

29.08.2022
Court No. 19
Item 548 (ML)
CP

WPA No. 21493 of 2021

Shital Chandra Pal
Vs.
The State of West Bengal & ors.

Mr. Jyoti Prakash Chatterjee
...for the petitioner.

Mr. Gazi Faruque Hossain
Mr. Himadri Kumar Mahata

....for the respondent nos. 5 & 6.

The petitioner alleges overt act of the police authorities. It is submitted by the petitioner that on August 9, 2021, this court had passed an order in WPA 2495 of 2020, directing the police to ensure that the parties to the partition suit abide by the final decree. The police authorities were directed to render assistance to the parties and act in terms of the decree passed by the civil court.

The complaint of the respondent nos. 5 and 6 before the coordinate bench was that pursuant to the final decree passed in a partition suit, the parties had taken possession of their respective shares, but when the said respondents tried to demarcate their area by erecting a fence, the petitioner demolished the fence. The respondent nos. 5 and 6 informed the matter to the police authorities. The police authorities did not take any steps and the writ

petition was filed. His Lordship was pleased to pass the following order:

“There is a final decree passed in a suit for partition. The parties to the suit for partition are bound by the final decree. The police are obliged to ensure that the parties to the suit in which the Civil Court passes a decree adheres to and abide by the decree. The police are to render assistance to a party acting in terms of the decree passed by the Civil Court.

In such circumstances, it would be appropriate to direct the police to ensure that no breach of peace occurs at the locale when the petitioners are erecting a fence on the are declared to be that of the petitioners in terms of the final decree passed by the Civil Court.”

Now the petitioner alleges that the police authorities dismantled the petitioner’s boundary/fence. The writ petition does not contain any document from which it would, prima facie, appear to the court that the allegations of the petitioner against the police authorities are justified.

On the contrary, the learned advocate for the respondent nos. 5 and 6, submits that the petitioner has alleged encroachment on plot no. 285 of Mouza – Kumor Para. The allegation is that the police authorities had demolished the wall of the petitioner and handed over the property of the petitioner to the respondent nos. 5 and 6. Such questions are matters of evidence and cannot be decided in this proceeding.

WPA 2495 of 2020 is still pending. The petitioner is entitled to file an application in the said proceeding, by bringing on record the subsequent

events which had taken place, pursuant to the order of His Lordship. If such application is filed, the same shall be decided in accordance with law, upon contest.

Without the copies of the partition commissioner's report, and without ascertaining the nature of possession and occupation of the parties, as per the final decree, the allegation of the petitioner cannot be adjudicated.

The writ petition is disposed of accordingly.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)