

46 17.01.2024
NB Ct. 14

WPA 24848 of 2023

Kazi Mahidul
Vs.
The State of West Bengal & Ors.

Mr. Anindya Bose,
Mr. Golam Mohiuddin,
Mr. Mridul Biswas,
Ms. Puja Mondal.
...for the petitioner.

Mr. Biswabrata Basu Mallick Id.AGP.,
Mr. Biman Halder.
...for the State.

Md. Sarwar Jahan,
Md. Ashraful Huq,
Mr. Sumit Naskar,
Mr. Kaustav Roy.
...for the respondent no.7.

Report filed on behalf of the State is also taken on record.

Copies of information slip and plaint of the private respondent, as filed in Court, are taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the owner of the land in question. Yet, the private respondents have been disturbing the possession and enjoyment of the property by the petitioner. This prompted the petitioner to approach the learned Magistrate under Section 144 of the Code. By an order dated 10.07.2019, the learned Executive Magistrate directed the police to render help for the petitioner to construct a boundary wall on depositing cost. The cost was deposited on 23rd September, 2020, but no help was rendered by the police.

Learned counsel appearing on behalf of the private respondent relies on documents and submits as follows. The disputed land is a common passage used by the private respondent for the last 19 years. The private respondent had filed a civil suit, which is still pending. An interim order was passed by the learned civil Court directing maintenance of status quo.

Learned counsel appearing on behalf of the State relies on the report and submits as follows. The dispute between the private parties is purely civil in nature. There is a civil suit pending. A proceeding has been initiated under Section 107 of the Code. However, the police authorities are keeping a close watch on the developments in the locality.

It appears that a civil suit is pending between the private parties. If any of the parties wants to establish any further right in respect of the property, the same has to be done before a civil Court.

Learned Executive Magistrate apparently exceeded its jurisdiction by allowing the party to raise a boundary wall with police help by exercising powers under Section 144(2) of the Code.

It also appears that the police authorities have taken steps by instituting a proceeding under Section 107 of the Code.

Therefore, no further order need be passed in this regard.

However, the police authorities shall keep a sharp vigil at the locale, ensure that no breach of peace takes place and see to it that no order of a civil Court is violated.

With these observations, the writ petition is disposed of.

Since affidavits were not called for, allegations contained in the writ petition are deemed not to have been admitted.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)