

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 21354 of 2022

Tarini Kumar Shil
Vs.
The State of West Bengal & Ors.

Mr. Uday Sankar Chattopadhyay,
Mr. Pronay Basak,
Ms. Trisha Rakshit
...for the petitioner

Mr. Arijit Chakrabarti,
Mr. Ratul Das
...for the State

The grievance of the petitioner is that, immediately after the petitioner lodged a complaint against the private respondents, the police authorities, hand in glove with the private respondents, started harassing the petitioner, who is a poor cultivator. It is also alleged that even the witnesses in the case, who were initially in support of the petitioner's case, have been won over in the meantime.

It is further contended that after initiation of the complaint and the resultant investigation, it was the petitioner who was ousted from his residence within the Purbasthali Police Station, for which the petitioner is having to reside elsewhere with someone else.

Learned counsel for the petitioner submits that, as such, the petitioner seeks a transfer of the

investigation to some higher authority or other police station than the Purbasthali police station. Furthermore, the petitioner obtained a *status quo* order from a civil court, observing that the petitioner had made out a *prima facie* case. As such, it is submitted that this Court may grant the petitioner leave to return to his home, with adequate police protection, which may be given by the appropriate authorities.

Learned counsel appearing for the respondent-authorities submits that it transpires from the statements of the probable witnesses under Sections 161 and 164 of the Code of Criminal Procedure, sought to be cited by the petitioner in support of his complaint, that the allegations made by the petitioner against the private respondents in the complaint were belied. Hence, palpably, the petitioner's complaint was a vindictive one to malign the private respondents, as it appears from primary investigation. It is further contended that the petitioner has been harassing the police-authorities by lodging complaints regularly before several authorities, even without there being any fault on the part of the authorities.

As such, it is contended that the writ petition may be dismissed.

Upon perusal of the allegations and materials-on-record, it *prima facie* appears that the police-authorities have initiated investigation on the

complaint of the petitioner against the private respondents.

Whatever may be the fate of the investigation, this Court is not in a position to exercise its writ jurisdiction, particularly at this premature stage, to return any finding as regards the veracity of the allegations and counter-allegations made by and against the petitioner.

However, since the petitioner is admittedly out of possession at present, it would be appropriate if the petitioner approaches the civil court with necessary application for restoration of possession as well as police help in aid of the same. That apart, since the petitioner has been enjoying a *status quo* order in his favour, it is also open to the petitioner to approach the civil court for appropriate orders for violation of such injunction.

However, at the present stage, it is beyond the jurisdiction of this Court to enter into any conclusive finding as to the possession in respect of the property-in-dispute.

Even the civil court, that is, the Civil Judge (Senior Division), Kalna, District Purba Bardhaman, by Order No. 2 dated June 13, 2022, passed in Title Suit No. 63 of 2022, merely observed that the plaintiffs as well as the principal defendants to the suit shall maintain “status quo in respect of nature, character

and possession of the suit property” without enumerating any specific order of injunction.

The petitioner might, nevertheless, claim the advantage of the observation of the trial court in the said order that it appeared to the court that the plaintiff, that is, the petitioner and the other co-plaintiffs are likely to suffer irreparable loss and injury if the defendants/private respondents are not restrained *from disturbing the peaceful possession of the plaintiffs* in the suit property. However, it also appears from the said order that the order was passed *ex parte*. Although the sanctity of an *ex parte* order is equivalent to an order passed on contest, even then, it will be premature for the writ court to enter into a factual assessment of the materials-on-record to come to an observation conclusively as to whether the petitioner was actually in occupation of the said premises at the relevant juncture.

Be that as it may, there is no scope of interference in the present writ petition. Needless to say, in the event the petitioner approaches any nearby police station, either in the locality where he is residing at present or the Purbasthali Police Station, for police protection alleging that he was being hindered from entering his residence or being threatened personally or along with his family, the said police authorities shall immediately assess the threat perception and its

veracity and, accordingly, provide police protection to the petitioner, as necessary.

W.P.A. 21354 of 2022 is, thus, disposed of with the above observations and by granting the petitioner liberty to approach the civil court for appropriate remedy with regard to the petitioner's allegation of having been ousted from his residence.

It is made clear that the merits of the respective contentions of the parties in the ongoing investigation arising out of the petitioner's complaint have not been entered into by this Court and it will be open to the investigating agency to carry out investigation independently, in accordance with law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)