

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 23.07.2024
DELIVERED ON: 23.07.2024

**CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 1429 of 2024
With
IA No. CAN 1 of 2024
Taher Ali @ Sk. Taher Ali & Ors.
Versus
Swapna Das & Ors.**

Appearance:-

**Ms. Susmita Saha Dutta
Mr. Angshuman Chakraborty
Mr. Niladri Saha
Mr. Dip Jyoti Chakraborty
Ms. Madhurima Basu**

.....For the Appellants

**Mr. Kaustav Bagchi
Mr. Debayan Ghosh
Ms. Priti Kar**

.....For the respondent/writ petitioner

**Mr. Subhendu Bandyopadhyay
Mr. Abhishek Chakraborty**

.....For the State

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal is directed against an interim order passed in W.P.A. 16275 of 2024 dated 5th July, 2024. The appellants have also challenged another interim order passed in the writ petition dated 10th July, 2024 as well. The appellants are the private respondents in the writ petition.
2. The respondent/writ petitioner sought for issuance of a writ of mandamus to change the investigating agency in connection with Haridevpur Police Station Case No. 194 of 2024 dated 9th April, 2024 under sections 448/380/114 of the Indian Penal Code and Haridevpur Police Station Case No. 231 of 2024

dated 25th April, 2024 under sections 448/342/324/506/354/34 of the Indian Penal Code.

3. There is also a prayer to direct the changed investigating agency to take necessary steps so that the writ petitioner is being able to enter into the said property without any hindrance. The writ petition is still pending and the prayer for change of investigating agency is yet to be adjudicated upon and considered by the learned Single Bench.
4. In the interregnum, an interim direction has been issued, which has an effect of recognizing the alleged possession of the writ petitioner and her son in respect of Flat No. BG/II.
5. In our view, it will be too early for the writ Court to record the stand taken by the police in their report, especially when the writ petitioner seeks for change of investigating agency in respect of the case, which is now pending before the Haridevpur Police Station.
6. Therefore, we are of the view that the learned writ Court may adjudicate the main prayer sought for in the writ petition and thereafter proceed to pass appropriate orders. We hasten to add that in matters concerning property disputes, the writ Court should be slow in interfering with the same especially when disputed questions of fact are involved. However, we do not wish to express anything on the merits of the claim made by the writ petitioner nor that of the appellants before us, who are the private respondents but we are inclined to interfere with the impugned orders for the simple reason that the writ petitioner herself sought for direction upon the changed investigating agency to ensure that the writ petitioner is able to enter into the property without any hindrance.

7. Therefore, it will be better if the writ petition is heard after exchange of affidavits and final orders be passed.
8. With the above observations, the impugned orders are set aside and the writ petition be listed before the appropriate bench in the next week at the earliest date. Accordingly, the appeal stands allowed and the connected application stands disposed of.
9. No costs.
10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)