

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 297 of 2023

Smt. Chesang Tamang
Vs.
The Home Secretary, Govt. of West Bengal and Ors.

Mr. Pratap Khati
Mr. Ranjan Sharma
..for the petitioner

Mr. Hirak Barman
Mr. Pretom Das
...for the State

Item No. 07.

Judgment on: 10.02.2023

BIBEK CHAUDHURI, J. : –

The petitioner is a senior citizen. The respondent Nos. 5, 6, 7 and 8 are the nephews and their respective wives. It is the allegation of the petitioner that the petitioner lives in her own property at Kalimpong. The private respondents under the leadership of private respondent No.5 have been treating the petitioner with cruelty. She is subjected to torture. The private respondents illegally tried to grab the property of the petitioner.

All such atrocious acts led the petitioner to file an application under Section 144(2) of the Code of Criminal Procedure. In the said proceeding an enquiry was directed to be held by the local BL & LRO with regard to the ownership of the property. It is found from the order sheet of the said proceeding dated 9th September, 2022 annexed at page 38 of the instant writ petition that the BL & LRO sent a report that the petitioner is the lawful owner of the property. However, the respondents are illegally trying to evict the petitioner otherwise the due process of law. The petitioner finally made an application before the District Magistrate seeking redressal and relief from torture inflicted upon her by the private respondents on 29th September, 2022. However, the learned District Magistrate has not taken any action against the respondents.

If the petitioner is subjected to torture, she can file an appropriate complaint before the police officer. It is not the District Magistrate, Kalimpong who will take police action against the private respondents.

It is pointed out by the learned advocate for the petitioner that a complaint was lodged before the Officer-in-charge of

Kalimpong police station on 14th December, 2021 but the police authority did not take any action.

The learned advocate for the petitioner submits that the petitioner is a senior citizen. As a senior citizen she is entitled to be protected by the State so that her life and personal liberty may not be disturbed in any manner by any person. She is entitled to live a dignified life during her old age. However, she cannot live a peaceful life due to the acts of the respondents.

The learned Additional Government Pleader, on the other hand, submitted a report issued by the Inspector-in-Charge, Kalimpong police station on 2nd February, 2023. It is found from the said report that on 14th December, 2021 A.S.I. Dinesh Dahal along with force had been to 7th Mile View Point Kalimpong to enquire into the complaint filed by the petitioner. During enquiry it came to light that that the petitioner was allowed temporarily to stay in the house of her nephew and wife. But suddenly the said nephew and others harassed her and tried to drive her out from the house. The police authority opined that the dispute is absolutely civil in nature and the informant was advised to take appropriate action against the

respondents in civil Court. A proceeding under Section 107 of the Code of Criminal Procedure was also drawn up by the police authority against Anand Tamang and Smt. Ritu Tamang.

Thus, from the record it appears that the allegation made by the petitioner that the police has not taken any action is not absolutely true because it appears from the report submitted by the learned Additional Government Pleader that the police authority took prompt action upon the complaint submitted by the petitioner.

From the documents filed by the petitioner along with the instant writ petition it is prima facie found that the petitioner is the owner of the house where she stays. On the other hand, from the police report submitted by the Additional Government Pleader it appears that the petitioner has been staying as a licensee under two of the respondents. The police authority is perfectly right that as to the petitioner's status in respect of the house where she stays, Civil Court is the competent forum to declare her title over the property. Therefore, efficacious relief of the petitioner lies in filing a suit in the competent civil Court.

Since the petitioner is a senior citizen and I have already held that the petitioner has a fundamental right to live a dignified life without being disturbed by others, the instant writ petition is disposed of directing the police authority that if any complaint is made by the petitioner in future, the police authority of the jurisdictional police station shall take appropriate action for her redressal.

With the above direction, the instant writ petition is disposed of on contest, however, without any costs.

(Bibek Chaudhuri, J.)