

08.02.2023
sayandeep
Sl. No. 14
Ct. No. 05

WPA 29077 of 2022

Mr. Jose Antonio Zalba Diez Del Corral @ Jose Antonio
Zalba
-Versus-
The State of West Bengal & Ors.

Mr. Jose Antonio Zalba Diez Del Corral
.....petitioner in-person
Mr. Subhabrata Datta
Mr. Sanatan Panja
.....for the State
Ms. Juin Dutta Chakraborty
Mr. Debasish Kundu
.....for the respondent No. 2
Mr. Siddhartha Lahiri
Mr. Debraj Dutta
Ms. Samira Grewal
.....for the respondent No. 3
Mr. Ishan Saha
Mr. Asish Kr. Mukherjee
Mr. Saurabh Prasad
.....for the respondent No. 4

The writ petitioner appearing in-person is a Spanish citizen and resides in Shantiniketan and Kolkata. The petitioner seeks a Mandamus on the respondent No. 3/The Additional District Judge, 10th Court, Alipore to hear an application filed by the petitioner under Section 340 of the CrPC before hearing the application filed by the petitioner under Section 25 of the Guardians and Wards Act, 1890.

The brief facts as would appear from the submissions of learned counsel appearing for the private respondent No. 4, The Additional District

Judge/respondent No. 3 and the Registrar General, High Court, Calcutta/respondent No. 2 are that the petitioner filed both the application for custody under the Guardians and Wards Act, 1890 as well as the application under Section 340 of the CrPC. The dispute is essentially a custody battle between the petitioner and the private respondent. The records further show that the Supreme Court passed an order on 11th November, 2022 on an application made by the petitioner, directing the Trial Court to finally decide the application for custody on or before 28th February, 2023.

This Court is informed that the application was finally heard yesterday, i.e., 7th February, 2023 and reserved for Judgment. The Judgment is to be delivered on 13th February, 2023.

The writ petition is not maintainable on at least three grounds.

First, no person who otherwise has locus to approach a writ Court can seek a Mandamus on a judicial officer/subordinate judiciary to hear a certain application. This can only be done under Article 227 of the Constitution of India which gives the High Court certain powers of superintendence over all Courts.

The writ petition is also not maintainable since the subject matter clearly arises out of a private civil dispute between the petitioner and the respondent No.

4. There is nothing in the writ petition to suggest that the State is a necessary party or has caused infraction of the rights granted to the petitioner under Part-III of the Constitution as mandated under Article 226(1) of the Constitution.

Further, the writ petition has become infructuous since the Trial Court reserved the application for custody/under the provisions of the Guardians and Wards Act, 1890 for judgment yesterday. This must be read as compliance of the order of the Supreme Court directing the Trial Court to finally decide the matter by 28th February, 2023.

Further, a co-ordinate Bench on 15th September, 2022 in a civil revisional application shows that the petitioner had sought for setting aside of an order of the ADJ granting stay of the application filed under the 1890 Act.

Hence the prayer sought now is clearly contrary to the stand taken by the petitioner before the co-ordinate Bench.

The above reasons persuade this Court to hold that the subject matter of the writ petition does not come within Article 226 (1) of the Constitution. WPA 29077 of 2022 is accordingly dismissed without any order as to costs.

Needless to say, the petitioner can avail of other remedies available to the petitioner before the civil

forum if the petitioner is so advised including before the Trial Court.

(Moushumi Bhattacharya, J.)