

18.05.2022
Item No.21
Court No.32
Avijit Mitra

**FMA 897 of 2021
with
IA No. CAN 1 of 2017 (Old No.CAN 11976 of 2017)**

**Kabita Adhikari
- Versus -
The State of West Bengal & ors.**

Mr. Bhaskar Chandra Manna
....for the appellant
Mr. N.C. Bihani,
Mr. Syed Nasirul Hossain
...for the State Respondent nos.1 to 6

Affidavit of service filed by the appellant be kept on record.

The present appeal has been preferred challenging an order dated 30th August, 2017 passed in a writ petition, being WP 22119 (W) of 2017.

Mr. Manna, learned advocate appearing for the appellant submits that the appellant is the owner of the land in question and she wanted to construct a boundary wall upon her own property but she was forcibly prevented by the private respondents from raising such construction and as such, the appellant was constrained to file an application under Section 144 of the Code of Criminal Procedure in which reports were filed by the concerned Block Land and Land Reforms Officer and the police authorities. A perusal of the said reports would clearly reveal that the private respondents

sought to disturb the appellant's possession. Such facts were not taken into consideration by the learned Single Judge while hearing the writ petition.

He argues that there is no dispute that the appellant is the owner of the concerned land, as would be explicit from the deed of conveyance annexed to the stay application. In view thereof, the learned Judge ought to have issued necessary direction upon the police authorities to ensure that the private respondents do not prevent the appellant from constructing the boundary wall over her own property.

Mr. Bihani, learned advocate appearing for the State, however, opposes the appellant's prayer and submits that from the documents on record, it would be explicit that the dispute amongst the appellant and the private respondents is civil in nature and by impleading the police authorities, a civil dispute cannot be made the subject matter of a writ petition. The order impugned in the appeal does not suffer from any infirmity as it has been observed in the said order that the appellant would be at liberty to initiate appropriate proceeding before the competent forum.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears from the records that there is a dispute pertaining to a landed property between the appellant

and the private respondents. Without approaching the competent civil forum to avail appropriate remedies, the appellant chose to prefer the writ petition alleging inaction on the part of the police authorities. In the order impugned, it has already been observed that to enforce her civil rights over land in question the appellant would be at liberty to approach the competent civil court and that in the event the private respondents resort to act of violence, it would be open to the appellant to initiate criminal case. The order impugned is a reasoned one and we do not find any infirmity in the same. As such, no interference is called for in the present appeal.

Accordingly, the present appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Rai Chattopadhyay, J.) (Tapabrata Chakraborty, J.)