

05.06.2023.
Court No.13
Item No. 17
ap

W.P.A. No. 3817 of 2023
Helaluddin Seikh
Versus
The State of West Bengal & Ors.

Md. Hafiz Ali.

...For the petitioner.

Mr. Amal Kumar Sen, AGP,
Mr. Lal Mohan Basu.

...For the State.

Mr. Manas Kumar Das,
Mr. Aritra Kumar Thokdar.

..For the opposite party no.4.

1. Affidavit-of-service filed in Court today be taken on record.
2. The petitioner is aggrieved that despite having a valid sanction plan from the local Panchayat, he is not able to construct on his property due to obstruction by the private respondent as also the police.
3. Admittedly, P.S. No. 543 of 2021 is pending before the learned Civil Judge (Senior Division) at Kandi, Murshidabad between the petitioner and the private respondent.
4. Injunction has been refused in the aforesaid civil suit by the Civil Court. The private respondent has filed a Miscellaneous Appeal before this Court being F.M.A.T. No. 356 of 2022, which is pending.
5. There has been no partition on the property till now, the mutual rights and extent of the petitioner and the private respondent in the property has not been demarcated or determined.

6. Subject to any orders that may be passed in the aforesaid F.M.A.T., it is ordered that the petitioner shall not be entitled to effect any construction on the property in question.

7. Mr. Sen, Counsel for the police, submits that there was no formal restraint from their side in the civil dispute between the parties. He further submits that they only inspected the property in terms of the order of learned Executive Magistrate.

8. All other issues shall be deemed to have been kept open for the parties to agitate in the pending suit or F.M.A.T. No. 356 of 2022, referred to hereinabove.

9. Since no affidavit has been called from the private respondent, the allegations made in the writ petition are deemed not to have been admitted by them.

10. The report of the Kandi Police Station dated 25th April, 2023 in the form of instructions addressed to the Government Pleader, High Court, Calcutta be kept with the record.

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

12. There will be no order as to costs.

13. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

