

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 17.08.2023

DELIVERED ON: 17.08.2023

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**F.M.A. 872 of 2021
With
I.A. No. CAN 1 of 2021**

**Nirmala Samanta
Vs.
The State of West Bengal & Ors.**

Appearance:-

Mr. Golam Mastafa	
Mr. T. S. Samanta	for the appellant
Mrs. Nirmala Samanta	appellant in person

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 4th February, 2021 in W.P.A. 8166 of 2020. The appellant filed the writ petition praying for a direction upon the respondent nos.2 and 3 to take action against the 4th respondent on the basis of the complaint lodged by the appellant and thereby remove the obstruction in front of the land of

the appellant in Plot No.47/2018 and 47/2019 within Mouza – Bamunia, Police Station – Mahisadal, District – Purba Medinipur.

2. The learned writ Court considered the submissions made by the appellant as well as the private respondents, who appeared to be co-owners of the property in question. After considering the submissions and the documents placed on record, the Court came to the conclusion that the dispute relates to title of the property and consequential reliefs. Therefore, the Court observed that it is beyond the scope of the writ petition to enter into the merits of such disputed questions of fact, which require examination of documentary evidence and other materials. Therefore, the writ petition was disposed of by granting liberty to the petitioner and the private respondents to approach the competent civil Court with a grievance, as raised in the writ petition and if so approached, the civil Court was directed to decide the same and grant interim orders, if it deems fit without being influenced in any manner with the observations made by the learned writ Court.
3. Aggrieved by such order, the appellant has filed the present appeal. The appellant is appearing in person and also assisted by a learned advocate. We have elaborately heard the submissions made by the appellant and the learned advocate, who is assisting the appellant. The appellant would contend that after the demise of her husband, she has been temporarily residing in Behala. However, when she came to the property, the 4th respondent is obstructing her free ingress and egress into the property. Therefore, the appellant had approached the respondent nos.2 and 3 by way of a complaint alleging that no appropriate action has been taken on

those complaint. On the basis of such complaint, the writ petition was filed.

4. The learned advocate assisting the appellant, who is appearing in person submitted that the appellant has a natural right to enter into her property through the National Highway.
5. Admittedly, the issue as to whether the appellant has a right to ingress and egress to a particular piece of land to reach her property is a civil matter in which a writ Court cannot interfere nor the police authorities can give any declaratory relief to the appellant and this is precisely the reason why the learned writ Court had granted liberty to the appellant to approach the civil Court, which liberty the appellant has not availed till date. However, in the event, the 4th respondent has committed a criminal offence and a complaint is lodged by the appellant to the 3rd respondent/police, then obviously the said complaint ought to be enquired into and it will be well open to the police to take into consideration all the materials, issue summons to the 4th respondent, conduct an enquiry and then proceed to take a decision in accordance with law. In the event, the 3rd respondent/police comes to the conclusion that the matter is entirely of a civil nature and there is no criminal overt act against the 4th respondent, then an appropriate report has to be drawn and served on the appellant and if aggrieved, the appellant can invoke the other remedies available under the Code of Criminal Procedure.
6. In the light of the above, the appeal and the connected application are disposed of by preserving the liberty granted by the learned Single Bench to both the writ petitioner as well as the 4th respondent to approach the

competent civil Court. In fact, the learned writ Court has also made observation that if such remedy is availed, the civil Court can grant appropriate interim orders by considering the matter on merits.

7. The appellant is directed to lodge a fresh complaint before the 3rd respondent/police along with a copy of this judgement and order. On receipt of the said complaint, the 3rd respondent/police shall cause an enquiry to be done after issuance of summons/notice to the appellant and the 4th respondent and conduct a spot inspection of the area and thereafter proceed to take a decision in accordance with law.
8. The above direction be complied with by the 3rd respondent/police within a period of three weeks from the date on which the complaint is lodged by the appellant.
9. No costs.
10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)