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2022**

Ct. No. 25

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WPA 12146 of 2021

**Samir Ali Mallick and another
Vs.
The State of West Bengal and others.**

**Mr. Mahammad Mahmud,
Mr. Mahfuzus Salam Mollah,
Ms. Pinki Das.**

... for the petitioners.

**Mr. Samrat Sen,
Mr. Saikat Chatterjee,
Ms. Joyeeta Sinha,
Mr. Sandip Mondal.**

... for the State.

**Mr. Anindya Lahiri,
Mr. Samrat Dey Paul.**

... for the private respondent no. 6 & 7.

1. The petitioner no. 1 is the father of the private respondent no. 6 and the petitioner no. 2 is the mother of the said private respondent. The private respondent no. 7 is the wife of the private respondent no. 6.

2. In this writ petition the parents of the private respondent no. 6 have prayed for issuance of Writ of Mandamus to command the police authorities to take steps against the private respondents for inflicting torture, assaulting and committing crime against the petitioners and other family members of the petitioners and to ensure that the petitioners can live in their own house.

3. The petitioners claim that at the instigation of some outsiders, the private respondent no. 6 was putting pressure upon the petitioners to transfer a portion of the residential property in his own name and since the petitioners did not accede to the said illegal demand of the private respondent no. 6, the said private respondent assaulted the petitioners with deadly

weapons and has also threatened the petitioners to kill them. The petitioners claim to have made a complaint to the concerned Superintendent of Police being the respondent no. 4 herein against the criminal activities of the private respondents and requested him to take necessary steps. The petitioners allege that the police authorities have not taken any steps pursuant to the complaint made by the petitioners, which compelled the petitioners to approach this Court.

4. A Co-ordinate Bench of this Court initially directed the concerned Officer in-Charge to file a report and the learned Judge after taking into consideration the said report passed an order on December 2, 2021 directing the concerned Officer in-Charge to escort the son and the daughter in-law out of the house of the petitioners.

5. The private respondents preferred an appeal being MAT 1305 of 2021 challenging the aforesaid order dated December 2, 2021, which was disposed of by an order dated December 9, 2021 by observing that the interest of justice will be served if the daughter in-law of the petitioners along with minor child are allowed to live in the house in question during pendency of the writ petition and subject to the final outcome of the petition on furnishing an undertaking before the learned Single Judge in terms of the said order.

6. The writ petition is now being taken up for final hearing after exchange of affidavits.

7. Pursuant to an order passed by this Court, Mr. Samrat Sen, learned Senior Advocate representing the State, files a copy of the report of the concerned Sub-Inspector of Police dated August 25, 2022, which is taken on record.

8. Learned Advocate appearing on behalf of the petitioners submits that the private respondents are

creating disturbances in the peaceful possession of the petitioners. He submits that the private respondents should not be allowed to stay in the property in question as the petitioners, who are the senior citizens, are staying in the said property along with other daughters in-law and other family members.

9. Mr. Anindya Lahiri, learned Advocate appearing on behalf of the respondent no. 6 and 7, places reliance upon a decision of the Co-ordinate Bench of this Court passed in a batch of writ petitions in the case of **Kalpana Pal vs. State of West Bengal**, reported at **2011(3) CHN (Cal) 460**. He submits that the powers and duties of the police authorities have been enumerated in the said decision wherefrom it will be evident that the police authorities cannot be directed to evict the private respondent from an immovable property. He further submits that the petitioners have approached the concerned authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short '2007 Act') for protection of their right in respect of the property and as such the petitioners are not entitled to any relief in this writ petition.

10. Mr. Sen, learned Senior Counsel, submits that it has been specifically stated in the report dated August 25, 2022 as to the steps taken by the police authorities pursuant to the complaint made by the petitioners. He further submits that after completion of investigation of the case, the concerned Investigating Officer had submitted a charge-sheet. He, thus, submits that the police authorities have already taken steps and the allegation of police inaction no longer survives.

