

08.12.2022
Court No.13
Item No.19

sp

WPA 27104 of 2022

Bimal Prakash Sarda
Vs.
The State of West Bengal & Ors.

Mr. Saptangshu Basu, Id. Sr. Adv.,
Mr. Nirmalya Dasgupta,
Mr. Rajesh Upadhay,
Mr. Abhishek Bhandari,
Ms. Surabita Biswas

...for the petitioner

Mr. Subhabrata Datta, Id. Sr. Govt. Adv.,
Mr. Sanatan Panja

...for the State

Mr. Asok Banerjee,
Mr. S.K. Halder.
Mr. A.K. Sarkar

...for the respondent no.10

The petitioner is aggrieved that certain persons allegedly associated with the private respondents have broken a portion of a wall of his thika tenanted premises No. 76/H/21, 22, 23, Dr. S.C. Banerjee Road, Kolkata.

The petitioner has filed suit being T.S. No. 130 of 2022 before the learned Civil Judge (Sr. Division), Sealdah. By an order dated June 21, 2022, the Civil Judge has ordered status quo in respect of the suit property. It is submitted that the private respondents have, in violation of the order of status quo, broken the petitioner's wall.

Counsel for the private respondent submits that his client is entitled to premises No. 84 Canal Road, Kolkata. He has nothing to do with premises No. 76/H/21, 22, 23, Dr. S.C. Banerjee Road, Kolkata. It is

also stated that the private respondents have neither interfered with nor broken any part of the petitioner's wall in question.

Counsel for the parties referred to an order passed by a Division Bench of this Court in APO No. 12 of 2022 dated 09.03.2022. A proceeding for demolition of the unauthorized construction of the petitioner's land was allowed to be carried on subject, however, to a 'NOC' from the Thika Controller as required under Regulation 13 of the West Bengal Thika Tenancy Act, 2001.

An order dated July 7, 2022 passed by the Thika Controller has been annexed to the writ petition in a proceeding under Section 5(4) and 6(7) of the WBTT (A&R) Act, 2009, whereby the Controller appears to have granted 'NOC' to the writ petitioner.

In the above circumstances, since there is otherwise no dispute in respect of the petitioner's claiming any right on 76/H/21, 22, 23, Dr. S.C. Banerjee Road, Kolkata, the petitioner is entitled to police protection on his property.

The petitioner shall be entitled to reconstruct the damaged wall in his premises. The petitioner shall also be entitled to prevent any outsiders from entering into the property and enjoying peaceful possession thereof.

For the aforesaid purpose and restoration of status quo as ordered by the Civil Court (supra), the Beliaghata Police Station, Kolkata shall post a police picket comprising of three constables at the said

premises No. 76/H/21, 22, 23, Dr. S.C. Banerjee Road, Kolkata. The costs of the police protection shall be borne by the petitioner and shall be paid at the first instance. The police shall ensure that no outsiders enter into the petitioner's property and that the petitioner is able to enjoy the same peacefully and without external interference.

The police shall also be authorized to remove from the said premises any person not permitted by the petitioner to stay inside.

The petitioner shall likewise not disturb the private respondents from enjoying their property at 84, Canal Circular Road, Kolkata.

A detailed report shall be submitted by the Beliaghata Police to the Civil Court, within a period of 15 days from date. The Civil Court shall be entitled to decide the matter wholly uninfluenced by any observations made hereinabove.

The Beliaghata Police Station shall also ensure there is absolutely no breach of peace in the area.

The aforesaid any construction made, and this very order, shall abide by any result of interim or final order in the aforesaid pending T.S. No. 130 of 2022. The construction pending in terms of any rules or any statutory including that of the Thika Tenancy Controller and the KMC.

With the aforesaid observations, the instant writ petition shall stand disposed of.

The report of the Beliaghata Police Station dated 07.12.2022, addressed to the learned State Advocate is taken on record.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)