

25.07.2023
sayandeep
Sl. No. 12
Ct. No. 14

WPA 15806 of 2023

Subham Mal
-Versus-
State of West Bengal & Ors.

Mr. Malay dhar
Mr. Amit Bikram Mahata
.....for the petitioner
Mr. Asish Kumar Guha
Mr. Joydip Basu
.....for the State

This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities, especially the respondent No. 4 to register criminal case against the private respondent on the basis of written complaint dated 19.05.2023.

Affidavit-of-service filed on behalf of the petitioner is taken on record.

Despite service, no one appears for the private respondents.

Report filed on behalf of the State is also taken on record.

Learned counsel appearing for the petitioner submits as follows. The petitioner is the owner of the land in question. In spite of that, the private respondents are disturbing the petitioner's possession. In fact, they had forcefully entered into the land belonging to the petitioner and tried to

construct structures. This was brought to the notice of the police, but the police did not take any steps. The petitioner was granted an order by the Executive Magistrate under Section 144(2) that the respondent authorities should not make any such illegal construction.

Learned counsel appearing for the State relies on the report and submits as follows. This is purely a civil dispute between the private parties. From the record of right, it appears that the predecessor of the private respondents were owning the land at one point. However, police authorities shall ensure that no breach of peace takes place. A proceeding under Section 107 of the Code has also been initiated .

I have heard the submissions of the learned counsel appearing for parties and have perused the writ petition.

This Court is not going into the question of whether an Executive Magistrate is empowered to pass such an order that he has passed in the present case restraining the opposite party from making construction work.

However, either of the parties shall be entitled to approach the civil Court for appropriate relief.

In the meantime, the police authorities shall keep strict vigil at the locale and ensure that no breach of peace takes place.

With these observations, the writ petition is disposed of.

Since affidavits have not been called for, the allegations contained in the writ petition are deemed not to have been admitted.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Jay Sengupta, J.)