

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri**

06.03.2023
44
as

**MAT 15 of 2023
with
C.A.N. 1 of 2023**

**Ms. Urbashi Gurung & Anr.
Vs.
State of West Bengal & Ors.**

Mr. Pratap Khati,
Mr. Ranjan Sharma.
...for the Appellants.

Mr. Subir Kumar Saha, Id. AGP,
Mr. Momenur Rahman.
...for the State.

Appellants have approached this Court under Article 226 of the Constitution of India. It is contended they are in lawful possession of the property. Respondent authorities particularly respondent No.3, Superintendent of Police has illegally interfered with the peaceful possession of their predecessor in interest. Respondents trespassed into the land and even dismantled water connection. Learned Single Judge failed to consider the impact of the wrongful actions of the

respondents and relegated them to ordinary civil remedy.

Learned Advocate for the State respondents deny and dispute the allegations. Referring to the affidavit-in-opposition filed before the learned Single Judge, it is contended appellants have encroached on Government land. Criminal case was registered against their predecessor in interest. They have been given liberty to establish their legal right over the land in question before the civil court.

We have given anxious consideration to the rival submissions of the parties. We have also perused the order impugned. Appellants were unable to place on record any document establishing their ownership over the land in question. On the other hand, criminal case had been registered against the writ petitioner (since deceased) for illegal encroachment. It is contended that criminal case was registered after institution of the writ proceeding.

Be that as it may, issue relating to title or possession over immoveable property is a question of fact. No incontrovertible material establishing

ownership on the land in favour of the appellants was placed before the learned Single Judge.

Under such circumstances, learned Single Judge was inclined to relegate the appellants to approach the civil court for necessary relief. We do not find any illegality in the order impugned.

Accordingly, the appeal and the connected application are disposed of.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)