

28
02.03.2023
d.p.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A 323 of 2023

**Samrat Mukherjee
-versus
The State of West Bengal
& Ors.**

**Ms. Supriya Singh,
Mr. Srijit Haldar.
...For the Petitioner.**

**Mr. Subir Kumar Saha,
Mr. Momenur Rahman.
...For the State.**

Affidavit-of-service filed in Court today be taken on record.

None appears on behalf of the private respondent in spite of service.

The issue relates to a piece and parcel of land vested to the State. It appears from the submissions made in Court and the documents annexed to the writ petition that the petitioner as well as the private respondent both are interested to obtain settlement of the said plot of land.

The Sub-Divisional Officer, acting as the Executive Magistrate, on the petition filed by the private respondent directed the Block Land & Land Reforms Officer, Kalchini to demarcate the said land.

In the order dated 21st November, 2022 passed by the Executive Magistrage, Alipurduar, it has been

recorded that the private respondent (Ratan Kumar Saha) wishes to get the area in his possession of plot no. 323 and plot no. 324 demarcated so that he can relinquish the area in plot no. 323 and get his due portion of area back in the plot no. 324. The Executive Magistrate advised Ratan Kumar Saha to seek demarcation by the appropriate authority.

It appears that thereafter, the land was demarcated and in the process of demarcation, the portion of the land which the petitioner claims to have been occupying for decades together, have been allotted to the private respondent.

The private respondent is presently constructing a boundary wall around the said land.

Learned advocate appearing for the petitioner contends that the Sub-Divisional Officer has practically decided the right, title and interest of the parties without conducting a proper proceeding and without giving reasonable opportunity to the petitioner to produce documents in support of the possession of the land in question.

Learned advocate appearing for the State respondents submits that the petitioner ought not to have approached the writ jurisdiction under Article 226 of the Constitution of India but should have availed the alternative remedy available to him.

It has been submitted that steps have been taken in the matter pursuant to the field enquiry report by the Revenue Inspector and the Amin.

The State respondents, however, fails to answer the query of the Court as to how the right, title and interest of the parties can be decided by the respondent authorities. The respondent authority, ideally, should have relegated both the parties to the appropriate civil forum for adjudication of their civil rights.

Instead of the same, the respondent authorities permitted one of the parties to construct boundary wall which in turn has infringed the private right of the present petitioner.

The aforesaid action of the respondent authorities is contrary to the civil laws of the land.

In view of the above, the instant writ petition is disposed of by relegating the parties to the appropriate civil forum for adjudication of their personal rights.

The Inspector-in-Charge, Jaigoan Police Station is directed to ensure that the respondent no.9, Ratan Kumar Saha does not proceed any further with construction of the boundary wall till a decision is arrived at before the competent forum.

Learned advocate for the State respondents is directed to immediately communicate this order to the Inspector-in-Charge, Jaigoan Police Station.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)