

02.09.2022.
Court No.13
Item No. 29
ap

W.P.A. No. 22791 of 2019
With
I.A. No. CAN 1 of 2022

Smt. Sumana Sam Mondal & Anr.
Versus
The State of West Bengal & Ors.

Mr. Supriyo Chattopadhyay.
...For the petitioners.

Mr. Radhamohan Ray.
...For the respondent no.8.

Mr. Uttiya Ray,
Mr. Arnab Mondal.
...For the respondent no.6.

Despite service of notice, the State is not represented. Affidavit-of-service filed in Court today be taken on record.

The writ petitioners contend that the private respondent has illegally constructed a wall, which is prevented access to the petitioners' land.

An order dated 14th March, 2018 passed by the Executive Magistrate, Bishnupur, Bankura is placed before this Court. By the said order, the Executive Magistrate, Bishnupur, Bankura has directed the private respondent to remove the brick built wall in question.

This Court notices that the order of the Executive Magistrate, Bishnupur, Bankura is ex facie without jurisdiction and/or in excess of authority.

Section 147 of the Code of Criminal Procedure does not confer any authority of the Executive Magistrate, Bishnupur, Bankura to direct removal of permanent and or semi-permanent construction.

It is also submitted by the parties that since after filing of the instant writ petition, in respect of title to the said property, the private respondent has instituted a Title Suit being T.S. No. 2 of 2020 before the learned Civil Judge (Senior Division) Bankura at Bishnupur. There is also an order of injunction in favour of the private respondent in the said suit. It is further submitted that the writ petitioners are contesting the said suit.

This Court is of the view that the disputes between the parties are primarily civil in nature and must be decided in the pending civil suit or any other proceedings, in accordance with law.

In view of the above, no relief can be granted to the writ petitioners in this writ petition and shall stand disposed of without any orders.

In view of the disposal of the instant writ petition, the connected application being CAN 1 of 2022 shall also stand disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)