

06 14.06.2023
RP Ct. No. 01
AN

MAT 877 of 2023
with
IA No. CAN 1 of 2023

Tumpa Dey alias Tumpa Dey Ghosh
Vs.
The State of West Bengal & ors.

Ms. Susmita Saha Dutta
Ms. Madhurima Basu

... For the Appellant

Mr. Subhabrata Dutta
Mr. Jatindra Barik

... For respondent nos. 5 & 6

1. We have heard learned counsel for the parties at length.

2. This intra-Court appeal filed by the private respondent in the writ petition is directed against the order dated 19.04.2023 passed in WPA 7450 of 2023. The said writ petition was filed by the respondents herein and the main prayer sought for in the writ petition is for issuance of the writ of mandamus to direct the respondent nos. 3 and 4 in the writ petition to render adequate police assistance to enable the writ petitioners to enjoy their own property peacefully by restraining the private respondent nos. 5, the appellant herein and her men and agents from doing any illegal act over the property concerned. The other directions sought for in the writ petition are also ancillary and incidental to the main reliefs.

3. Firstly, we need to point out that such prayer is not maintainable especially when the petitioners seek police assistance to enjoy immovable property which the writ petitioners claim to be their own property. Though such was the prayer but on a reading of the impugned order, we find that the order passed

by the learned trial court was so benevolent in favour of the writ petitioner to the extent that there is a direction to the Police to take action against the appellant and her family members by taking coercive measures to evict them from the premises in question. Not stopping with that, the learned trial court has passed an order directing the appellant and her family members shall not be entitled to stay in the premises in question and the Police had been directed to notify the same to the appellant and to her family members and they shall be evicted from the premises after a month from date.

4. In our considered opinion, the order impugned has transgressed all the limits for which the power under Article 226 of the Constitution of India can be invoked. Thus, the order passed and directions issued by the learned trial court calls for interference.

5. Hence, both the appeal and the connected application stand **allowed** and the order passed in the writ petition stands set aside and the writ petition is hereby dismissed. However, it is open to both the parties to work out their remedies before the appropriate forum in accordance with law.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)