

31 31.08.2023
NB Ct. 14

WPA 18858 of 2023

Jyotirmoy Basu
Vs.
The State of West Bengal & Ors.

Mr. Pinaki Bhattacharyya,
Mr. Amartya Mohal Bhattacharya.
...for the petitioner.

Mr. Jayanta Samanta,
Mr. Indumouli Banerjee.
....for the State.

Mr. Somak Sankar Lahiri,
Mr. Prithish Bandyopadhyay.
...for the respondent nos.8.

Affidavit of service filed on behalf of the petitioner is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the owner of the land in question. A property development agreement was entered with the promoter being the respondent no.6 in the year 2017. The petitioner was to get allocations of flats in the ground floor and in the third floor. However, the promoter did not construct the third floor. Before that he sold away flats on the second floor of the building. This prompted the petitioner to approach the Arbitrator. The promoter's men and agents are now threatening and even assaulting the petitioner. This was brought to the notice of the local police authorities at least on three occasions, but no steps have been taken. The Commissioner of Police was also approached with the complaint, but in vain.

Learned counsel appearing on behalf of the respondent no.8 submits that his client is only an intending purchaser of a flat in the said building.

Learned counsel appearing on behalf of the State relies on the report, which is taken on record and submits as follows. On the complaint of the petitioner GD Entries have been lodged. However, no cognizable offence was made out, according to the police authorities. So no FIR was registered.

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

It appears that the petitioner has already approached the learned Arbitrator regarding the purported wrongdoings of the promoter.

If the petitioner is aggrieved with the police for not registering an FIR, it shall be open to the petitioner to approach the Commissioner of Police, failing which an application may be filed before the learned Magistrate under Section 156(3) of the Code.

Therefore, the petitioner shall be at liberty to file an application before the learned Magistrate in terms of the ratio laid down in ***Aleque Padamsee***, (2007) 6 SCC 171.

No further order need be passed in this case.

Since affidavits were not called for, the allegations contained in the writ petition are deemed not to have been admitted.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)