

01.02.2023
Court No.13
Item No.12
AP

WPA 434 of 2023

**Abdul Kalam alias Abul Kalam and Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Partha Chakraborty
Mr. Debayan Ghosh

... For the Petitioner.

Mr. Haradhan Banerjee
Mr. Md. Nurul Hoque
Mr. Manabendra Thakur
Mr. N. Das
Mr. Afrozul Hoque

... For the Respondent Nos.5 & 6.

The question that comes for consideration is as to whether an order of ad interim injunction passed by the learned 5th Civil Judge (Senior Division) at Alipore in TS No. 503 of 2022 ought to be implemented by the police or not.

The dispute between the parties has lead to another suit being TS No.1289 of 2022 before the City Civil Court at Calcutta and also an order of the Hon'ble Supreme Court in Civil Appeal No.8681 of 2022.

In terms of the directions of the Hon'ble Supreme Court, the City Civil Court by its order dated 22nd December, 2022 has heard and held that TS No. 1289 of 2022 cannot be maintained before the City Civil Court. It was held that such suit must be adjudicated before the learned Civil Judge (Senior Division) at Alipore. The plaint was accordingly returned to the learned filing advocate.

The plaintiffs in TS No.1289 of 2022 are also defendants in TS No.503 of 2022. The said defendants/ private respondents have applied in the Court below for vacating the ex parte order of injunction.

The said order of injunction in TS No.503 of 2022 is subsisting. An application for direction upon the Kasba Police Station to enforce the order of injunction and restrain further construction, is pending.

It is, therefore, directed that the learned 5th Civil Judge (Senior Division) at Alipore, shall dispose of all applications filed by the parties mandatorily and positively on 6th February, 2023. No adjournment whatsoever given to any parties.

The petitioner shall file his objection to the application under Order 39 Rule 4 by day after tomorrow i.e. 3rd February, 2022 upon service to the counsel for the private respondents/ defendants. Reply, if any, be filed by the private respondents/ defendants by 4th February, 2023 upon service of the same on the counsel for the petitioner.

Counsel for the respondent Nos.5 & 6 i.e. Magnet Construction Pvt. Ltd. and Central Holding Private Limited on the instruction of his client, undertakes before this Court not to effect any construction until 7th February, 2023. Kasba Police shall ensure that such undertaking is enforced until 7th February, 2023. The Kasba Police shall thereafter strictly implement any order that may be passed by the learned 5th Civil Judge (Senior Division) at Alipore or

any other forum sitting in appeal over the said proceedings or as may be modified in the pending appeal being FMAT 2 of 2023.

It is made absolutely clear that this Court has not entered into the merits of the rival claims between the petitioner and the private respondents in the suit in the Court below or any other proceedings. The learned 5th Civil Judge (Senior Division) at Alipore shall independently dispose of the applications of the parties in accordance with law.

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

There shall be no order as to costs.

The report of the Additional Officer-in-Charge, Kasba Police Station dated 24th January, 2023 is taken on record.

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

(Rajasekhar Mantha, J.)