

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

W.P.A. 15195 of 2023

Surat Ali Sardar & anr.
Vs.
The State of West Bengal & Ors.

For the petitioners : Mr. Mohinoor Rahaman
Ms. Maria Rahaman
Ms. Iqra Rahaman

For the State Mr. Jayanta Samanta
Mr. Kushal Biswas

For the private respondent
nos. 5 & 6 Mr. S. A. Moqued
Mr. Numan Shah

Heard on : 13.07.2023.

Judgment on : 13.07.2023.

Jay Sengupta, J.

This is an application under Article 226 of the Constitution of India, *inter alia*, praying for a direction upon the respondent nos. 2, 3 and 4 to investigate into the offences as per FIR lodged by the petitioner no.2 and to provide police protection to ensure that the

petitioners may enter into their residential houses situated at Mouza- Ghosalhati, J. L. No. 78, Plot No. 1740 measuring about 0.48 decimals of land along with 210 sq. ft. shop room at plot no. 1740, Mouza- Ghosalati, Police Station- Hasnabad.

A report filed on behalf of the State is taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are the parents of the respondent no.5 and the respondent no.6 is the wife of the respondent no.5. The petitioner no. 1 had constructed his house on the property in question with his own money. After sometime, the petitioner no.1 gifted the property to his wife the petitioner no.2. Soon thereafter, the respondent nos. 5 and 6 started creating disturbances. They tried to grab the property and throw out the petitioners from their own residential house. On one occasion, they attacked the petitioners armed with weapons for which an FIR being Hasnabad Police Station Case No. 268 of 2023 dated 30.06.2023 had to be lodged. The shop room, which the private respondents claimed had been gifted by the petitioner no.2, is not a part of the same premises and is not even connected with the same premises. Reliance is placed on the decision of this Hon'ble Court in *Ramapada Basak & anr. -vs- The State of West Bengal & ors*, WPA 10835 of 2021 on 23.07.2021.

Learned counsel appearing on behalf of the private respondents submits as follows. The private respondents have never caused any disturbance to the petitioners, far less committing assault or torture. In fact, it was the respondent no. 5 who had given huge sums of money to the petitioner no.1 to construct the house. In the case started by the petitioners, the private respondents have already obtained bail. The shop room which was gifted by the petitioner no.2 to the private respondent no.5 is very much apart of the same premises.

Learned counsel appearing on behalf of the State relies on the report and submits as follows. Pursuant to the lodging of the FIR by the petitioners, steps have been taken and the case is being investigated. The private respondents were granted in bail.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition and report filed on behalf of the State.

It appears to be an admitted position that first, the petitioner no.1 and then, the petitioner no.2 is the owner of the property in question, except for the purported shop room.

The private respondents also claim that they have never caused any hindrance nor would cause any obstruction if the petitioners want to enter into their own house.

In this context, it may be appropriate to quote portions of the judgment in *Ramapada Basak & anr.* (supra). -

“It is now well settled that the children and their spouses living in the senior citizen’s house are at best “licensees”. Such licence comes to an end once the senior citizens are not comfortable with their children and their families. This principle has also been followed by the Delhi High Court in in WP(C) 2761/2020 (*Sandeep Gulati Vs. Divisional Commissioner*), decided on 13.03.2020 and the Punjab and Haryana High Court in the cases of (a) *Manmohan Singh Vs. U.T. Chandigarh and Ors.* (Case No. 1365/2015), (b) *Samsher Singh Vs. District Magistrate, U.T. Chandigarh* (Case No. 2017 CWP 6365) and (c) *Gurpreet Singh Vs. State of Punjab* (Case No. 2016(1) RCR (Civil) 324).

Two issues would come up for consideration. The first of which is the availability of alternative remedy under the provisions of the Maintenance and Welfare of Parents Senior Citizens Act, 2007. The other is a right of a daughter-in-law of residence to be provided by either the husband or the father-in-law, if directed by a competent court under the provisions of the Domestic Violence Act, 2005.

The Hon’ble Supreme Court in the case of **S. Vanitha Vs. Deputy Commissoner, Bangaluru Urban District and Ors.** reported in **2020 SCOnline SC 1023** has said that since both, the Senior Citizens Act, 2007 as also the Domestic Violence Act, 2005 are special legislations, the two must be construed harmoniously and applied suitably by a writ court hearing a plea of the senior citizens that they do not want their children to live with them. At paragraphs 35-40 the Hon’ble

Supreme Court has elaborately dealt with the principle under the headline **“E. Harmonising competing reliefs under the PWDV Act 2005 and Senior Citizens Act 2007.”**

.....

“However, the right of senior citizen to exclusively reside in his own house, must be viewed from the prism of Article 21 of the Constitution of India. To compel a senior citizen to approach either a civil court (the jurisdiction of which is any way barred under Section 27 of the 2007 Act) or take recourse to a special Statute like the 2007 Act would in most cases be extremely erroneous and painful for a person in the sunset days of life. This Court is therefore of the view that the principle of alternative remedy cannot be strictly applied to Senior Citizens and a Writ Court must come to the aid of a Senior Citizen in a given case.

A nation that cannot take care of its aged, old and infirm citizens cannot be regarded as having achieved complete civilization.”

This Court fully concurs with the view taken by the Hon’ble Single Bench in Ramapada Basak (supra).

The ratio laid down therein squarely applies to the present facts.

In view of the above and in the interest of justice, this Court disposes of the writ petition with the following directions -

- (i) The respondent authorities shall provide adequate police assistance to the petitioners so that they can enter their house and reside there peacefully. The same shall be done

by 15.07.2023 at daytime and upon adequate notice to the petitioners about the same.

- (ii) Once the petitioners are able to enter their own house, the police shall keep a strict vigil at the locale and ensure that no harm is done to the petitioners.
- (iii) The respondent police authorities shall investigate into the lodged offences as contained in the FIR lodged by the petitioners in accordance with law.

As affidavits were not called for, the allegations are deemed not to have been admitted.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)