

April 1, 2024
A 21
Ct. No.14
SG

WPA 7448 of 2024

Smt. Kajal Naskar and others
vs.
The State of West Bengal and others

Mr. Amitabha Ghosh
Ms. Nabanita Chatterjee
... for the petitioners.
Mr. Swapan Kumar Banerjee
Mr. Barun Chatterjee
... for the State.
Ms. Sukanya Datta
Mr. Subhajit Chowdhury
... for the respondent No.4.

Report filed by the State is taken on record.

Learned counsel appearing for the petitioners submits as follows. An ex parte decree of eviction was passed in 2014 in respect of the property in question. An execution order was also passed ex parte sometime in 2020. This was a suit filed by the private respondent against the husband of the petitioner No.1. This is despite the fact that the petitioner's husband had deserted her long ago and she and her minor daughters were residing at the premises since long. The petitioner was not even made a party. The petitioner and her daughters moved a writ petition on 19.03.2024. When the matter came up for hearing, a report was filed on behalf of the State. It showed that for some reason the police authorities were unable to evict the petitioners from the said property. So, the petitioners did not pray for stay. In spite of these, the

police authorities executed the order during pendency of the writ petition even as against the present petitioners.

Learned counsel appearing for the private respondent No.4 denies the allegations and submits that the private respondent No.4 is the landowner in question. He deposited the cost before the writ petition was filed. After coming to know about pendency of the writ petition, the private respondent approached the civil court and obtained an order to have the civil court's order executed forthwith and the Civil Judge (Junior Division), 1st Court, Serampore in Title Execution No.6 of 2020 immediately passed an order on 16.03.2024 pursuant to which the eviction was effected.

Learned counsel appearing for the State relies on the report and submits that there was no stay order granted by this Court. But, an order was passed by the civil court mandating immediate eviction, failing which legal action would be initiated.

It appears that the civil proceedings had remained pending for long and execution could not be effected for no fault of the defendant. The civil court also did not take any stern action thus far. However, after a writ petition became pending before this Court, the civil court appears to have directed the order to be implemented by putting fear that legal action would be initiated for non-implementation. Such new-found zeal on the part of the civil court is very exceptional indeed. The rhetorical observation of the Civil Judge (Junior Division), "So, how

the writ petition filed by the said Kajal Naskar is connected with the present execution case is not known to **this Ld. Court** ..." shows utter disregard to the principle of hierarchy of Courts. It appears that the Civil Judge can pre-empt anything that the High Court might think or do.

Whatever be the merits of the case, when the matter was pending before this Court and a short date was fixed for hearing, the civil court ought not to have acted in such haste. Here, stay was not prayed for by the petitioners apparently as the police report averred that for some reasons execution could not be done at the present.

This Court did not consider passing a stay order against eviction as the police stated that the eviction could not be done for some reason. The police knew that such a direction from the civil court to immediately implement the civil court's order would render the writ petition infructuous. Therefore, it was the duty of the police authorities to have intimated about such subsequent developments by filing a report before this Court. But, the same has not been done.

Be that as it may, as the order of the civil Court has already been executed, let the petitioners be at liberty to take appropriate steps in this regard before the Court of law. If the petitioners make any such application, the same shall be disposed of expeditiously and in accordance with law.

With these observations, the writ petition is disposed of.

The Office shall communicate copies of this order to the District Judge, Hooghly and to the Director General of Police, West Bengal.

Parties shall act on server copy downloaded from the official website of this Court.

[Jay Sengupta, J.]