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gd/ssd

MAT/1520/2022
IA NO: CAN/1/2022, CAN/2/2022
ANWAR ALI KHAN AND ORS.
VS
ABDUL BASAR FAKIR AND ORS.

Mr. Nitai Ch. Saha,
Mr. Abhijit Ch. Majumder
..for the Appellants.

Mr. Bhaskar Prasad Vaisya,
Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee
..for the State.

Mr. Prosenjit Mukherjee,
Mr. Nirmalya Kr. Das
..for the Respondent No.1.

This intra court appeal is at the instance of the respondent nos.5 to 10 in the writ petition challenging the order of the learned Single Judge dated 4th July, 2022 by which in WPA 9095 of 2020 filed by the respondent nos.1 and 2 herein (writ petitioners) has been disposed of with certain directions.

The writ petition was filed with the plea that the writ petitioners had purchased the land in question by way of two sale deeds from one Sahida Begum and their names were duly recorded in the LR record. Further plea was raised that at the stage of construction of boundary wall some obstructions were raised, therefore, a complaint was made to the police and thereafter writ petition was filed with the prayer seeking a direction to

the police authorities to render adequate police help in favour of the writ petitioners so that the petitioners could construct a temporary boundary wall on the plot in question.

Learned Single Judge has disposed of the writ petition with the liberty to the writ petitioners to approach the concerned Superintendent of Police with the prayer for police protection and further directed the police authority to dispose of the representation in accordance with law and in case, if the writ petitioners are found to be entitled to police protection, then to extend the same at their own cost as assessed by the police authority.

Submission of learned counsel for the appellants is that the writ petitioners had purchased only a part of the joint property and the vendor was not entitled to sell the said part in entirety and that the other co-owners were not made parties in the writ petition and learned counsel for the appellants could not appear when the matter was taken up by the learned Single Judge and the petition itself has been disposed of on the first day of hearing, therefore, the stand of the appellants has not come on record. He has further submitted that the civil suit in respect of the property in question is already pending and the order of the learned Single Judge will affect the right of the appellants.

Learned counsel for the respondent has raised the submission that in terms of Regulation 666C of the Police Regulations writ petitioners were entitled to temporary police protection which has been granted. He has also submitted that the suit has already been abated.

It is in dispute between the parties whether the suit property is a water body or a bastu land.

Learned counsel for the State has produced the report indicating that boundary wall has already been constructed with the police help because in the local enquiry the petitioners were found to be entitled to have police protection for erecting boundary wall.

Having heard the learned counsel for the parties and perused the materials on record, we find that in the writ petition the prayer was to extend police help for the purpose of construction of boundary wall. In exercise of the writ jurisdiction under Article 226 of the Constitution of India the private dispute between the parties or dispute of civil nature cannot be decided nor the police authorities are empowered to enter into such an arena. In the present case, the direction of the learned Single Judge to the police authorities was to decide the representation. Thereafter the police authorities found the petitioners entitled to police protection to erect the boundary wall but police

authorities had no jurisdiction to decide the petitioners entitlement to erect the boundary wall. The fact remains that the boundary wall has been constructed after the order of the learned Single Judge.

In the changed circumstances, now the appellants are required to approach the appropriate forum questioning the construction of the boundary wall by establishing their right over the property in question. In the circumstances of the case, we make it clear that any observation made by the learned Single Judge or any order passed by the police authorities in this regard will not come in the way of the appellants in establishing their right before the appropriate forum and if the appropriate forum reaches to the conclusion that the rights of the appellants are prejudicially affected on account of the construction of the boundary wall in question, then the said forum will be at liberty to pass the order in accordance with law.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

