
(2020) 02 CAL CK 0092

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 2806 (W) Of 2020

Biswarup Ghosh And Others

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 145

Citation : (2020) 02 CAL CK 0092

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Bhudeb Chatterjee, Goutam Bhakat, Lalit Mohan Mahata, Prasanta Behari Mahata, Soumyajit Das Mahapatra

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

Learned counsel for the petitioners submits that the private respondents trespassed upon the property of the petitioners and have been holding Kali

Puja on the said premises without any such permission.

It is submitted that initially an order was passed in a proceeding under Section 145 of the Code of Criminal Procedure in that regard and, pursuant to

the order of the concerned Magistrate, a police report was filed which prima facie shows that there had been an encroachment on the property of the

petitioners. Subsequently, as per the report, the private respondents surrendered and were enlarged on bail.

Learned counsel for the police authorities submits that the present grievance of the petitioners has no nexus with annexure P/11 which is relied on by

learned counsel for the petitioners. It is submitted that, pursuant to the previous

complaint, already a First Information Report was registered, on the basis of which investigation is going on.

Learned counsel for the private respondents submits that Kali Puja is being held on the said property for more than fifty years and some of the petitioners were functionaries of the club which conducts such Puja. It is submitted that the said Kali Puja is famous in the area, which makes the property partake the character of a place of worship for the public.

It is further submitted by learned counsel for the private respondents that the reliefs claimed in the writ petition have no nexus with the recent complaint annexed at page 59 (annexure P/11).

Upon hearing the parties, it is seen that apparently there was a trespass on the property of the petitioners, which is evident from the police report filed in connection with the proceeding under Section 145 of the Code of Criminal Procedure. As such, the petitioners have a right to rebuild their boundary wall which was demolished, irrespective of the fact as to who was guilty of such demolition, which is already a subject-matter of a separate investigation.

It is also found from the complaint in the annexure P/11 at page 59 that the private respondents allegedly kept a bullock cart in the garage of the petitioners, which vehicle was used to carry the idol of Kali thereto. This, according to learned counsel for the petitioners, amounts to criminal trespass and the police ought to have taken steps thereon.

The right to protect one's own property is inbuilt and implicit in the right to property and right to life guaranteed by the Constitution. Since the records clearly show that the petitioners are the owners of the property, which proposition is also not disputed by the private respondents, it is ridiculous to be argued that the private property of the petitioners has partaken the character of a public place of worship, merely by virtue of the so-called "famous" Kali Puja being held there every year, that too forcibly. It appears that initially the petitioners had permitted the private respondents, including the private respondent-club, to hold Kali Puja on their property but have resiled from that position now, which is well within the discretion of the owners of a property.

As such, the petitioners have every right to reconstruct the damaged wall,

irrespective of having lodged a complaint or not regarding that. Since it is evident from the police report that the petitioners' land was encroached upon, which proposition is not denied by the private respondents, who claim that they have the right to perform a Kali Puja there every year, it is incumbent upon the police not only to assist the petitioners in removing the bullock cart-in-question from the garage of the petitioners, but also to provide police assistance to the petitioners in the event the petitioners face any hindrance in reconstructing their damaged boundary wall. The technical objection, that no complaint was registered regarding any resistance so far as the petitioners' endeavour to reconstruct the boundary wall is concerned, cannot be taken into account since the hands of this Court are wide enough under Article 226 of the Constitution of India to take care of and to mitigate any violation of fundamental rights of the petitioners. In the present case, the right to life as well as right to property of the petitioners are palpably threatened in the circumstances as narrated in the writ petition and the materials annexed thereto.

Accordingly, W.P. No.2806(W) of 2020 is allowed, thereby directing the respondent no.4 to provide police assistance to the petitioners in removing the bullock cart, which has been kept in the premises of the petitioners by outsiders, from such premises as well as to see that the petitioners do not face any hindrance in rebuilding their boundary wall. In the event any police picket is necessary for the purpose of ensuring that the petitioners can rebuild their boundary wall without any hindrance from the private respondents or other outsiders, the petitioners shall be informed by the police about the costs involved and such costs shall be furnished by the petitioners.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.