

21.04.2021.
Item No. 14

(Via Video Conference)

W.P.A. 8753 of 2020

Smt. Reba Manna

Vs.

The State of West Bengal and others.

Mr. Souradipta Banerjee.

... for the petitioner.

Mr. Sirsanya Bandyopadhyay.

... for the State.

Mr. Souradipta Banerjee, learned Advocate, appears on behalf of the petitioner. Mr. Sirsanya Bandyopadhyay, learned Advocate, appears on behalf of the State. Despite service there is no representation on behalf of the private respondents. The affidavit of service filed in the Court today is kept with the record.

This present writ application has been filed, inter alia, for the following reliefs:

“a)

i).....

ii) To proceed and/or initiate criminal proceedings against the Private Respondent No. 7 and 8 as well as against the Respondents Nos. 5 and 6 under the appropriate provisions of law.

iii) To restore the possession of the said flat being No. 2A, on the 2nd floor of premises No. 50/A, Shyambazar Street, Police Station – Shyampukur, Kolkata – 700004 in favour of the petitioner.”

It is the grievance of the petitioner that the private respondent no. 7 and 8 are the owners of the flat in question at 50/A, Shyambazar Street, Police Station – Shyampukur, Kolkata – 700004.

The petitioner claims that she had paid a sum of Rs. 35,00,000/- (Rupees thirty five lakh) to the private respondent nos. 7 and 8 on the understanding that the said private respondents should return the said amount by 11th October 2019 to the petitioner, failing which, the petitioner would be entitled to take possession of the flat and the said private respondents should execute a proper deed of conveyance in favour of the petitioner.

The petitioner submits that she took possession of the flat in question following the payments made by her to the private respondent nos. 7 and 8 but they with the aid of respondent nos. 5 and 6 dispossessed the petitioner from the said flat. The petitioner further submits that it is the high-handedness of the police authorities to evict her from the flat in question and to put the private respondents again in the possession of the flat. The petitioner, therefore, submits that appropriate direction should be issued upon the respondents to put the petitioner back in possession of the flat in question.

In support of the assertion that the petitioner was in possession of the flat in question, the petitioner has relied upon a complaint dated 10th December 2019 lodged by the private respondent no. 7 before the various police authorities. The relevant part of the complaint is quoted below:

“7. It has been more than two months the said Reba Manna and her husband and son are illegally occupying two rooms of our flat and threatening us of dire consequences.”

The petitioner further relied upon a complaint dated 5th November 2019 lodged by the private

respondent nos. 7 and 8 addressed to the Officer in-Charge, Shyampukur Police Station wherein it has been stated as follows:

“That on 30th September 2019 the above named Smt. Reba Manna and her son forcibly and illegally entered the premises and took possession of one room of the said property and on 4th November 2019 forcibly took possession of the Master Bedroom by driving out the resident and have started using all items of furniture, beds and despite our vehement objection they refused to part with their illegal possession.”

It is clear from the said complaints as quoted above that the petitioner did not enter the premises in question pursuant to the voluntary delivery of possession of the flat in question by the private respondent nos. 7 and 8. Rather it appears that the petitioner was in unlawful possession of the flat. In this writ petition, therefore, no order can be passed to restore such unlawful possession of the petitioner.

It further appears that the petitioner filed a civil suit for declaration of her title over the flat in question, which is pending before the learned Judge, 10th Bench, City Civil Court, Calcutta.

It has been submitted by the learned Advocate for the petitioner that dispossession of the petitioner took place after filing of the suit and, as such, this writ petition has been filed for the reliefs as quoted before.

The dispute appears to be civil in nature and it is open for the petitioner to bring on record the subsequent events by amending the plaint, if she is so advised. It is not for a writ Court to pass a

direction upon the police to restore an unlawful possession.

There is no merit in this writ petition and the same is accordingly dismissed.

There shall, however, be no order as to costs.

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(Kausik Chanda, J.)