

20.01.2022
Court No.13
Item No.30
pk

WPA 13226 of 2021

**Mr. Satyajit Das
Vs.
State of West Bengal and Ors.**

(Through Video Conference)

Mr. Aniruddha Bhattacharya
... For the Petitioner.

Mr. Subhabrata Datta,
Mr. Debasish Sarkar
... for the State.

Mr. Santimay Bhattacharya,
Mr. Ziaul Haque
... for the respondent nos. 5, 6, 8 & 9.

The writ petitioner is disabled to the extent of 60%. He is aggrieved with the private respondent who is his blood brother. The petitioner and his brother are presently residing at 57/5, PL, Ashoknagar, P.O. & P.S. Ashoknagar, Dist: North 24-Parganas. The property in question was acquired by their father. By a deed of gift executed in the year 2012, the father has gifted the said property to the writ petitioner exclusively. In the same breath, by a separate deed of gift, the father of the petitioner transferred vacant land of premises No. 57/A/5, Ashoknagar, P.O & P.S. Ashoknagar, Dist: North 24-Parganas, to the private respondent no.5-brother. The respondent no.5 is able bodied.

It appears that in no uncertain terms vacant land gifted to the other elder brother was to enable him to effect construction and live thereat. The respondent no.5 continued to live in the said property gifted to the

petitioner. He also started construction over the gifted piece of land which has substantially progressed. It is submitted by the counsel for the petitioner, the respondent No. 5 is now refusing to leave the said property notwithstanding the aforesaid gift.

A complaint has been lodged with the Ashoknagar Police Station dated August 11, 2021 which has not been attended to. Hence, the instant writ petition complaining of inaction by the police.

The facts in the instant case appear to be undisputed. However relief in the nature of decree for possession cannot be granted under Article 226 notwithstanding the fact that the petitioner is physically disabled to the extent of 60%.

The petitioner relies upon a decision of the Single Judge of the Madras High Court in the case of **A.S.V. Varadachariar vs. The Commissioner of Police and Ors.** reported in **MANU/TN/0470/1968**. This Court finds that the said decision cannot be applied in the instant case.

This court is, therefore, of the view that the dispute between the petitioner and his brother, respondent no.5 is purely private and civil in nature which the police cannot enter into, notwithstanding a very favourable police report in favour of the petitioner.

The writ petitioner may agitate his grievance against his brother, respondent no.5, as referred to hereinabove, before an appropriate civil court.

The writ petition is disposed of.

There will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)