

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Heard on: 10.07.2024

Delivered on: 10.07.2024

CORAM:

The Hon'ble Mr. Chief Justice T. S. Sivagnanam
and
The Hon'ble Mr. Justice Hiranmay Bhattacharyya

M.A.T. of 1863 of 2023

Sri Dhrubaram Kanu
Versus
The State of West Bengal & Ors.

with
CAN 1 of 2023

Appearance:-

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K. Rahim Ahmed
Mr. Rudranil Das
Mr. Tapas Chatterjee

.....For the Appellant

Mr. Anirban Ray, Ld. G. P.
Mr. Sk. Md. Galib
Ms. Sujata Mukherjee

.....For the State

Mr. Krishna Das Poddar
Mr. Sujit Bhunia
Mr. Dilip Kumar Shyamal

.....For the respondent no. 4 and 5

JUDGMENT

(Judgment of the Court was delivered by Hiranmay Bhattacharyya, J.)

1. The order dated September 13, 2023 passed by the learned Single Judge in WPA No. 19848 of 2023 is under challenge in this intra-court appeal at the instance of the 4th and 5th respondents in the writ petition.
2. By the order impugned, the learned Single Judge after observing that the appellant therein would not have any right to object to the writ petitioner making construction on the plot of land, i.e., plot no. 147, directed that if a breach of peace takes place, it would be responsibility of the local police authority to deal with the same.
3. Mr. Mukherjee, learned advocate representing the appellant submits that taking advantage of the said observation of the learned Single Judge in the order impugned, the police authorities are rendering assistance to the writ petitioners/4th and 5th respondents herein in raising construction.
4. Mr. Galib, learned advocate representing the State submits that the police is acting only in terms of the directions contained in the order passed by the learned Single Judge and they are only keeping a sharp vigil so that no breach of peace takes place in the locality.

5. The 4th and 5th respondents approached the Writ Court with a prayer for adequate police assistance in the matter of raising construction on their demarcated area of land measuring about 9 decimals within plot no. 147.
6. A civil suit, being Title Suit No. 63 of 2007, is pending before the learned Civil Judge (Junior Division), 3rd Court, Paschim Medinipur. On the allegation of encroachment, a Survey Passed Commissioner was appointed, who has submitted a report dated August 24, 2021.
7. After going through the said investigation report it appears that the Survey Passed Commissioner has observed under point no. 3 that the defendants, i.e., the respondent nos. 4 and 5 herein, has encroached a portion of land from R. S. Plot No. 146 and 146/1835.
8. Learned advocate representing the 4th and 5th respondents submits that an objection to such report has already been filed before the civil court.
9. A Title Suit filed by the appellant herein against the 4th and 5th respondents is pending. In the said suit the appellant prayed for recovery of possession from the alleged encroached portion of plot nos. 146 and 146/1853. The learned Single Judge rightly noted that vide order dated 27.02.2023 in C.O. 501 of 2023, the defendants/ 4th and 5th respondents were given liberty to raise construction specifically within plot no. 147 but not to encroach any lands of plot nos. 146/1835.
10. When a Civil Suit on the allegation of encroachment upon adjoining plots is pending, this Court is of the considered view that the learned Single

Judge was right in not allowing the prayer seeking assistance of police in the matter of construction. This Court is, therefore, not inclined to interfere with the order passed by the learned Single Judge.

11. The police authorities are, however, directed to see that no breach of peace takes place in the locality.

12. With the above observation and direction, the appeal stands disposed of.

I agree.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)