

13 11.12.19
akb Ct. No. 2

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A. 1033 of 2019

Smt. Mamta Sarki & Anr.

-Versus-

The State of West Bengal & Ors.

Ms. Suman Sehanabis (Mandal) ...For the Petitioner

Mr. Hirak barman

Ms. Bedashruti Bose

...For State Respondents

Mr. Debajit Kundu

...For Respondent No. 6

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order dated November 26, 2019 passed by the Sub-Divisional Magistrate, Jalpaiguri, directing the petitioner from vacating the house belonging to the private respondent, being the respondent No. 6 herein. The above order has been passed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the said Act).

Learned Counsel appearing on behalf of the petitioner submits that the procedure as indicated under Section 5 of the said Act has not been followed by the concerned Authority, and therefore, writ jurisdiction would lie and the impugned order is liable to be set aside.

Mr. Debajit Kundu, learned Counsel appearing on behalf of the respondent No. 6 indicates the orders passed by the Sub-Divisional Magistrate on earlier occasions that clearly show that the procedure under Section 5 of the said Act have been complied with. Furthermore, it is clear that an appeal lies against the impugned order under Section 16 of the said Act.

I have heard learned Counsel appearing on behalf

of all the parties and perused the materials placed on record.

In the light of the above submission, I find there is an alternative and efficacious remedy. I do not find any of the exceptions with regard to the lack of jurisdiction and/or violation of the principles of natural justice in the present case.

Accordingly, the writ petition is disposed of with liberty given to the petitioner to approach before the appropriate forum within a period of 10 (ten) days from date.

Since, no affidavit-in-opposition has been called for, the allegations made in the writ petition are deemed to have not been admitted by the respondents.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

(Shekhar B. Saraf, J.)