

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 1190 of 2021

with

CAN 1 of 2021

(Through Video Conference)

Reserved on : 08.06.2022

Pronounced on: 12.07.2022

M/S CITY DEVCON PVT. LTD. & ORS.

...Appellants

-Vs-

THE STATE OF WEST BENGAL & ORS.

...Respondents

Present:-

Mr. Siddhartho Mitra,
Mr. Suman Sengupta,
Mr. D. Banerjee,
Mr. B. Bag, Advocates

.... for the Appellants

Mr. Tapan Kumar Mukherjee,
Mr. Naba Kumar Das,
Mr. Ranjan Saha,
Ms. Debdooti Dutta, Advocates

..... for the State

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the Learned Single Judge dated 05.10.2021 passed in W.P.A. No. 12495 of 2021 (M/s City Devcon Pvt Ltd & Ors. v. The State of West Bengal & Ors.) has been questioned by the appellants.
2. The facts of the case are that the writ petitioners/appellants herein had complained that the private respondents were obstructing and preventing the appellants from making construction on the property he had purchased. In this regard, there is a specific allegation against one Anup Soni. From the agreement it appears that the entire property was tenanted and the writ petitioners/appellants herein reserved the right to evict the tenants in accordance with the law.
3. Based on the report placed before the Learned Single Judge by the Officer-in-charge of Howrah Police Station dated 12.08.2021, the court was unable to countenance the submission that the proposed construction of the property was being obstructed by outsiders and goons. The Learned Single Judge observed that it appeared that Anup Soni-the person against whom the allegation of obstruction was made is himself a tenant in the said premises and that there were already in existence some shanties and gumties in the pathway leading to the petitioner's property prior to the purchase.
4. The learned counsel for the State had submitted that proceedings under Section 107 had been initiated and assurances were obtained to ensure that no breach of peace would take place in the said area. The learned advocate for the petitioners/appellants submitted that an order was obtained from this court on 14th July, 2021 in WPA 10950 of 2021 for police protection to be granted to the appellants to enable them to construct boundary wall and that the aforesaid order being passed in the instant writ application before the Learned Single Judge would be in conflict with said order.
5. The Learned Single Judge held that there was absolutely no question of any boundary wall at this stage since there were other tenants who were lawful occupants of the said premises and whose occupation of the same would be obstructed by the construction of the boundary wall. Also, the Learned Single Judge stopped short of imposing exemplary costs against the appellants herein.

6. Learned Senior counsel appearing for the appellants submits that the Learned Single Judge by passing the order impugned had erred both in law and facts since the order dated 22nd December, 2020 passed in W.P.O. No. 587 of 2019 had become binding among the parties. Therefore, it was the duty of the investigating agency to ensure necessary police protection if the appellants herein approached the respondent authorities given that illegal parking and forceable unauthorized occupation by hawkers was an apparent problem in and around the property of appellants.

7. Also, it was contended that since the Learned Single Judge failed to appreciate that the order passed in W.P.A. 10950 of 2021 dated 14th July, 2021 was not in conflict with the reliefs sought in W.P.A. 12495 of 2021, the question of suppression of material facts or engineering the conflict does not arise. The construction of a boundary wall was of outmost importance and since the same did not cause any disturbance to the right of any occupiers residing at the property of the appellants herein, the removal of the ghuntis/stalls was not affecting the right of any occupier in any manner whatsoever.

8. Moreover, despite receiving the complaint dated 03.08.2021, the respondent police authorities sat tight over the matter and have yet not initiated any legal action which tantamounted to grave dereliction of duty on their part thus necessitating intervention by this Court. The lackadaisical attitude of the police suffers from omission and commission prejudicial to the interests of the appellants and thus in gross violation of the professional standard and statutory duty vested upon them as per Section 23 of the Police Act 1863 and Police Regulation of Bengal, 1943.

9. Additionally, it was also contended that the Learned Single Judge failed to appreciate that since constructing a boundary wall over his own land is a right conferred upon him, the same does not affect the rights of the tenant and thus the cause of action and prayer of the two writ petitions are different and cannot be clubbed together. Since the title of the land is clear and no civil dispute was involved, the issue which is in the nature of a law and order problem, should be looked into by the state authority and the police authorities are duty bound to act on the basis of the complaint, if the same discloses the offence cognizable in nature.

10. Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the right which the appellant is asserting is of pure civil nature, therefore, Learned Single Judge has not committed an error in reaching to the conclusion that the remedy of the appellant lies before the Civil Court. Hence, we find that if the petitioners take recourse to the civil remedy, then any observation made by the Learned Single Judge in the impugned order will not come in the way of the petitioners. Another submission raised by the learned counsel for the appellants is that a direction be issued to the respondent no. 3 to forthwith remove the goomties/stalls installed at the pathway of the appellants' property. The record reflects that respondent no.3 in the writ petition is the Officer-in-Charge of Howrah Police Station and is not the appropriate authority for issuing direction to remove encroachment. The writ petition does not disclose impediment of any such competent authority in this regard. Hence, in the circumstances of the case, we are of the opinion that no case for interference is made out. Appeal is accordingly, dismissed and all pending applications are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
12.07.2022

PA(BS)