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09.07.2024
d.p.

**In The High Court At Calcutta
Constitution Writ Jurisdiction
Appellate Side**

W.P.A. 17215 of 2024

**Sambhu Nath Singh & Anr.
-versus
The State of West Bengal & Ors.**

**Mr. Debangshu Dinda,
Ms. Esha Manchanda,
Ms. Mayuri Ghosh.
...For the Petitioners.**

**Mr. Sumon Ghosh,
Mr. Gaurav Das.
...For the State.**

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

The petitioners complain that the police are not taking any step in response to the complaint lodged before the Officer-in-Charge, Parnashree Police Station on 30th June, 2024 alleging encroachment and illegal attempt by the private respondent to take forceful possession of the property at 107, Parnasree Pally Road, Kolkata-700060.

The petitioners rely upon the decree passed by the learned civil Court declaring the right, title and interest over the suit property in favour of the petitioners.

The learned civil Judge restrained the private respondent from causing any obstruction and interference in the matter of peaceful possession, occupation and enjoyment of the property by the petitioners.

The petitioners intend to protect the property by constructing a boundary wall. The private respondent, a club, is disturbing the petitioners in doing so.

The petitioners approached the learned Magistrate and have obtained an order under Section 144(2) Cr.P.C. directing the OC to enquire and report and to see that no breach of peace takes place at the locale and to see that the lawful and peaceful possession of the petitioners in the scheduled property is not disturbed by anyone in any manner.

Despite having the order from the learned civil Court as well the learned Magistrate, the petitioners are not able to enjoy their property peacefully.

Learned advocate appearing on behalf of the State respondents relies upon the instruction forwarded by the Officer-in-Charge, Parnashree Police Station signed on 9th July, 2024 which mentions that the private respondent has preferred an appeal against the judgment delivered by the learned civil Judge and the same is subjudice before the learned District and Sessions Judge, Alipur, 24 Parganas South. As both parties are trying to put forth their claim over the subject land, the police are maintaining vigil to prevent any breach of peace.

The private respondent intended to make boundary wall with bamboo stick and the petitioner raised objection. The same has been diarized.

It has been submitted that all the directions passed by the learned Executive Magistrate has duly been complied with.

After hearing the parties and upon perusal of the report forwarded by the police, it appears that the police is relying more on the fact of the pendency of the appeal rather than acting in accordance with the decree and order that has been passed.

An order passed by the Court is liable to be followed and complied with strictly till the same is set aside/modified or varied by a superior Court. Mere filing of an appeal does not operate as stay of the order appealed against. As on date, there is no order setting aside, varying or modifying the order passed by the learned civil Judge or the learned Magistrate.

The Court has not been apprised with any order passed by the appeal Court touching the order passed by the learned civil Judge. The police are, accordingly, bound to act in terms of the direction passed by the learned civil Judge (Junior Division) at Alipur.

The learned Magistrate has also passed order directing the police to see that the petitioners can enjoy their property peacefully and without any disturbance from anybody. The attempt made by the private respondent in constructing boundary wall by bamboo sticks should have been immediately objected to and stopped by the police. The same has not been done.

The police are directed to take steps to ensure that the petitioners can enjoy their property as per their own wish and desire in accordance with the order passed by the learned civil Judge and the learned Magistrate.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)