

21.02.2022
Court No.13
Item No.19
AP

WPA 10744 of 2020

Khayanta Rani Mondal
Vs.
The State of West Bengal & Ors.
(Through Video Conference)

Mr. Md. Sarwar Jahan
Mr. M. Hossain

... for the petitioner.

Mr. Monoj Malhotra
Mr. Jaydip Basu

... for the State.

Mr. Shibasis Chatterjee

... for the Respondent Nos.5 & 6.

Learned counsel for the writ petitioner submits that the writ petitioner has obtained sanctioned plan for construction on his property. The private respondents are obstructing the same despite complaint with the Nowda Police Station, Murshidabad. Nowda Police Station, Murshidabad has not rendered any assistance.

Learned counsel for the private respondents submits that T.S. No.259 of 2016 is now pending before the learned Civil Judge (Senior Division), Berhampore, Murshidabad.

The property is a joint property and until partition, the writ petitioner is not entitled to make any construction thereat. In addition thereto, it is submitted that the Civil Court has ordered injunction restraining the parties from changing the nature and character of the property until disposal of the suit.

Learned counsel for the State has produced a report in the form of instructions dated 22.12.2020 issued by the

Officer-in-Charge, Nowda Police Station addressed to the learned State Advocate and the same is taken on record.

Learned counsel for the State on instruction submits that the police have also verified and confirmed the pendency of a partition suit.

This Court notes that the normal remedy of the writ petitioner is to obtain orders enforcing the injunction from the Civil Court.

Neither the private respondents nor the police have any authority to interfere or suo motu enforce the orders of the Civil Court.

The writ petitioner shall be entitled to effect construction, subject to any order passed by Civil Court. In the event the private respondents are of the view that the construction has been in effect prevented by the order of injunction of the Civil Court, he may obtain orders under Section 39 Rule 2a of the CPC from the appropriate Court.

With the aforesaid observations, the writ petition is disposed of.

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.)