

Constitutional Writ
Present : The Hon'ble Mr Justice Jayanta Kumar Biswas
Judgment on 03.09.2010

W.P.No.18328 (W) of 2010
Ali Hossain
-vs-
The State of West Bengal & Ors.

POINTS:

SCOPE OF WRIT: Private respondents forcibly entered upon petitioner's property-Police did not take any action inspite of lodging General Diary- Writ whether maintainable- **Constitution of India Art.226**

FACTS:

The private respondents forcibly entered upon the petitioner's properties. The petitioner initiated proceedings under ss.107 and 144 of the Code of Criminal Procedure, 1973. After entering information given by the petitioner in the General Diary the police officer concerned did not take any action against the private respondents.

HELD:

the petitioner's remedy, if any, was before the Civil and Criminal Courts. If the private respondents, his brothers and sons, have been disturbing in any manner in his enjoyment of his property, then he ought to have approached the Civil Court. If the private respondents committed any offence and the officer in charge concerned decided not to register any FIR, then he ought to have approached the Magistrate under s.156(3) of s.190 of the Code of Criminal Procedure, 1973. There is no reason to entertain the matter in exercise of power under art.226.

Para 4

Ms. Rupna Bhattacharjee Ray for the petitioner

Ms. Abha Roy
Mr. K.N. Nabi for the State

The Court : The petitioner in this art.226 petition dated August 26, 2010 is seeking the following principal relief :

“(a) A writ in the nature of Mandamus commanding the respondents more particularly the Inspector-in-Charge of Barasat Police Station, to forthwith take necessary step on the basis of complaint lodged by the petitioner's Learned Advocate on 12.01.2010 as well as the Learned Magistrate passed an order dated 05.02.2010 and to pass necessary order till disposal of the case.”

2. Counsel submits as follows. The private respondents forcibly entered upon the petitioner's properties. The petitioner initiated proceedings under ss.107 and 144 of the Code of

Criminal Procedure, 1973. After entering information given by the petitioner in the General Diary the police officer concerned did not take any action against the private respondents.

3. Counsel for the State submits that with a pure private dispute with his brothers and sons the petitioner has approached the Writ Court involving the police, though the police had absolutely nothing to do in the matter.

4. In my opinion, the petitioner's remedy, if any, was before the Civil and Criminal Courts. If the private respondents, his brothers and sons, have been disturbing in any manner in his enjoyment of his property, then he ought to have approached the Civil Court. If the private respondents committed any offence and the officer in charge concerned decided not to register any FIR, then he ought to have approached the Magistrate under s.156(3) of s.190 of the Code of Criminal Procedure, 1973. There is no reason to entertain the matter in exercise of power under art.226.

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

(Jayanta Kumar Biswas, J)

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