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23.09.2024
KC

WPA 20857 of 2024

Aktrarul Laskar
Vs.
The State of West Bengal & Ors.

Mr. Pintu Karar
Mr. S. U. Laskar
... for the petitioner.

Mr. Kalyan Bandyopadhyay, Sr. Advocate
Ms. Debolina Ghosh
Mr. Rahul Kumar Singh
... for the respondent nos. 12 & 13

Ms. Sabnam De Bardhan
Ms. Tuli Sinha
... for the State.

Petitioner claims to be the owner of RS Dag No. 825 within Mouza Baruipur which has been recorded as holding no. 1262, Kulpi Road within Ward No. 10 of the Baruipur Municipality. Petitioner claims that his name has been duly mutated in the records of the Baruipur Municipality. The petitioner filed a title suit being T.S. No. 677 of 2022 before the learned Civil Judge (Junior Division), 1st Court at Baruipur and obtained an order of status quo on July 12, 2023. The petitioner alleges that the private respondent in utter disregard and violation of the order of status quo, has started making construction on the property of the petitioner. Petitioner lodged a complaint before the Officer-in-Charge of

the Baruipur Police Station vide letter dated July 20, 2024, which was received by the Officer of the said police station on the said day. The petitioner also approached the concerned Executive Magistrate by filing an application which was registered as MP Case No. 2965 of 2024 and by an order dated July 29, 2024 the concerned Executive Magistrate directed the Officer-in-Charge to see that no breach of peace takes place.

Mr. Bandyopadhyay, learned senior advocate representing the private respondent submits that the private respondents are not parties in T.S. No. 677 of 2022. He submits that the order of status quo, therefore, cannot bind the private respondents. He submits that the private respondents became the absolute owner of RS Plot No. 825 under Mouza Baruipur vide a Deed of Kobala dated September 6, 1984. Mr. Bandyopadhyay, learned senior advocate submits that the name of the private respondent have been duly mutated in the record of the municipality and the holding number allotted to the private respondent is 1213 within Ward No. 10 of the Baruipur Municipality.

Learned advocate for the State files a report of the Inspector-in-Charge, Baruipur P.S. dated August 22, 2024

in Court today and submits that pursuant to the written complaint made by the petitioner an FIR has been registered and the investigation is under progress.

Heard the learned advocates for the parties and perused the materials on record.

The petitioner filed a suit for declaration of title and for permanent injunction being T.S. No. 677 of 2022. In the said suit, the learned Civil Judge (Junior Division), 1st Court, Baruipur passed an order on July 12, 2023 directing both the parties to maintain status quo in respect of nature, character and possession of the suit property and not to change the nature and character and possession till the disposal of the suit.

The learned Civil Judge in the order dated July 12, 2023 noted that there is a huge dispute between the parties regarding title and possession of the property which can only be resolved after considering the evidence produced by both sides.

After going through the said order, this Court finds that the learned Civil Judge directed the parties to maintain status quo with regard to possession also without indicating as to who is in possession of the property which is

the subject matter of the said Title Suit. It is well settled that the Court while passing an order of status quo has to clearly indicate in the said order as to what was the status quo prevailing as on the date of passing of such order.

That apart, the private respondents herein are not parties to the title suit no. 677 of 2022. Learned advocate for the petitioner would submit that the private respondent are the men and agents of the defendants of T.S. No. 677 of 2022 and, therefore, the order of status quo is binding upon the private respondents. This Court is not inclined to accept such submission of the learned advocate for the petitioner as there is nothing on record to indicate that the private respondents are the men and agents of the defendant of T.S. No. 677 of 2022.

The private respondents also filed a suit being T.S. No. 566 of 2024 wherein the petitioners herein is the defendant. In the said suit, the learned Civil Judge (Junior Division), 1st Court, Baruipur passed an order on August 2, 2024 thereby directing the defendant/writ petitioner herein not to disturb the peaceful possession of the plaintiff/private respondent herein and also not to change the nature and character of the suit property till September 2, 2024.

Mr. Bandyopadhyay, learned senior counsel for the private respondent submits that the said order has been subsequently extended and the same is still subsisting.

It has been specifically admitted in paragraph 7 of the writ petition that the private respondent herein have taken possession of the property in question forcibly.

Since admittedly the writ petitioners are out of possession, it is well open to the petitioner to take appropriate steps in this regard before the Civil Court. A person not in possession of the property in question cannot pray for implementation of an order of status quo, which also did not define the status quo as on the relevant date.

The writ petitioner prayed for a direction upon the police authorities to implement the order dated July 12, 2023 and to remove the private respondents from the suit property.

As observed hereinbefore, the order dated July 12, 2023 did not indicate that the petitioner was in possession as on the date of passing the said order. Whether the writ petitioner was in possession of the immovable property on July 12, 2023 and has been forcibly dispossessed from the same as alleged by the petitioners are disputed questions of fact

which can only be decided by a trial on evidence in the Civil Suit which is pending.

The Writ Court is not the proper forum for adjudication of disputes regarding title and possession in respect of an immovable property between private parties. Therefore, the relief claimed for restoration of possession is legally impermissible in a writ petition.

Since the Civil Court is in seisin over the said dispute, the parties are left free to approach the Civil Court for redressal of their grievances.

Since, FIR has been registered pursuant to the complaint lodged by the petitioner, the concerned Investigating Officer is directed to conclude the investigation and take all consequential steps thereupon as expeditiously as possible.

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

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

(Hiranmay Bhattacharyya, J.)