11. On the issue as to whether the Writ Court can pass an order of eviction of the private respondents, whose right in respect of the property in question is that

of a licensee in the said property, Mr. Sen relied upon two decisions of the Co-ordinate Benches of this Court in the case of **Ramapada Basak and Another vs. State of West Bengal and Others**, reported at **2021 SCC OnLine Cal 2181** and in the case of **Debaki Nandan Maiti vs. State of West Bengal and Others**, reported at **2022 SCC OnLine Cal 740**. Mr. Sen would contend that the scope of Article 21 of the Constitution of India has been expanded in recent times and the Writ Court can evict a person from the property of a senior citizen with a view to protect the life and liberty of such senior citizen. He distinguished the judgment in the case of **Kalpana Pal (supra)** by submitting that the said decision enumerated the powers of the police authorities on a complaint being lodged before them and the decisions of the Co-ordinate Benches in the case of **Ramapada Basak and Another (supra)** and **Debaki Nandan Maiti (supra)** are on the issue as to whether the Court in exercise of its jurisdiction under Article 226 of the Constitution of India can direct eviction of the son and the daughter in-law from the property at the instance of the parents and the parents in-law of the concerned private respondents.

12. In reply, Mr. Lahiri contended that in order to invoke the jurisdiction of the Writ Court, the inaction on the part of the authority under Article 12 of the Constitution of India is to be alleged and in absence of such allegation, the Writ Court cannot direct eviction of the private respondents as the same falls within the exclusive jurisdiction of the Civil Court.

13. Heard the learned Advocates for the parties and considered the materials placed.

14. The facts leading to the complaint of the petitioners is that undue pressure is created by the private respondents to transfer a portion of the

residential property, which, it is claimed by the petitioners, is owned by the petitioner no. 1. The petitioners claim that the property was constructed by the petitioner no. 1 and the private respondents do not have any manner of right, title and interest in the property in question.

15. On the other hand, it is the specific stand of the private respondents in their opposition that the respondent no. 6 has spent his entire savings to built the house at his ancestral property and it was also alleged that the petitioners had no source of income for constructing the property. The private respondent also claimed to have equal rights in the residential property, which they claimed to be the ancestral property, along with the petitioners as per the provisions of the Mohammedan Law. It was also stated therein that the respondent no. 6 provided entire funds for releasing the ancestral property from the mortgage. It is the further case of the private respondents that the petitioners initially promised to transfer a portion of the property to the respondent no. 6 and an agreement as well as the sketch showing such division of the property duly signed by the parties was also entered into.

16. The aforesaid stand of the private respondents has, however, been disputed by the petitioners in the affidavit-in-reply wherein the petitioners have stated the aforesaid agreement for division of the property in question to be a fabricated one. The fact that the private respondents have contributed the fund for construction of the property in question was also denied by the petitioners in the said reply.

17. The scope of this writ petition is very limited as the same was filed alleging inaction on the part of the police authorities to take steps pursuant to the complaint lodged by the petitioners. Writ petitions on such

allegations may be entertained to see whether the police authorities have failed to perform their statutory duties to register an FIR if the complaint discloses cognizable offences. The writ Court may also direct the police authorities to give protection to a writ petitioner in case the Court feels that such order is necessary for protection of life and liberty of the writ petitioner.

18. However, the writ petitioner seeks to enlarge the scope of this writ petition by inviting the Court to pass an order of eviction of the private respondents from the property in question or an order of injunction permanently restraining the said private respondents from entering into the property as they were ousted by the interim order passed by this Court.

19. The writ petitioners claim ownership in respect of the property and seeks eviction of the private respondents from the property as they are merely licenses which comes to an end when the writ petitioner feels uncomfortable to stay with the son, daughter-in-law and the grand-daughter in the same house.

20. On the other hand, the private respondent no. 6 sought to make out a case in the nature of irrevocable license having made permanent construction on the property with his own funds.

21. The issue of eviction of a person from an immovable property involves adjudication of the claims and counterclaims of the respective parties on their right in respect of such property including the right to possess such property. Such disputes are purely civil in nature and the same falls within the domain of the civil Courts.

22. Now, the question arises whether such disputes can be entertained and decided by a Writ Court.

23. Neither the police authorities nor the other respondent authorities have the power and/or authority to decide the issue as to who is/ are entitled to possess

the immovable property which is a residential house. The said respondent authorities are neither necessary parties nor proper parties in so far as adjudication of inter se rights of the private parties qua the immovable property. Mere impleadment of the police authorities for adjudication of such dispute pertaining to immovable property do not clothe the Writ Court to decide such dispute.

24. The Writ Court while protecting the life and liberty of the writ petitioner/senior citizen guaranteed under Article 21 of the Constitution cannot evict the private respondents from their shelter without there being an adjudication of the disputes raised by such party.

