

15.09.2022

**MAT 1406 of 2022
With
CAN 1 of 2022**

**Sudipta Bose
Vs.
The State of West Bengal & Ors.**

Mr. P. Das
Mr. Gautam Das
Ms. Madhumita Patra

... ... for the appellant

Mr. Amitesh Banerjee, Sr. Adv.
Ms. Ipsita Banerjee

... ... for the State

Mr. Haradhan Banerjee
Mr. Sudip Banerjee
Mr. Sanjoy Kumar Das

... ... for the respondent no.4

This intra-court appeal is at the instance of the writ petitioner before the learned Single Judge challenging the order of the learned Single Judge dated 18th August, 2022 whereby WPA 3314 of 2018 has been dismissed.

The appellant had filed the writ petition with the plea that he has a decree of the trial Court in his favour in respect of property in question and that he wanted to construct a boundary wall on the western side of his property which was resisted by the private respondent. Therefore, he had sought the police help and being unsuccessful he had filed the writ petition with a prayer to provide the necessary police help/protection for construction of the boundary wall surrounding his property situated at and comprised within Dag No. 96 under Khatian No.49 in Mouza – Ram Narayan Taluk, J.L. No.4, measuring about 3 kathas.

Learned Single Judge has dismissed the writ petition on reaching to the conclusion that the boundary line of land of the appellant is required to be demarcated for which a writ is not a proper remedy.

Submission of learned counsel for the appellant is that there is a decree of injunction in his favour and the private respondent is disturbing the possession of the appellant, therefore, police help is necessary for raising the construction of the boundary wall.

Learned counsel for the State supporting judgement of the learned Single Judge has submitted that proper remedy available to the appellant is to get the decree executed wherein the land will be demarcated.

Learned counsel for the respondent no.4 has also submitted that there is a second appeal pending against the original order from the decree of the trial Court which was earlier dismissed and now has been restored.

Having heard the learned counsel for the parties and on perusal of record, we find that the learned Single Judge has rightly examined the decree of permanent injunction passed by the trial Court and has duly taken note of the fact that there is absence of material on record showing that the land of the appellant has been demarcated and boundary line has been fixed. In the absence of demarcation of land the appellant cannot approach Writ Court seeking a direction for extending the police help for the purpose of construction of the

boundary wall. It has also been noted by the learned Single Judge that the appellant has not obtained any decree for construction of boundary wall from the trial Court. Learned Single Judge has rightly come to the conclusion that the police protection cannot be extended for construction of the boundary wall until and unless boundary line of the property is fixed by the competent authority. It is rightly noted that if in the absence of the same if a direction is issued to the police authorities that would lead to disastrous result. Therefore, learned Single Judge has rightly reach to the conclusion that it is not a case of inaction by the police authorities.

We do not find any error in the order of the learned Single Judge and no case for interference is made out.

The appeal is accordingly dismissed.

Connected application is also dismissed.

(Prakash Shrivastava, C.J.)

(Sugato Majumdar, J.)