

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

**Before:
The Hon'ble Justice Jay Sengupta**

WPA 2178 of 2021

**Kohinoor Begum
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Narendra Nath Das,
Mr. Pragyadip Roy Basunia,
Mr. Pratyush Adhikary,
Ms. Binapani Singha,
Mr. Jagesh Ch. Roy,
Mr. Madhab Kumar Roy,

For the State : Mr. Hirak Barman,
Ms. Bedashruti Bose

For the respondent no. 5 & 6 : Mr. Amritam Mondal,
Mr. Debasish Mukhopadhyay
Mr. Partho Chowdhury,
Mr. Anirban Banerjee

Heard on : 13th June, 2023

Judgment Dated : 13th June, 2023

Jay Sengupta, J.: This is an application under Article 226 of the Constitution of India praying for re-investigation of Kotwali Police Station Case no.778/2019 dated 11.11.2019 under Section 420 read with Section 34 of the IPC.

Learned Counsel appearing on behalf of the petitioner submits as follows. The land in question was acquired by the Judicial Department in 1975. A part of it is claimed to be occupied by the petitioner's family. In fact, in 1987-88 the Judicial Department left that part open without planning any construction on the same in favour of the occupiers. On 02.03.2011 the respondent no.4 falsely claimed himself as owner and entered into a false and fictitious agreement for development of that property. In 2017 the respondent no.6 supplied a copy of the agreement to the petitioner's family and asked them to shift to a temporary hutment. In 2017 petitioner's family was shifted to a temporary hutment with a promise to allow 3 (three) flats and shifting expenditures and to complete the work within a year. On 06.02.2018 petitioner's family re-shifted to incomplete ground floor on the pressure of the private respondents. Thereafter the private respondents were reluctant to complete the construction and were threatening the petitioner's family to leave the premises by all means. They were threatened with dire consequences alongwith the police officials and goons and nobody was there on their side. This prompted the de facto complainant who happened to be the son of the present petitioner to lodge the present case. Unfortunately, thereafter the de facto complainant consumed poison and committed suicide on the torture made by the private respondents. The investigating agency submitted

Charge-sheet under Section 420 read with Section 34 of the Indian Penal Code. The petitioner made representation to the police authorities for conducting the investigation properly and undoing the wrongs committed by the erstwhile investigating officer, but to no effect. In such circumstances, re-investigation is the only relief. The learned Judge does not have any power to direct re-investigation. So, the matter has to be dealt with by this Court. Incidentally, the Inspector-in-Charge presently dealing with the matter was of the view that re-investigation should be done in this regard.

Learned Counsel appearing on behalf of the private respondent nos. 5 and 6 submits as follows. The respondents 5 and 6 were the developers of the property in question. On the petitioners' agreeing to have the property developed in the interest of flats and money, they started construction. In fact, the members of the petitioners' family had taken money in exchange.

Learned Counsel appearing on behalf of the State refers to their affidavit-in-opposition and submits as follows. After going through the matter, the present investigating agency is of the firm view that the matter is to be re-investigated. The present Investigating Officer had brought it to the notice of his superior authorities. Therefore, it is abundantly clear that there is no ill motive in this case. In fact, further investigation in this case would suffice is relevant documents that had

not been seized earlier are seized. There would be no impediment on the present investigating officer to collect and seize the same. The officer can also examine further witnesses.

I have heard the learned Counsels for the parties and have perused the writ petition and the affidavits.

It is not in doubt that the investigation done earlier was not adequate. This is not only alleged by the petitioner, but is also admitted by the present dispensation of the prosecution dealing with the matter. Accordingly, they have approached for re-investigation and the same is pending.

It is a settled position of law that re-investigation can be directed only by Constitutional Courts. However, in this context, one needs to find out whether re-investigation is at all required in this case or further investigation would suffice.

The petitioner has relied upon the documents showing that the land in question was acquired by the Judicial Department. If that is so, then one needs to investigate as to how the land owners who are sponsoring the development project on the land can claim ownership to the suit land. For this, the documents relied on by the owner or the developer would have to be sent for examination.

Examining further witnesses or, for that matter, seizing relevant documents and sending them for examination are well within the domain of the existing investigating agency. If a further investigation is ordered, these can be taken care of.

Re-investigation is required if investigation is found to be completely tainted. Then, some tainted parts need to be removed from the case records. The instant case does not appear to be so. A further investigation can fairly reveal the truth.

It appears that an application by the prosecution for allowing re-investigation is pending before the learned Magistrate. The same can very well be treated as an application for further investigation and an appropriate order may be passed.

Therefore, the learned Magistrate is requested to decide the application for re-investigation and/or further investigation filed by the prosecution expeditiously and in accordance with law.

With these observations, the writ petition is disposed of.

Urgent Xerox certified copy, if applied for, be supplied to the parties.

(Jay Sengupta, J.)