying to violate such order. An application under Section 151 of the Code of Civil Procedure, seeking police help for implementation of the order of *ad interim* injunction, was filed.

It appears that by an order dated April 20, 2022, the learned Civil Judge (Junior Division), 2nd Court at Alipore, directed the Officer-in-Charge, Garfa police station, to visit the suit property and to see whether the order of *ad interim* injunction dated August 21, 2019 had been violated or not. It was further directed that the police authority must ensure that the order should not be violated and steps as per law be taken. A report of compliance was also directed to be filed.

Learned Advocate for the petitioner alleges that despite such order, the police authorities have not been able to prevent subsequent encroachments and construction of an illegal and unauthorized boundary wall was going on.

Reference is made to the report filed by the police authority dated May 12, 2022 in the Court of the learned Civil Judge (Junior Division), 2nd Court at Alipore. In the said report, the police authorities have stated that it was not possible for the police authorities to ascertain whether the *ad interim* order of injunction was violated or not, as neither the plaintiff, nor the defendants were found to be in possession of the property, rather it was found that the property was in possession of some other persons.

There is nothing on record to show what further orders and subsequent steps were directed to be taken by the learned civil Court. The police authorities have filed a report before this Court.

It appears that a complaint was filed by one Uday Kumar Srivastava against the petitioner and some other persons, alleging that the petitioner and his associates had committed some offence with regard to the subject property. Accordingly, on the basis of the complaint dated August 3, 2019, Garfa P.S. Case No. 324 of 2019 under Sections 120B/420/467/468/471 of the Indian Penal Code was registered. The investigation was concluded and charge-sheet has been filed against the petitioner and five others bearing CS No. 175/21 under Sections 120B/420/467/468/471 of the Indian Penal Code.

On the basis of the complaint filed by the son of the petitioner, namely, Goutam Safui dated August 12, 2019, Garfa P.S. Case No. 351/19 under Sections 34/323/341/448/506 of the Indian Penal Code had been registered. After completion of the investigation charge-sheet *vide* CS No.332/19 under Sections 34/323/341/448 of the Indian Penal Code was submitted against Bhola Paik, Goutam Purkait and others. The police authorities have also registered a general diary with regard to the complaint of alleged illegal construction of an unauthorized boundary wall. Intimation has also been given by the police authorities to the Kolkata Municipal Corporation with regard to such construction.

Having heard the learned counsels for the respective parties, it appears that the police authorities have already concluded an investigation on the basis of the complaint

lodged by the petitioner's son with regard to the similar allegations which have been made in the writ petition. With regard to the construction of an alleged unauthorized boundary wall, the police authorities have already sent intimation to the Kolkata Municipal Corporation. With regard to the allegation of violation of the *ad interim* order of injunction, the police authorities have filed a report before the learned civil Court. It is for the learned civil Court to decide what further orders should be passed on the basis of the report filed by the police. Those are matters of evidence and the dispute is civil in nature, which cannot be decided by a writ Court. It is open to the petitioner to take appropriate steps on the basis of police report, before the learned civil court. The allegations of violation of the *ad interim* order must also be raised in the suit.

The police authority shall keep a vigil in order to ensure that peace is maintained. The remedies of the petitioner before all other fora, are kept open.

The writ petition being W.P.A. 15740 of 2022 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.)