

S/L 29
09.06.2022
Court. No. 19
GB

WPA 800 of 2022

Md. Sadek Zamal & Anr.
VS
The State of West Bengal & Ors.

*Mr. Debabrata Saha Roy,
Mr. Indranath Mitra,
Mr. Subhankar Das,
Mr. Neil Basu.*

...for the Petitioners.

*Mr. Amal Kumar Sen,
Mr. Jaladhi Das.*

...for the State.

*Mr. Rajdeep Bhattacharya,
...for the Respondent Nos.7 & 8.*

It appears from the record that the property was transferred by a registered deed of gift in the name of the respondent no.7 by the petitioner No. 1. The property is situated at Premises No.293, Radhanagar, Muslim Para, Post Office and Police Station – Bardhaman, District – Purba bardhaman.

According to the petitioners, the police authorities had put the petitioners back in possession sometime in 2019 after the order of this Court dated August 29, 2019, was passed in W.P. No.21066(W) of 2018. The petitioners allege that subsequently, the petitioners were driven out from the said premises. Hence, the writ petition has been filed alleging inaction on the part of the Inspector-in-Charge, Burdwan Police Station in not taking any action on the complaint filed by the petitioners, subsequent to such alleged dispossession.

Mr. Bhattacharya, learned advocate appearing on behalf of the respondent nos.7 and 8 submits that the

petitioners had transferred the property to the respondent no.7. Thereafter, a civil suit was filed for cancellation of the deed of gift. Proceedings were also initiated before the Maintenance Tribunal. The Maintenance Tribunal rejected the proceeding on the ground that the matter was sub judice before the civil court. The civil court passed an order of status quo.

Mr. Bhattacharya learned Advocate for the respondents Nos. 7 and 8 submits that there is a specific allegation in the plaint filed in the suit that the petitioner was not in possession of the property. Whereas, the writ petition has been filed with contrary pleas and false averments.

The police authorities have also submitted a report.

Mr. Sen, learned advocate appearing on behalf of the State respondents submits that the dispute is a private dispute between the father and the son and the issues with regard to title, and validity of the deed are sub judice before the learned Civil Judge (Junior Division), 2nd Court at Bardhaman.

Having heard the rival contentions of the parties, this Court is of the view that title shall be determined in the suit, which shall proceed in accordance with law. The averments in the plaint and the advantage therefrom, which may be available to the defendant in the suit shall not be prejudiced by this order. This proceeding or order shall not in any way take away the defence of the respondent nos.7 and 8, in the suit.

This Court finds that an order was passed on August 29, 2019 also during the pendency of the suit directing the police authorities to ensure that there was no breach of peace and the ingress and egress of the petitioners to and from the property must be ensured. The relevant portion is quoted below:-

“In the facts of the present case, the officer-in-charge of the concerned police station will submit a report as to the complaint dated August 21, 2019. The police will ensure that, no harm befalls the petitioners as to their lives and properties in any manner whatsoever. The police will ensure that, no breach of peace takes place at the locale. Given the complaint of the petitioners that, they are being prevented free ingress and egress from the premises concerned, the police will ensure that, the petitioners have complete freedom of ingress and egress.”

The writ petition is disposed of with a direction upon the Inspector-in-Charge, Burdwan Police Station to comply with the order already passed by this Court on August 29, 2019 in W.P. No.21066 (W) of 2018. The civil suit shall continue on its own merit and any observation made herein and the order passed shall not prejudice the rights and interest of the respondent Nos. 7 and 8 in the civil suit.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)