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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 5206 of 2024

Nurul Islam
Vs.
The State of West Bengal & Ors.

Mr. Nitai Chandra Saha,
Mr. Abhijit Chandra Majumder
...for the petitioner

Ms. Noelle Banerjee
...for the State

Mr. Ayan Banerjee,
Ms. Debjani Sengupta,
Ms. Poulomi Ghatak
...for the respondent nos. 7,8,10 & 11

After some arguments, learned Advocate for the petitioner submits that he is not pressing the relief claimed in the prayer (b) of the writ petition, which runs as follows:

“b) A writ in the nature of Mandamus commanding the respondent police authority and the BL and LRO authority to ensure the judgment and decree passed in Partition Suit 38 of 1993 passed by the learned Civil Judge (Sr. Divn.) at Raiganj as to final allotment of the land being the land measuring about 0.66 decimal being part of C.S. Khatian No. 50 and Dag No. 6 and New Dag No. 7 and All that piece and parcel of land measuring 2.20

satak being part of J.L. No.44 and Dag No. 33 and New Dag No. 69, 73 situated and lying in Mouza Uttar Shankarpur and all that piece and parcel of land measuring about 1.18 Satak being part of J.L. No. 43 Dag No. 213 and New Dag No. 311, 312 situated and lying in Mouza: Nehalipara and all that piece and parcel of land measuring about 0.22 decimal being part of J.L. No. 41 and Dag No. 226 New Dag No. 204 and all that piece and parcel land measuring about 0.98 decimal being part of JL No. 41 Dag No. 238 and New Dag No. 207 and all that piece and parcel of the land measuring about 0.09 decimal being part of Dag No. 287 and new Dag No. 346 situated and lying in Mouza Pandara be not violated by the private respondents and their men and agents forcibly.”

The petitioner alleges that the private respondents herein have looted the crops cultivated by the petitioner on a portion of a cultivable land, which has been allotted to the petitioner by virtue of a final decree in a suit for partition.

Mr. Banerjee, learned Advocate appearing for the private respondents submits that an appeal has been filed before the learned District Judge, Uttar Dinajpur at Raiganj, being Partition Appeal No. 02 of 2024 challenging the final decree passed in

connection with Partition Suit No. 38 of 1993. Mr. Banerjee submits that the petitioner is in possession of a portion of the property, which is the subject matter of the partition appeal.

Since the property is yet to be partitioned by metes and bounds, every co-sharer has a right over every inch of the property.

In view thereof, this Court is not inclined to grant any relief directing the police authorities to ensure possession of the petitioner in respect of the portion allotted in favour of the petitioner by virtue of the final decree pending the partition appeal.

The learned Advocate for the State files an undated report of the I/C Kaliyaganj Police Station wherein it has been stated that pursuant to the complaint lodged by the petitioner, the police authorities has submitted a prosecution under Section 107 of the Criminal procedure Code vide RO No. 186/2024 dated February 10, 2024. Therefore, it appears that police authorities have taken steps on the basis of the complaint lodged by the petitioner.

Learned Advocate for the petitioner submits that taking advantage of the pendency of the partition appeal, the private respondents are creating disturbances in the possession of the petitioner in respect of the said property.

The petitioner is, however, left free to approach the learned Court where the partition appeal is pending for appropriate reliefs in that regard.

With the above observations and directions, this writ petition stands disposed of.

The Officer-in-Charge, Kaliyaganj Police Station, being the fourth respondent herein, is directed to ensure that no breach of peace takes place at the locale.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.)