

20.07.2022
Sl.No.3(SL)
srm

W.P.A. No. 6343 of 2020
With
CAN 1 of 2020 (Old CAN 4890 of 2020)
Goutam Guha Roy
Versus
The State of West Bengal & Ors.

Mr. Sreekumar Chakraborty,
Mr. Amitabha Ghosh
... for the Petitioner.

Mr. Ashim Kumar Ganguly,
Mrs. Sukla Das Chandra
...for the State-respondents.

The petitioner alleges that the Inspector-in-Charge, Uttarpara Police Station failed and neglected to complete the investigation on the basis of the complaint filed by the petitioner. It is alleged that the petitioner is a promoter. The respondent Nos.5 and 6 had entered into an agreement with the petitioner for purchase of a flat. Instead of paying the amount of Rs.20,00,000/- to the petitioner, the respondent Nos.5 and 6 forcibly occupied the flat.

On the basis of the complaint filed by the petitioner, Uttarpara Police Station Case No.319 of 2019 dated July 1, 2019 under Sections 417/456/307/120B/34 of the Indian Penal Code was started against the respondent Nos.5 and 6. Upon completion of the investigation, the police filed a report *vide* Uttarpara PS FRMF No.523 of 2019

dated September 30, 2019 under Sections 417/456/307/120B/34 of the Indian Penal Code.

It appears that the investigating officer of the case was SI Kasturi Gupta. She visited the place of occurrence. Rough sketch map of the place of occurrence was prepared with index. Statements of the complainant and other witnesses were recorded under Section 161 of the Code of Criminal Procedure. Notices under Section 41A of the Code of Criminal Procedure were issued to the respondent Nos.5 and 6. They complied with such notices.

The respondent Nos.5 and 6 had produced documents along with money receipts, before the police. On perusal of the money receipt, it was revealed that the respondent Nos.5 and 6 had paid Rs.4,00,000/- to one Biltu Das, one of the owners of the property, on which the multi-storeyed building was built. Biltu Das had given a money receipt to the respondents Nos. 5 and 6, indicating that Rs.4,00,000/- would be adjusted from Rs.20,00,000/-, which was to be paid by the promoter, to the landowners. In course of investigation, it was revealed that the respondent Nos.5 and 6 had paid Rs.4,00,000/- to Biltu Das towards the consideration money for the flat. The same was accepted. It was credited to the amount

payable by the promoter in respect of the land in question.

According to the petitioner, the police authorities have filed a final report without making a proper investigation. Payment of Rs.4,00,000/-, to Biltu Das, would not amount to payment to the petitioner and the allegation of cheating survived.

It appears from the record that development agreement was entered into between the petitioner, as a developer, and Shantilata Das, Biltu Das and Santu Das, as the land owners. An agreement for sale was also entered into between the landowners including the said Biltu Das, the constituted attorney/developer Goutam Guha Roy (petitioner) and the respondent Nos.5 and 6 for sale of one self-contained residential flat more or less 450 sq.ft. being flat No.202 on the second floor towards North-Eastern side of the building. The allegation is that the possession of the flat was taken by the respondent Nos.5 and 6, but the payment was not received by the developer/petitioner.

The police investigation revealed that the promoter owed some money to the landowners and a part of the consideration money for the alleged flat, i.e., Rs.4,00,000/- was paid to Biltu Das, one of the landowners. Biltu Das certified that the amount

would be adjusted against Rs.20,00,000/- or more which the promoter owed to the landowners.

Thus, there appears to be a dispute between the promoter, landowners and the respondent Nos.5 and 6 over payments of money arising out of the development agreement and the agreement for sale. It also appears that the respondent Nos. 5 and 6 were paying the money directly to the landowners. Moreover, the agreement for sale on the basis of which the petitioner makes his claims for Rs.20,00,000/- is an unregistered deed on a Rs. 10, non-judicial stamp paper. The same is not admissible in evidence. Thus, the enforcement of the same cannot be done indirectly, through the writ court.

The police investigation was concluded and a final report of mistake of fact, has been filed. The allegation is that the final report was a counter-blast to the filing of the writ petition. This is not substantiated. The final report was filed on September 30, 2019. The writ petition was filed in August, 2020.

However, as the Criminal Procedure Code provides for steps that may be taken by the *de facto* complainant, if he is aggrieved with the investigation and final report, the petitioner is at liberty to avail of such remedy, as per law. The observations made in

this writ petition, will not have any impact on any other proceeding before the learned court below. These observations are made only for the purpose of disposal of the writ petition.

The writ petition is, thus, disposed of.

In view of disposal of the writ petition, the connected application has become infructuous and the same is disposed of accordingly.

There will be no order as to costs.

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

(Shampa Sarkar, J.)