

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 2245 of 2023

Md. Samsuddin & Anr.
-versus
The State of West Bengal & Ors.

Mr. Ambu Bindu Chakraborty
Ms. Mrinmoyee Roy chowdhury ...For the Petitioners

Mr. Chandi Charan De, Ld. Addl. Govt. Pleader
Mr. Anirban Sarkar
... For the State

Ms. Malabika Roy Dey ... For the Private Respondents

This writ petition has been filed by the petitioners under Article 226 of the Constitution of India for a direction upon the Executive Magistrate, Chanchal, Malda to conclude the proceeding being Case No. 2(M) / 2001 under Section 145 of the Criminal Procedure Code (hereinafter referred to as 'the Code').

The brief fact of the case is that the father of the respondent nos. 5, 6 & 7 namely Debi Prasad Surekha filed an application under Section 145 of the Code and upon hearing proceedings was drawn up on 08.06.2001 under Section 145 of the Code restraining both the parties strictly from entering into the land as shown in the *patta* and directed the parties for filing affidavit, written statements and documentary evidence. Learned Magistrate also appointed Officer-in-Charge, Harishchandrapur Police Station to act as custodian / receiver of the plots. Alleging of certain illegal activities of the custodian/receiver, the

petitioners filed an application on 12.9.2022 for recalling of the order of appointment of the receivership and / or initiate a fresh proceeding to protect the opposite parties from the alleged illegal activities of the custodian/receiver. In the meantime, the applicant Debi Prasad Surekha died. During his lifetime said Debi Prasad Surekha filed an appeal being WPLRT 132 of 2005. The learned Magistrate, in view of the order passed by this Court in WPLRT 132 of 2005 directing the parties to maintain *status quo* in respect of possession, stayed the further proceeding pending before it till disposal of WPLRT 132 of 2005 and also kept such application of the petitioner pending. Being aggrieved by such order, the petitioner has filed this present writ petition for a direction upon the learned Executive Magistrate, Chanchal, Malda to dispose of such application expeditiously.

Mr. Ambu Bindu Chakraborty, learned counsel appearing on behalf of the petitioners submits that the learned Executive Magistrate appointed the respondent no. 4 Officer-in-Charge / I.C., Harishchandrapur Police Station as custodian / receiver of the suit plots. However, the said receiver is deliberately misappropriating the proceeds of the said land for which reason the petitioner was constrained to take out an application for recall of the order of appointment of receivership or initiating of fresh proceeding to protect the suit properties. The said application thus needs to be heard expeditiously. He seeks for appropriate orders.

Mr. Chandi Charan De, learned Additional Government Pleader submits that the order has been passed in a criminal proceedings and, therefore, such order should be challenged

following the provisions of the Code. Hence, the present writ petition is not maintainable and should be dismissed.

Ms. Malabika Roy Dey, learned counsel appearing on behalf of the respondent nos. 5, 6 and 7 also advanced similar arguments.

It is not in dispute that a proceeding has been drawn up under Section 145 of the Code in respect of the suit plots by the learned Executive Magistrate, Chanchal, Malda in Case No. 2 (M) of 2001. Challenge has been made in respect of an order passed by the learned Executive Magistrate for keeping the application of the petitioner pending in view of the order passed in WPLRT 132 of 2005. The order under challenge having been passed in a criminal proceedings, the petitioner ought to have taken recourse to the provisions embodied under the Code for assailing the same. In the light of the above, the present writ petition is not maintainable and is liable to be dismissed.

Accordingly, the writ petition being **WPA 2245 of 2023** stands dismissed being not maintainable.

All connected applications, if any, stands dismissed.

Interim order, if any, stands vacated.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Bivas Pattanayak, J.)