

17-01-2022

ct no. 13

Sl. 11

sp

**WPA 17975 of 2021
(Through Video Conference)**

Shri Madhusudan Das & Ors.

-Versus-

State of West Bengal & Ors.

**Mr. Shyamal Kumar Das,
Mr. Ajay Barman Ray**

....for the petitioners

**Mr. Tapan Kumar Mukherjee,
Mr. Somnath Naskar**

...for the State

Affidavit of service filed in Court today is taken on record.

The petitioners complain that the private respondent in violation of the order dated September 2, 2021 passed in T.S. 131 of 2021 by the learned Civil Judge (Jr. Division), 1st Court, Contai (In-Charge), has continued to effect construction in the disputed property.

The petitioners by reference to a judgment of the Hon'ble Supreme Court in the case of ***P.R. Murlidharan and others vs. Swami Dharmananda Theertha Padar and others*** reported in ***(2006) 4 SCC 501***, has submitted that the Writ Court can enforce a Civil Court's order. Reference is also made to a decision of a Co-ordinate bench of this Court in ***Srikanta Roy vs.***

State of West Bengal and others reported in ***2012 (2) CLJ (Cal) 486***.

This Court is of the view that the facts and circumstances under which the said of ***P.R. Murlidharan (supra)*** decision has been rendered, are quite different and have no manner of application in this instant case. The arguments of the learned counsel for the petitioners that moving the Civil Court under Order 39, Rule 2A is a useless formality, cannot also be accepted by this Court.

This Court is, therefore, of the view that the petitioners ought to first move the Civil Court under Order 39, Rule 2A and seek directions upon the police for assistance in enforcing the order of injunction.

It is made clear that in case of any application as above is filed in the Court below by the petitioners, the same shall be dealt with as expeditiously as possible, by the learned Civil Court and suitable orders for enforcement and/or police help may be passed in accordance with law.

In that view of the matter and for availability of efficacious alternative statutory remedy, this Court is not inclined to interfere under Article 226 of the Constitution of India. Hence, WPA 17975 of 2021 shall stand dismissed with liberty however reserved to the petitioners as indicated hereinabove.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)