

17.05.2024
Ct. No. 19
Item 3662
Cp

WPA No. 2812 of 2023

Ranjit Kumar Sapui
Vs.
The State of West Bengal & ors.

Mr. Shahan Shah
Mr. Soumen Barman

....for the petitioner.

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee

....for the K.M.C.

Mr. A. Ray
Ms. M. Bhowal
Mr. A. Gupta
Mr. I. Bhattacharya

....for the respondent no. 13.

Despite service, none appears for the Kolkata
Municipal Corporation.

Mr. Debjit Mukherjee, learned advocate, who usually
appears for the Kolkata Municipal Corporation, is requested
by this court to enter appearance.

Title Suit No.1191 of 2019 is pending before the
learned Civil Judge (Junior Division), 2nd Court at Alipore,
between the petitioner and the respondent No.13. The
defendants in the suit were restrained from dispossessing the
plaintiff from the suit property, without due process of law.
The petitioner is the plaintiff. The petitioner alleges that the
respondent no. 13, despite the order of injunction, was

disturbing the possession of the petitioner by constructing a boundary wall, unauthorizedly.

It appears before this court that WPA No. 15740 of 2022 had been filed by the petitioner, alleging police inaction. The allegation was that the ad interim order of injunction was being violated, but the police authorities were not taking any steps. Accordingly, an application under Section 151 of the Code of Civil Procedure, seeking implementation of the ad interim order with the help of the police was filed in the civil suit. The learned civil court directed the Officer-in-Charge, Garfa Police Station to visit the locality and see whether such ad interim order of injunction had been violated or not. The police authorities were also directed to ensure that the ad interim order of injunction was not violated. The police authorities filed a report before the learned court. WPA No. 15740 of 2022 was dismissed with liberty to the petitioner to approach the learned trial court. It was also recorded that a police case had been started against the defendants in the suit. The ordering portion is quoted below:-

“Having heard the learned Counsel for the respective parties it appears that the police authorities have already concluded an investigation on the basis of the complaint lodged by the petitioner’s son with regard to the similar allegations which have been made in the writ petition. With regard to the construction of an alleged unauthorized boundary wall, the police authorities have already sent intimation to the Kolkata Municipal Corporation. With regard to the allegation of violation of the *ad interim* order of injunction, the police authorities have filed a report before the learned civil Court. It is for the learned civil Court to decide what further orders should be passed on the basis of the

report filed by the police. Those are matters of evidence and the dispute is civil in nature, which cannot be decided by a writ Court. It is open to the petitioner to take appropriate steps on the basis of police report, before the learned civil court. The allegations of violation of the ad interim order must also be raised in the suit.

The police authority shall keep a vigil in order to ensure that peace is maintained. The remedies of the petitioner before all other fora are kept open.”

Thereafter, the petitioner filed this writ petition alleging failure on the part of the Kolkata Municipal Corporation to take steps on the basis of the complaint and the report of the police authorities.

Learned advocate for the respondent no. 13 submits that this court on the earlier occasion had granted liberty to the petitioner to approach the learned Trial Judge, for necessary reliefs. The petitioner was always at liberty to approach the learned Civil Judge for necessary orders with the allegation that construction was going on, which was causing damage to the property.

The petitioner is granted liberty to approach the Corporation for an inspection and consideration of the issue as to whether the boundary wall was being constructed as per the Building Rules. The competent authority of the Corporation shall consider such prayer, upon hearing all the parties.

Prior to hearing the parties, an inspection shall be made in the presence of the parties.

While doing so, the following procedure shall be adopted:

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no. 13. An advance notice of the inspection shall be served upon the petitioner and the respondent no. 13 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.
- c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties.
- e) A hearing shall be given to the petitioner and the respondent no. 13. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.

f) A reasoned order shall be passed and communicated to the parties.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

The question of title, possession and boundary etc. shall not be decided by the authorities. The only question to be decided by the authorities, would be whether the construction of the boundary has been made without any permission and/or in violation of the building rules and the relevant laws. The petitioner can take steps as per the report, before the appropriate forum.

A copy of the writ petition along with a server copy of this order be served upon the Corporation for necessary compliance of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)