

S/L 85(ML)
08.07.2022
Court. No. 19
GB

WPA 11123 of 2022

Smt. Gouri Ghosh Dastidar
VS
The State of West Bengal & Ors.

Mr. Mit Guha Roy.

...for the Petitioner.

*Mr. Subhabrata Datta,
Mr. Banibrata Datta.*

...for the State.

*Ms. Laboni Pal,
Mr. Sanipan Das.*

...for the Respondent Nos.5 to 8.

The petitioner has initiated parallel proceedings by filing this writ petition. Similar orders have already been passed by the learned Magistrate in a proceeding under the Domestic Violence Act. According to the petitioner, although, there is an order of the learned Magistrate under the Domestic Violence Act that the petitioner's stay in her shared household shall not be disturbed, the police authorities failed and neglected to ensure the petitioner's entry into the house. The police authorities did not take any steps against the respondents Nos. 5 to 8.

This writ petition has been filed for execution of the order of the learned Magistrate.

The learned advocate appearing on behalf of the respondent nos.5 to 8 submits that the petitioner was never in possession of the same. That a suit has been filed in the Court of the learned Civil Judge (Senior Division), 7th Court at Alipore, being Title Suit No.318 of 2017 for declaration and partition. The petitioner must not be allowed to maintain parallel proceedings.

Be that at it may, it appears that there is an order of the learned jurisdictional Magistrate under the Domestic Violence Act. The respondents had been restrained from disturbing the stay of the petitioner in respect of the shared household.

When the police authorities went to comply with the order, it was found that the petitioner was not in possession since long and the respondents prevented the police from complying with the order of the learned Magistrate. Accordingly, a report has been filed before the learned Magistrate.

The police authorities have specifically submitted that the learned Judicial Magistrate, 1st Court at Alipore has enough power to ensure implementation of its own order and the writ court cannot be used as an executing court. On the basis of the complaint of the petitioner, Behala P.S. Case No.26 dated February 4, 2022 under Sections 498A/406/354/34 of the Indian Penal Code was initiated by the police authorities against the respondent nos.5 to 8.

The police authorities requested the respondents to allow the petitioner to stay in the undivided property, but the respondents refused.

The petitioner has already approached the learned jurisdictional Magistrate for orders with regard to her right to stay in the shared household. If there is non-compliance, the learned Magistrate can act and proceed in accordance with law. The fact that the petitioner has a share in the property, is not disputed. The partition suit stands testimony

to the fact. In the partition suit, the petitioner has also pleaded that the respondents were trying to oust the petitioner.

The police authorities are at liberty to take all such actions under the law as may be permissible with regard to the resistance of the respondent nos.5 to 8. The petitioner is at liberty to approach the learned Magistrate for all other and further reliefs, that may be available under the special statute.

It is made clear, that the pending investigation shall be concluded independently and expeditiously.

Accordingly, the writ petition is disposed.

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.)