

S/L 5
01.08.2022
Court. No. 19
GB

WPA 19191 of 2021

Sk. Nazrul Islam
VS
The State of West Bengal & Ors.

Mr. Ujjal Ray.

...for the Petitioner.

*Mr. Ansar Mandal,
Mr. Sougata Mitra.*

...for the State.

The petitioner prays for a mandamus upon the police authorities to take action against the respondent nos.3, 4 and 5, on the basis of the complaint lodged by the petitioner dated September 15, 2021. The petitioner prays for a protection, so that the petitioner is able to access his land through a passage, by removing the temporary structure, allegedly constructed by the respondent nos.5 to 13.

The dispute is with regard to Dag No.560. According to the petitioner, there is a common pathway leading to the property of the petitioner. The land of the petitioner comprises of 3 decimals in Dag No.560. The said pathway runs alongs the eastern side of the property of the petitioner in the said dag.

It is alleged that the respondent nos.5 to 13 constructed a bamboo structure, blocking the ingress and egress of the petitioner to his property. The petitioner prays that the police authorities must remove such structure. The petitioner also lodged a complaint with the Jangipara Gram Panchayat, but the Jangipara Gram Panchayat did not take any steps in this regard.

The police report is taken on record, from which it appears that the petitioner lodged a complaint before the Sub-Divisional Executive Magistrate, Serampore, under Section 144(2) of the Code of Criminal Procedure. As per the order of the learned Magistrate, both the parties were directed to produce necessary documents in support of their respective claims. On enquiry by the officer of the concerned police station, it was revealed that the dispute was with regard to the ownership of the land in question. The police was not in a position to ascertain the actual ownership of the said strip of land, over which the bamboo fencing has been erected. On the allegation of threat by the respondent nos.5 to 13, the officer of the concerned police station made a General Diary and submitted a prosecution against the respondent nos.5 to 13 under Sections 107/116(3) of the Code of Criminal Procedure, being Jangipara Police Station NCR No.1403 of 2021. Both the parties were directed to maintain peace and tranquility. The police authorities found that the dispute was civil in nature.

Under such circumstances, this Court is of the view that neither the writ Court nor the police authorities are authorized to decide the issue with regard to the ownership of the strip of land, on which the bamboo fencing has been allegedly erected. Whether the said land is a common passage for all or is the exclusive land of the respondent nos.5 to 13, are matters to be decided in a civil suit, which is pending before the learned Additional Civil Judge (Junior Division) at Serampore, Hooghly, being Title Suit No.329 of

2021. The respondent Nos. 5 to 13 have claimed title in respect of the Dag No. 560 as well.

It is submitted that the defendant no.2 in the suit described as Sk. Nazu, is the pet name of the writ petitioner. The petitioner shall be at liberty to pray for necessary interlocutory orders in the suit.

Under such circumstances, this Court is of the view that the only relief that can be granted to the petitioner is that the police authorities shall keep a vigil in order to ensure that no law and order problem is created by the parties and peace and tranquility is maintained. The petitioner shall not be harmed in anyway.

This order shall also not prevent the petitioner from approaching the appropriate authority or the competent court of law for demarcation of the alleged common pathway.

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.)