

September 21, 2021

ARDR

(37)

WPA 14239 of 2021

Smt. Manorama Biswas

Vs.

The State of West Bengal & Ors.

Mr. Mrityunjay Goswami,

Mr. Parikshit Goswami,

...for the petitioners.

Mr. Debjit Mukherjee,

Ms. Susmita Chatterjee,

Ms. Dipanwita Ganguly,

Mr. K. Bhamacharya,

...for the respondent no.5.

Mr. Chandi Charan De,

Ms. Reshmi Rahaman,

...for the State.

The petitioner's grievance is that she was allotted freehold title deed vide Deed No. 1-36 dated 16th April, 1990 and the plot inscribed in the deed was LOP-79. The petitioner received an intimation from the District Rehabilitation Officer, Barasat, 24 Parganas (North) on 20th December, 2020 to the effect that there is a clerical mistake in recording the plot number which should be LOP-76 instead of LOP-79. The petitioner was requested to appear before the concerned authority for such rectification.

In the meantime, a chain of incidents occurred with regard to the said plot.

The private respondent who holds a power of attorney issued by the legal heirs of one Satish Chandra Biswas, since deceased, filed a suit for declaration of title and injunction before the trial

Court which was dismissed and an appeal was filed which was also dismissed. A second appeal preferred against the said judgment is subjudice (SAT 421 of 2019).

The petitioner also filed a suit for eviction against a third person and obtained an order of eviction. During pendency of the execution proceeding, the private respondent appeared before the executing Court and submitted documents to substantiate his possession in respect of the property in dispute. An application under order XXI Rule 99, 100 of the Code of Civil Procedure was filed before the learned executing Court which is pending (Misc. Case no. 10 of 2003).

It appears that the matter in dispute in the present writ petition is also the subject matter of the Misc. Case before the executing Court as well as the second appeal pending before this Court.

The petitioner is at liberty to place her case before the Executing Court, in accordance with law.

This Court, in its extra ordinary jurisdiction under Article 226 of the Constitution of India, cannot deal with the merits of the present application which is subjudice before the regular civil forum.

In view of the same, WPA 14239 of 2021 is dismissed as not maintainable. However, there shall be no order as to costs.

Since no affidavit has been invited, the allegations made in the writ petition are deemed to be not admitted.

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

(Suvra Ghosh, J.)