

S/L 98
31.01.2023
Court. No. 12
Sourav

WPA 9392 of 2018

**Soumitra Kumar Jha & Ors.
Vs.
The State of West Bengal & Ors.**

*Mr. B. N. Ray
Ms. Shetparna Ray*

...for the petitioners.

*Mr. T. M. Siddiqui
Mr. Nilotpall Chatterjee
Mr. Amrita Lal Chatterjee*

...for the State.

Writ petitioner is represented by his learned advocate Mr. B. N. Ray and State/respondents are represented by their learned advocates, Mr. Nilotpall Chatterjee.

The report in the form of affidavit as called for from the Superintendent of Police, Malda and as filed today be taken on record.

The writ petition is now taken up for hearing.

Heard learned advocates for both sides at length.

The present case is now taken up for passing appropriate order.

By filing the instant writ petition under Article 226 of the Constitution of India, it has been contended by the writ petitioner that the present writ petitioner executed a deed of conveyance dated 16.08.2010 in favour of the private respondents.

It is the further case of the writ petitioner that after completion of registration of the deed, it has come to the knowledge of the present writ petitioner that the private respondents by exercising fraud upon him has put 99 decimal of land in the schedule of the said deed of

conveyance though the present writ petitioner actually transferred 88 decimal of land under cover of the said deed. It is contended further that immediately after getting knowledge of such fraudulent act on the part of the private respondent, the matter was reported with the registering authority and accordingly, an enquiry was done by the Registrar and on the basis of such enquiry, a report dated 20.12.2016 was published from which, it reveals that prior to registration, requisition for valuation in respect of the schedule mentioned property has been taken mentioning the extent of land 88 decimal.

It is further contended that from such enquiry report, it would reveal that the private respondent being the purchaser obtained valuation of 88 decimal of land but at the time of registration of the document, forged the said deed of conveyance dated 16.08.2010 by putting 99 decimal of land instead of 88 decimal of land without paying requisite stamp duty and registration charges.

It is contended further that in spite of such enquiry report, the registering authority had not taken any steps for cancellation of the said deed of conveyance dated 16.08.2010 and though the matter was reported to the police also, no action was taken on the part of the police on the said alleged fraudulent act on the part of the private respondent. It is thus, submitted on behalf of the writ petitioner that an appropriate order may be passed in terms of the prayers made in the writ petition.

Mr. Chatterjee, learned advocate for the State, however, contended that by filing the present writ petition,

the present writ petitioner has made an attempt to usurp the jurisdiction of a civil court by a writ court. It is further argued that the allegation as made out in the writ petition cannot be adjudicated by exchange of affidavits and the same can be disposed of by a Civil Court on trial on evidence. It is further argued by Mr. Chatterjee that the concept of cancellation of a document in exercise of writ jurisdiction is foreign to the concept of the prevailing law of the land and, therefore, the instant writ petition is required to be dismissed.

On perusal of the entire materials as placed before this Court and after hearing the learned advocates of both sides, it appears that it is the grievance of the present petitioner that at the time of the registration of the deed of conveyance dated 16.08.2010, it was his knowledge that he is going to transfer 88 decimal of land but subsequently, it has been noticed by him that 99 decimal of land have been transferred by him in favour of the private respondents on account of forgery by the private respondent.

It is settled principle of law that if a document is executed under coercion, threat, misrepresentation or fraud, etc., the said document can be cancelled by a competent court of civil jurisdiction under the provisions of the Specific Relief Act after trial on evidence. Cancellation of document in estimation of this Court cannot be done in exercise of the writ jurisdiction under Article 227 of the Constitution of India. So far as the allegation of the writ petitioner with regard to the inaction or non-action on the part of the police is concerned, it further appears to this Court that the present

writ petitioner has every liberty to approach the competent court of criminal jurisdiction under the provisions of the Code of Criminal Procedure.

In view of such, this Court thus finds no merit in the instant writ petition and, accordingly, the instant writ petition being **WPA 9392 of 2018** is dismissed, however, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)