

12.08.2022
Court No. 19
Item no.08 (DL)
CP

W.P.A. No. 18111 of 2022

Dhana Kumar Patni
Vs.
The State of West Bengal & ors.

Mr. Soumajit Das Mahapatra
Md. Abdul Rakib
Ms. Oindrila Ghosh
Ms. Ankita Maji

...for the petitioner.

Sk. Md. Galib
Mr. Anubrata Santra

...for the State.

Mr. Atanu Biswas

....for the respondent no.6.

The petitioner claims to be the owner of a portion of plot nos. 5988 and 6201 which has been classified as 'Math', pertaining to Mouza – Kalna, JL No. 164, District – Purba Bardhaman. The allegation is that the respondent nos. 6 to 9 have tried to encroach into the land of the petitioner in order to hold a 'mela' for a few days as a part of the celebration of 'Mahismardini Puja'. The petitioner alleges that although the puja has been organized in the said land for many years, for the first time the respondent nos. 6 to 9 have organized the mela, by encroaching the petitioner's land.

Learned advocate for the respondent no. 6 submits that the mela has been going on since long

on a vacant land, since long. It is further submitted that a club is in permissive occupation of the said land as per the record of rights. It is also submitted that the preliminary enquiry by the municipality revealed that the land of the petitioner had not been encroached.

Mr. Galib, learned advocate appearing on behalf of the police authorities submits that an enquiry was made by the police authorities and it was found that the land in question, over which the alleged 'mela' is being held, is an open field. The field does not have any demarcation or fencing. The local people who were interrogated in the course of the enquiry revealed that the field was used as a temporary helipad for VIPs. Events like local functions, football matches and cricket matches are organized there. It is stated that the Mahishmardini Puja at Kalna has been organized on the said field for more than 250 years. The installations of the rides and other equipments were also found. The matter was diarized on the basis of the complaint of one Manish Kumar Patni.

The petitioner also filed a proceeding under Section 144(2) of the Cr.P.C. with the same allegations of encroachment before the learned Sub-Divisional Executive Magistrate which was registered as M.P. Case No. 409 of 2022. By an order dated

August 1, 2022, the concerned Block Land & Land Reforms Officer was directed to enquire into the matter and submit a report within 7 days. The Officer-in-Charge, Kalna Police Station was also directed to maintain peace in the locality.

The police authority submitted that the report has already been filed before the learned Magistrate. The next date is fixed on August 24, 2022. The police authorities also spoke to the Chairman, Kalna Municipality and the Chairman informed the police authorities that the land was used as a temporary helipad and for other local events and functions.

The learned advocate for the petitioner submits that the court must intervene in the matter and protect the right to property of the petitioner. The police authorities must be directed to remove the mela from the premises of the petitioner. He relies on a decision of this court passed in WP No. 2806(W) of 2020 in the matter of Biswarup Ghosh vs. The State of West Bengal, in support of his contentions.

This court finds that the said decision was rendered under different facts and circumstances. In *Biswarup Ghosh (supra)*, it appeared to the court, from the police report which had been filed before the learned Magistrate in a proceeding under Section 145 of the Cr.P.C., that there was a prima facie finding of encroachment on the property of the petitioner. His

Lordship was of the view that the private respondents had trespassed into the property of the petitioners. It also appears from the facts of the case that initially the petitioners therein had permitted the club to hold the Kali Puja on the property, but the owners were within their right not to continue with such permission. The court observed that the petitioners/owners had every right to reconstruct the damaged wall. The court found that the allegation of encroachment was not denied by the respondents who claimed to have performed a Kali Puja on the land in question. The court permitted police assistance for reconstruction of the damaged boundary wall in aid of protecting the right to property of the petitioners. The Court did not pass any orders with regard to stoppage of the Kali Puja.

Thus, this court is of the view that in this case, the facts are completely different. The police enquiry revealed that the field has been used as a temporary helipad for VIPs and for events like local functions, playing football and cricket matches. There is no admission of encroachment.

The question of title of the petitioner cannot be decided by this court. The question as to whether the land of the petitioner is being used for the purpose of the 'mela' and the puja, is also to be decided on evidence. The Chairman of the municipality has

submitted on a preliminary enquiry, that the land of the petitioner had not been used for the mela.

Under such circumstances, the writ petition is disposed of without any mandatory directions upon the police authorities to either stop or remove the mela or the puja from the alleged open field, of which the petitioner claims to be the owner.

It also appears that the learned Sub-Divisional Executive Magistrate has directed the Block Land & Land Reforms Officer to file a report with regard to the actual state of affairs and during the pendency of the said proceeding before the said forum, parallel proceeding has been initiated before this court.

However, the police authority shall ensure that no breach of peace takes place in the locality and the field is not damaged or destroyed.

The question of title, encroachment and possession etc. have not been gone into. The petitioner has adequate remedy before the learned civil court.

The writ petition is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)