

05.12.2022
Court No.2
Item No.31
Cp

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

WPA 2917 of 2022

**Pankaj Ghosh
Vs.
The State of West Bengal and Ors.**

Mr. Jagriti Mishra
Mr. Subham Gupta
Mr. Debayan Goswami
Ms. Ria Paul

... For the Petitioner.

Mr. Hirak Barman
Mr. Momenur Rahman

...For the State.

The petitioner alleges inaction of the Officer-in-Charge, Ashighar Out Post under Bhaktinagar and the Inspector-in-Charge, Bhaktinagar Police Station.

It appears that the petitioner runs a school under the name and style of 'Mount Carmel School'. The petitioner suffered an ex parte decree of eviction and recovery of khas possession. Such decree was passed by the learned Civil Judge (Junior Division), Jalpaiguri. Title Execution Case No. 05 of 2022 was filed by the decree holders.

The petitioner filed an application praying for stay of the execution case. The execution case was stayed by an order dated July 20, 2022.

Thereafter, the petitioner filed an application before the police authorities praying for assistance to open the school. Such prayer was made as the petitioner was under the impression that once the execution case had been stayed, the right to operate from the said premises would revive. The petitioner, aggrieved by the inaction of the police, prays for a direction upon the police authorities to facilitate the running of the school by opening the lock affixed by the decree holders.

In the opinion of the court, this is not a case of police inaction. There is a civil dispute pending between the petitioner and the owners of the land on which the school is running. The petitioner has suffered a decree of eviction and recovery of khas possession. The petitioner did not take any steps against the said ex parte decree by either filing an application under Order 9 Rule 13 of the C.P.C or by filing a regular first appeal. Stay of the execution would not ipso facto amount to stay of operation of the decree and shall not create any right in favour of the petitioner.

Moreover, these are issues which would have to be decided in a civil suit or in any proceeding arising out of the said civil suit. Even the executing court cannot go beyond the decree

and pass orders in favour of the petitioner at this stage.

Under such circumstances, the writ petition is dismissed.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)