

05.07.2022
RP/Ct. 2
sl no. 34

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction**

**WPA 1421 of 2022
Sri Murari Lal Agarwal
Vs.
State of West Bengal & Ors.**

Mr. Ajay Singhal
..... for Petitioner
Mr. Subir Kumar Saha
Mr. Momenur Rahaman
..... for State
Ms. Supriya Singh
..... For Respondent Nos.7 & 8

Petitioner alleges that the private respondents are creating obstruction in construction of a boundary wall encircling the property of the petitioner. It is the case of the petitioner that he is the owner of plot nos.483, 490/1495, 481/1493 and 491 recorded in R.S. Khatian No.471, J.L. No.3, now under P.S. New Jalpaiguri, District- Jalpaiguri and is in possession of the same and the private respondents have no manner of right, title, interest and possession in respect of the aforesaid plots.

The learned advocate for the petitioner refers to the judgment and decree dated June 24, 2019 passed by the learned Civil Judge, Junior Division, Jalpaiguri in Title Suit No.368 of 2012 and submits that the Civil Court had declared the petitioner's right, title and possession in respect of the aforesaid property and passed a decree of

permanent injunction restraining the defendants of the said suit from creating any disturbance as well as obstruction in peaceful enjoyment of the suit property by the petitioner. He further submits that the defendants of the said suit are not creating any obstruction at present but the private respondents herein are creating obstruction in the matter of raising boundary wall by the petitioner which compelled the petitioner to file this writ petition for protection of his immovable property.

The learned advocate appearing for the private respondents submits that the private respondent has acquired right, title and interest in the property in question by virtue of registered sale deed and is in possession of the same. She submits that the petitioner by taking advantage of the said decree passed against the defendants of that suit is trying to oust the private respondents from the property by attempting to raise a boundary wall encircling the said property.

Learned advocate for the State files a report which is kept on record. He submits that New Jalpaiguri PS Case No.1053 of 2021 dated 17.09.2021 under Section 420/465/468/471/506/447/120B of the Indian Penal Code has been registered on the basis of the complaint dated 17.09.2021 made by the petitioner against Kadu Singh and others. He further submits that the petitioner made another complaint against the private respondents

which was registered as General Diary No.450 dated 13th June, 2022.

The learned advocate for the petitioner submits that though a prayer has been made alleging inaction on the part of the police authority to lodge an FIR on the basis of the complaint dated June 12, 2022 but the principal grievance of the petitioner is for not rendering assistance by the police authorities to the petitioner for construction of the boundary wall. He further submits that since he has obtained a decree in respect of the property in question, he is entitled to protect his property by constructing a boundary wall encircling the property in question.

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

From the complaint dated June 12, 2022 it appears that the petitioner had come across a deed of sale, being deed no.2356 of 2021, executed by Kadu Nath Roy, being the private respondent no.7, in favour of Nihar Sarkar i.e the respondent no.8 herein, whereby 43 decimals of land has been alleged to have been fraudulently transferred out of the total land of the petitioner measuring 1.18 acres.

Thus, it is evident from the said complaint that there is a dispute with regard to title in respect of the property in question between the petitioner and the

private respondents herein. The police authorities cannot decide the issue relating to the title of an immovable property. Such dispute with regard to title in respect of the property in question is civil in nature, which cannot be decided by this Court on an application under Article 226 of the Constitution of India. This Court is thus of the considered view that the petitioner is not entitled to any order of police assistance in the matter of construction of a boundary wall to encircle an immovable property in respect of which there are rival claims. In view thereof, the prayer for police protection is rejected.

Since the police authorities have already lodged a FIR on the complaint made by the petitioner as indicated hereinbefore and it is submitted by the learned advocate for the State that investigation is in progress the investigating authority is directed to conclude the investigation at the earliest.

With the above direction, this writ petition is disposed of leaving the petitioner free to approach the appropriate forum for deciding the inter se disputes between the private parties relating to title of the immovable property.

Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocate for the parties, upon compliance of usual formalities.

(Hiranmay Bhattacharyya, J.)

