

Constitutional Writ

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

W.P.No.17967 (W) of 2010
Judgment on : August 30, 2010

Md. Istekharujjaman Molla
-vs-
The State of West Bengal & Ors.

POINTS:

SCOPE OF WRIT: Petitioner was apprehending encroachment upon his property by the private respondents-. Private respondents wrongfully erected a bamboo fence obstructing the passage to his shop- Writ whether maintainable. **Constitution of India Art.226**

FACTS:

Inaction of the authorities to take any action of the complaint of the petitioner addressed to the inspector in charge of Falta police station in South 24-Parganas wherein he stated that the persons named therein were creating disturbance, besides erecting a bamboo fence with to view to obstructing the passage to his shop. A legal notice also sent alleging that the persons named therein were attempting to encroach upon the petitioner's property.

HELD:

It is evident from the complaint letter and the legal notice that the petitioner was apprehending encroachment upon his property by the private respondents. His allegation is also that the private respondents wrongfully erected a bamboo fence obstructing the passage to his shop. The police and the other officials were not competent to do anything in the matter. The petitioner's remedy, if any, was before the Civil Court. He is not entitled to any relief from the Writ Court under art.226.

Para 4

Mr. Abdul Hamidfor the petitioner

Ms. Abha Roy
Ms. Amrita Sinhafor the State

The Court : The petitioner in this art.226 petition dated August 23, 2010 is seeking the following principal reliefs:

- a) A writ of and/or in the nature of mandamus be issued commanding the respondents No.2 to 4 herein to act in accordance to law.
- b) An order be passed directing the respondents No.2, 3 and 4 to remove any illegal encroachment on the main entrance path of the petitioner in Dag No.1158 and in the main ingress and egress of land of the petitioner as per chart in paragraph No.4 of the writ petition.
- c) A writ of and/or in the nature of mandamus be issued directing the respondents No.2, 3 and 4 to show cause as to why they have not taken any steps against the private respondents No.5 to 7 on the basis of the written complaint dated June 2010 and 10.08.2010, as annexed with the writ petition."

2. In his complaint dated June 10, 2010 addressed to the inspector in charge of Falta police station in South 24-Parganas the petitioner stated that the persons named therein were creating disturbance, besides erecting a bamboo fence with to view to obstructing the passage to his shop. In the legal notice dated August 10, 2010 it was alleged that the persons named therein were attempting to encroach upon the petitioner's property.

3. Counsel submits that though it is difficult to say what offence, if any, the private respondents have committed, the police and other officials of the State Government ought to have made some enquiry when the petitioner sent a complaint letter and then a legal notice.

4. I am unable to see how the police and the officials to whom the complaint letter and the legal notice were sent could take action in the matter. It is evident from the complaint letter and the legal notice that the petitioner was apprehending encroachment upon his property by the private respondents. His allegation is also that the private respondents wrongfully erected a bamboo fence obstructing the passage to his shop. The police and the other officials were not competent to do anything in the matter. The petitioner's remedy, if any, was before the Civil Court. He is not entitled to any relief from the Writ Court under art.226.

5. For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J)