

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 23914 of 2023

Nanda Dulal Bag

Versus

The State of West Bengal & Ors.

For the petitioner

Mr. Moyukh Mukherjee

Mr. Prasanta Kr. Saha

Mr. Abhijit Singh

For the private respondent no.7

Mr. S. K. Humayan

For the State

: Mr. Amal Kumar Sen

Mr. Lal Mohan Basu

Heard on

: 10.10.2023

Judgment on

: 10.10.2023

JAY SENGUPTA, J:

This is an application praying for direction upon the respondent authorities to provide police protection to the petitioner and his family members from the illegal activities of the respondent no.7, for quashing of Jagaddal Police Case No. 393 dated 21.09.2023 under Sections 341, 195A, 506 and 34 of the Indian Penal Code and initiating disciplinary proceedings against the erring police personnel.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the owner of the property in question. He lives there with his wife, his other son and his family. The respondent no.7 being the youngest son of the petitioner never stayed with the petitioner for the last 15 years. He had worked in Mumbai. It was only after the petitioner gifted away a considerable portion of his property to another son that the respondent no.7 has come to create disturbances. In fact on 19th September, 2023, a case was started, *inter alia*, under the provisions of the POCSO Act against the other son of the petitioner for alleged misbehavior with the respondent no.7's minor daughter. Soon thereafter, the respondent no.7 lodged another case, *inter alia*, under Section 195A of the Penal Code for threatening witnesses. In this case, the daughter in law of the petitioner was made an accused. On a particular day, the respondent no.7 along with police personnel tried to break open the lock on the main door of the petitioner's building with a hammer. Surprisingly in connection with this case, the police registered a case under Section 195A of the Penal Code against the present petitioner.

Learned counsel appearing on behalf of the private respondent submits as follows. The allegations made in the writ petition are denied. The private respondent, his wife and minor daughter had been staying in the said house for quite some time. All their belongings including important documents are present inside the house. One day when the private respondent had gone out, the main door of the house was locked by the petitioner and his men. They were denied entry. The petitioner said that until the POCSO case was withdrawn, they would not be allowed to enter the house.

Learned counsel appearing on behalf of the Stare relies on the report and submits as follows. Upon local inquiry, it was found by the police authorities that the private respondent, his wife and minor daughter had also been staying in the

said house. This is the premise on which the case under Sections 4 and 6 of the POCSO Act was registered and is being investigated. If at all, the petitioner wishes to evict the private respondent from his property, the same has to be done in accordance with law.

At this stage, learned counsel for the petitioner submits that it would not be difficult for the petitioner to find out if any articles belonging to the private respondent were lying in the house, so that the same can be returned to the private respondent.

First, the question of quashing of the police case mentioned in the prayer cannot be entertained because the petitioner is not even an accused in that case. The accused in the said case shall be at liberty to move an application for quashing before the appropriate forum.

From the submissions of the learned counsel as also from the local inquiry made by the police authorities, it appears that the private respondent might have been staying with his wife and his minor child in the said house.

Putting a padlock on the main gate of a property is no way to evict a person. An eviction has to be in accordance with law. It is true that a son stays at the father's property as a licensee. But for evicting him, due process of law has to be taken recourse of. Putting a padlock to prevent a co-resident from entering is nothing but an act of mischief, which should not be encouraged.

Therefore, the private respondent shall be at liberty to seek police help to enter into the said house. If such exercise is to be undertaken, the entry of the private respondent shall be videographed.

However, the petitioner shall be at liberty to initiate civil proceeding for eviction of the private respondent and his family members from the property if he so wishes.

Since there are cases pending between the private parties, the police authorities shall keep a sharp vigil at the locale, ensure that no breach of peace takes place and see to it that no order of any Court is violated.

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

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J)