

26-06-2024
Item No.19
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.16327 of 2024
Sabera Bibi & Ors.

-vs-

The Commissioner of Police, Kolkata & Ors.

Mr. Srijib Chakraborty
Mr. Sumitava Chakraborty
Ms. Bratati Pramanick
Mr. Washim Aktuir Dafader ...for the petitioners

Ms. Sonal Sinha
Mr. Avishek Prasad ...for the State

Mr. Aniruddha Chatterjee
Mr. Saptarshi Datta
Mr. Saptarshi Kumar Mal
Ms. Srinjita Ghosh
Mr. Pourush Kanti Pal
Mr. Debdut Hore ...for the private respondents

The petitioners in this writ petition pray for a direction upon the police to act in accordance with the order of injunction passed by the learned Civil Judge (Sr. Division), 7th Court, Alipore, South 24 Parganas on March 4, 2024 in Title Suit No.325 of 2024. The said title suit was filed by the petitioners against the private respondents no.3 and 4.

Learned trial judge by his order dated March 4, 2024 restrained the defendants and their men and agents from dispossessing the plaintiffs from the suit property and from disturbing, obstructing, threatening the plaintiffs in their possession and cultivation or from encroaching the suit property as well as from making any kind of construction thereby changing the nature

and character of the suit property. The defendants were also directed not to deal with the suit property in any manner whatsoever or create any third party interest over the suit property as mentioned in the schedule of the plaint and the application for injunction. Learned advocate for the petitioners alleges that the order of injunction is subsisting till date.

The description of the suit property as mentioned in the plaint is a piece and parcel of *sali* land measuring more or less 40.5 decimals in *mouza* Bairampur, J.L. No.41 comprising of R.S. Khatian No.233 corresponding to L.R. Khatian No.3052 corresponding to L.R. Khatian No.15 previously under police station Bhargar, presently Chandaneswar police station in the district South 24 Parganas.

The case of the petitioners is that the private respondents are encroaching upon the land of the petitioners and raising construction thereon. The petitioners pray that the police should act in accordance with the order of injunction passed by the learned civil court restraining the private respondents from raising construction upon encroaching the land of the petitioners.

Learned advocate representing the private respondents raises an issue with regard to the maintainability of the writ petition and submits that the petitioners ought to have approached the learned civil court for necessary relief, instead of approaching the writ court.

The development agreement pursuant to which the construction is being made is annexed to the writ petition. The schedule of land in the said agreement is

distinctly different from the schedule of land of the petitioner mentioned in the plaint.

From the submissions made on behalf of the respective parties it appears that the police will not be the appropriate authority to identify the plot of land and to take any action restraining any party from raising construction thereon. Till the land in question where the alleged construction is being made is properly identified, the police may not be in a position to comply and implement the order of injunction passed by the learned trial court. Passing any order directing the police to act in accordance with the order passed by the learned civil court may give rise to other legal complications.

In view of the above, it will be open for the petitioners to approach the learned civil court in seisin of the matter for necessary police help for implementation of the order of injunction, if so advised.

The parties are, however, directed to act in strict compliance of the order passed by the learned civil court.

As the writ petition is disposed of without calling for affidavits, the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

The writ petition stands disposed of.

Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