25. In the aforesaid factual background it is evident that there are factual disputes involved in respect of the right, title and interest of the property in question, which are required to be decided by a full fledged trial on evidence. Whether the private respondent no. 6 is merely a licensee in respect of the residential property or has any right, title and interest in the said property has to be decided by the Civil Court of competent jurisdiction.

26. The petitioners have alleged that the private respondents have assaulted them with deadly weapons and a complaint was also lodged before the police authorities. From the report dated August 25, 2022 submitted by the concerned Sub-Inspector of Police it is evident that the Dhaniakhali P.S. FIR No. 177/21 dated August 21, 2021 under Sections 341/323/325/307/506 IPC against the FIR named accused persons was lodged. It further appears therefrom that the investigation has been completed and a charge sheet no. 188/2021 dated September 30, 2021 under Sections 341/323/325/307/506 IPC has been

filed. It also appears therefrom that the petitioners and the respondent no. 7 herein are maintaining peace and tranquility and they have no allegation against each other.

27. Though the learned Advocate appearing for the petitioners submitted that after the writ petition was filed, steps were taken by the police authorities and, as such, it cannot be said that there was no inaction on the part of the police authorities at the time of filing the writ petition. However, without entering into such disputes, since the complaint lodged by the petitioners has been investigated upon and the charge sheet has been submitted, this Court is of the considered view that no further order at this stage is required to be passed. However, the police authorities shall ensure that there is no breach of peace at the locale.

28. In **Kalpana Pal (supra)**, the Hon'ble Judge laid down the guidelines, which are to be followed by the police when it is approached by the parents complaining of violation against their children. The circumstances when the Writ Court is to exercise its jurisdiction under Article 226 of the Constitution of India has also been laid down therein in these words:

“133. The principles (emerging from the aforesaid decisions and discussions and the submissions of learned Amicus Curiae and learned Counsel) that the Court ought to bear in mind while deciding allegations of police inaction in respect of alleged violation of rights to life and of liberty as well as property may be summarized as follows:

a. Whenever a writ petition is presented before the Writ Court alleging police inaction, the Judge ought to separate the chaff from the grain and entertain only those matters which deserve adjudication for upliftment of our constitutional jurisprudence keeping in mind the extra-ordinary powers conferred on him by the Constitution itself vis-a-vis exercise of such power for enforcement of the rights guaranteed under Part III of the Constitution or for any other purpose for which any of the writs would, according to well-

established principles, issue;

b. A Court of Writ may interfere for issuing directions to an authority who has failed to discharge a statutory duty. The police authorities may be directed to give protection to a writ petitioner when the Court is satisfied that there is justification in his perception of threat to his person by a private party or when his right of personal liberty is likely to be invaded by such party and the police is found to be hands in glove with him;

c. The Court may also direct the police to register a complaint as FIR, notwithstanding the provisions in the Cr.P.C., when acts purporting to constitute offences under the Indian Penal Code (hereafter IPC) thereby leading to invasion of the right recognised by Article 21 are alleged or in an appropriate case where interference is considered necessary with the caveat that further proceedings or investigation would be conducted entirely uninfluenced by the fact that the FIR was registered on the directions of the High Court;

d. The police may be directed to intervene when the Court is approached for protection of rights declared by a decree of a civil court, or by an order passed by it, determining rights of parties finally or even at least at an interlocutory stage in an unambiguous manner and that too in furtherance of the decree or order;

e. No direction ought to issue to protect one's right to property when a Civil Court has been approached and the lis is pending before it for adjudication;

f. Adjudication by the Writ Court of disputed questions of fact regarding right, title and interest in respect of immovable properties emerging from affidavit evidence ought to be eschewed and the parties granted liberty to pursue the channel of civil litigation;

g. It would not be proper to exercise power if a writ of mandamus is sought for directing the police to protect a claimed possession of a property without first establishing such possession free from all doubts;

h. Discretion concededly must be reserved to the police to decide its course of action upon receipt of a complaint. However, the officer in-charge concerned is duty-bound to register FIR on the basis of such an information disclosing cognizable offence since provision of Section 154 of the Cr.P.C. is mandatory and veracity of the allegations levelled in the complaint is not a matter for consideration of the police before registering a

case [see : Ramesh Kumari v. State (supra)]; and

i. If a party approaches the Superintendent of Police or the competent authority with a prayer for deputing police personnel upon payment of requisite cost by him and such prayer is not heeded, the Court would be justified in passing a mandatory direction for consideration of such prayer according to law.

