

31.01.2023.
Court No.13
Item No. 8
pk

**W.P.A. No. 28092 of 2022
CAN 1 of 2023**

**Smt. Tapasi Sardar
Versus
The State of West Bengal & Ors.**

Mr. Ajay Debnath,
Mr. Devranjan Das,
Mr. Pradip Kar.

...For the petitioner.

Mr. Shyama Prasad Purkait,
Ms. Moumita Mondal.

...For the respondent no.3.

Mr. Sandip Das

... For the private respondents.

The private respondents have filed CAN 1 of 2023.

Twofold grounds have been urged. Firstly that notice of upgradation was not given clearly and that the certain documents already annexed to the writ petition were not placed before this Court.

The short question is as to whether the petitioner can construct a boundary wall on the premises-in-question. The father-in-law of the petitioner obtained ex parte decree as regards possession of certain property.

It is submitted that the decree itself recorded a demarcated portion of his property. An application for seeking punishment of the judgment debtor has been dismissed since the petitioner sought reliefs in view of the availability of other reliefs under Order 21 of the

Code of Civil Procedure. There is also another partition suit being T. S. No. 13 of 2017 filed by the private respondents. The writ petitioner questions the maintainability of the said suit. It appears that Case No. 1 of 2021 remains even today and a revisional application against the said case has been dismissed for default.

The District Magistrate, who was acting in terms of this Court's order dated 01.11.2018 passed in W. P. No. 22022(W) of 2018 had recalled an earlier order after intervention of the private respondents. There is some dispute between the parties with regard to the demarcation of the property-in-question between the father-in-law of the writ petitioner and the private respondents.

In that view of the matter, the parties may seek civil reliefs in the pending civil proceedings. The boundary wall already constructed by the writ petitioner shall abide by any direction that may be passed by the competent Civil Court. The petitioner shall not in any way further effect construction of boundary wall and the parties shall maintain status quo in respect thereof as on date.

The Civil Courts shall deal with the matter uninfluenced by any observation made in this order.

This Court has serious doubts as regards the locus of the writ petitioner to maintain the writ petition

because the property-in-question is standing in the name of her father-in-law.

Diamond Harbour Police shall ensure that there is no breach of peace in the area and shall comply with any direction or order passed by the Civil Court.

Since no affidavit has been used by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted by them.

The writ petition is disposed of.

In view of dismissal of the writ petition, connected application being CAN 1 of 2023 is also disposed of.

There will be no order as to costs.

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.)