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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE
(Via Video Conference)

W.P.O. No. 186 of 2021

SOUTH INDIAN BANK LIMITED AND ANR.
Versus
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 13th April, 2021.

Appearance:

Mr. Suvankar Nag, Adv.

Mr. Avishek Guha, Adv.

...for the petitioners

Mr. Debasish Ghosh, Adv.

...for the respondents

Mr. Dipayan Choudhury, Adv.

Mr. Suvradal Choudhury, Adv.

Mrs. Priyanka Chowdhury, Adv.

..for the Election Commission of India

The Court : Learned counsel for the petitioners submits that despite the standing order of the competent magistrate under Section 14 of the SARFAESI Act, the police authorities have refused to grant assistance in evicting the private respondent, although the petitioners have already deposited the requisite costs for such assistance.

Learned counsel further argues that the provisions of the Model Code of Conduct issued by the Election Commission of India, which has been cited as a

reason for such non-assistance, does not apply to the case of the petitioners. By placing specific reliance on Clause 2 and Clause 4 of the Instruction (serial number) 125 of the said Code, learned Counsel asserts that the restriction contemplated therein applies only to agencies of the Government who are responsible for urban affairs and other developmental projects and pertain to general eviction drives, not particularly individual cases where there is a standing statutory order for such eviction.

Learned Senior Counsel appearing for the Election Commission submits that Clause 3 of the said Instructions clearly indicates the basis of such instruction, which is to prevent displacement of voters from their electoral areas in order to prevent any obstruction in casting votes duly.

Learned counsel appearing for the State respondent submits that the police authorities are facing a practical difficulty in view of their additional responsibilities due to the ongoing election. As such, it is submitted by learned counsel for the State respondent that the implementation of the order may be postponed to some time immediately after the conclusion of the election process.

The expression “different agencies of the Government, responsible for urban affairs and other developmental projects” in the relevant instruction of the Model Code does not cover the police authorities and the present eviction is not a mass-scale “election drive” which would come within the purview of the restrictions issued by the election commission. However, keeping in view the ground realities and the practical difficulty actually being faced by the police authorities, in view of this Court, the police ought to be granted some more time,

at least till the election processes is over, for implementing such order of the magistrate.

Accordingly, W.P.O. No. 186 of 2021 is disposed of by directing respondent no. 3 to implement the order passed by the concerned Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act in favour of the petitioner at the earliest after the election process is over on May 2, 2021, but positively by May 5, 2021.

The parties shall act on the communication of the learned Advocates and/or server copy of the order without insisting upon prior production of certified copy thereof.

There will be no order as to costs.

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

(SABYASACHI BHATTACHARYYA, J.)