134. Exercise of writ powers under Article 226 would thus be proper, effective and meaningful only upon prudent and pragmatic exercise, and that too in appropriate situations.

135. Having regard to the above it may not be inappropriate to lay down certain guidelines to be followed by the police when it is approached by parents complaining of violence against their children:-

- i) immediately on receipt of a complaint which discloses cognizable offence it would be the duty of the police to register the complaint as FIR and commence investigation;
- ii) if the complaint discloses a non-cognizable offence, the police ought to obtain orders from the Magistrate as required under law;
- iii) it would be open to the police after receipt of a complaint to enter into a dialogue with the parents and the accused son/daughter-in law and to coax and to cajole them to resolve their disputes and differences but in the process there must never be any coercion or compulsion;
- iv) to suitably advise those parents who are oblivious of the recent enactments like the DV Act, 2005 and the 2007 Act and to seek remedies before the appropriate forum;
- v) in a case where an allegation relating to dispossession from property is received, the police may conduct a probe to ascertain the worth of the allegations and if it is established that the parents have been dispossessed from their own property, a request to the children to restore possession in favour of the parents by resorting to amicable settlement could be made but if the children do not agree, no further step ought to be taken by the police for restoring possession and the parents advised to obtain appropriate orders from the Court of law;
- vi) if the parents have already taken recourse to the DV Act, 2005/the 2007 Act, the police would be well advised from interfering in the disputes between the parties and leave the issue to be decided by the appropriate forum."

29. From the aforesaid decision it is evident that the adjudication by the Writ Court of disputed questions of facts regarding right, title and interest in respect of immovable properties emerging of affidavit evidence ought to be eschewed and the parties be granted liberty to pursue the channel of civil litigation. It was further observed therein that the Writ of Mandamus cannot be granted to protect a claimed possession of a property without first establishing such possession free from all doubts.

30. From the order dated December 2, 2021 passed by the Co-ordinate Bench it will be evident that the private respondents along with their minor son were in possession of the property in question and were only ousted therefrom pursuant to an order passed by this Court. The Hon'ble Division Bench modified the order to an extent by allowing only the daughter in-law along with minor child to live in the house in question during pendency of the writ petition. The aforesaid arrangement was as an interim measure subject to the final decision of the writ petition. It is also not in dispute that the police authorities have implemented the said order(s).

31. It is well settled that the consideration at the time of passing the interim order is entirely different from that at the time of final hearing of the writ petition after exchange of affidavits by the parties.

32. In the decision of the Co-ordinate Bench in **Ramapada Basak and Another (supra)** the daughter in-law claimed her right of residence in respect of the property in question. The said decision do not apply to the facts of this case where the father is claiming eviction of the son from the property in question when the son has set up a claim in respect of the right, title

and interest of the property in question.

33. In **Debaki Nandan Maiti (supra)**, the learned Judge recorded that there are no disputed question of facts in that case. In the said writ petition the daughter in-law claimed right of residence and there was no allegation was made by her against her father in-law or the husband. It was specifically observed therein that there is bad blood between the daughter in-law in one side and her husband and father in-law on the other. In view of the said special facts recorded therein, the Co-ordinate Bench directed eviction of the daughter in-law after recording that a decree of divorce has been passed by a competent Court wherein the daughter in-law has not claimed any right of residence or share of the household against the writ petitioner or her husband under the provisions of the Domestic Violence Act. Therefore, the said decision do not have any manner of application in the facts of the instant case.

34. It appears from the record that the petitioners have taken out an application under Section 4 and 5 of the 2007 Act, which was disposed of taking into consideration the pendency of the writ petition. Liberty was given to the petitioners to apply in future after disposal of the writ petition.

35. In the facts and circumstances of this case, this Court is not inclined to pass an order of eviction against the private respondents or an order permanently restraining them from possessing the property in question in this writ petition.

36. For the reasons as aforesaid, this Court feels that in view of the fact that the police authorities have taken steps pursuant to the complaint made by the petitioners and after completion of the investigation charge sheet has been submitted, no further order need to be passed in this writ petition. It will be open to the

parties to approach the police authorities if necessary and if such approach is made the police authorities shall act in accordance with law. The police authorities shall ensure that no breach of peace taken place at the locale. In case the attention of the police authorities are drawn by the parties by lodging any complaint, the police authorities shall be obliged to take steps in accordance with law.

37. With the above observations and directions, the writ petition stands disposed of without, however, any order as to costs.

(Hiranmay Bhattacharyya, J.)