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24.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 20942 of 2024

Sabera Bibi & Anr.
Vs.
State of West Bengal & Ors.

Mr. Joy Chakraborty,
Mr. Ranjit Malakar
...for the petitioners

Mr. Wasim Ahmed.
Mr. Sk. Md. Masud
...for the State

Affidavit of service filed today be kept with the record.

The petitioner nos. 1 and 2 are the parents of the respondent no. 5. The respondent no. 6 is the daughter-in-law of the petitioners. The petitioners and the private respondents reside in the same house, which is a two-storied building. It has been specifically stated in the writ petition that the petitioners are residing in the ground floor of the two-storied building and the private respondents are staying in a portion of the first floor of the said two-storied building. The petitioners allege that the private respondent nos. 5 and 6 are disturbing the peaceful possession of the petitioners in the property and are also creating pressure upon them to transfer the property in their names.

The petitioners lodged a complaint before the police authorities by a letter dated August 02, 2024.

The learned Advocate appearing for the petitioners submits that the police authorities have not taken any steps pursuant to the said complaint. He further places reliance upon a decision of a coordinate Bench dated July 23, 2021 in W.P.A. No. 10835 of 2021 (*Ramapada Basak & Anr. Vs. The State of West Bengal & Ors.*) in support of his contention that the writ court can direct eviction of the private respondents from the property of the petitioners.

The learned Advocate appearing for the State submits that the police is keeping a strict vigil at the locale in order to ensure that the petitioners can live in their own property peacefully. He further submits that a proceeding under Section 126 of the BNSS has been initiated on the basis of a complaint lodged by the petitioners. However, no material has been produced by the State to show that any step has been taken by the police authorities on the basis of the complaint lodged by the petitioners.

The first issue that is to be decided is whether a writ petition at the instance of a private party to oust a person, who does not fall within the definition of Article 12 of the Constitution of India, is maintainable.

After going through the reliefs claimed in the writ petition, this Court finds that the petitioners have not prayed for any order directing eviction of the private respondents from the property in question. When this was pointed out to the learned Advocate for the petitioners, he submits that prayer (a) of the writ petition is to such effect. Prayer (a) of the writ petition is thus extracted hereinafter.

“(a) A writ of or in the nature of Mandamus directing the respondent authorities their men, agents, associates and each of them particularly the respondent no. 3 and 4 to ensure that the petitioners will not be subjected to any kind of physical, mental torture and abuse by the private respondents and make further arrangement so that the petitioners can live at their own house peacefully.”

It appears from prayer (a) of the writ petition that the petitioners have only prayed for an order so that they can live at their own house peacefully. No relief for eviction of the private respondents from the property in question has been claimed.

The petitioners have lodged a complaint before the police authorities vide a letter dated August 02, 2024. It appears that the police authorities have not taken any effective steps pursuant to the aforesaid complaint lodged by the petitioners.

In view thereof, the Inspector-in-Charge, Dum Dum Police Station, being the 4th respondents, is directed to consider the complaint lodged by the petitioners vide letter dated August 02, 2024 and upon going through the same, if, in his opinion, the complaint discloses a cognizable offence, a First Information Report is to be registered forthwith. If the said authority decides against registration of a First Information Report, reasons therefor are to be communicated to the petitioners immediately thereafter and it will be open to the petitioners to take steps in accordance with law.

Insofar as the submission of the learned advocate for the petitioners that the Writ Court can direct eviction of a private party from an immovable property, this Court is of the considered view that a writ petition at the instance of a private party for eviction of a person, who does not fall within the definition of Article 12 of Constitution of India, from an immovable property is not maintainable. The remedy under Article 226 of the Constitution is available if there is violation of any statutory duty on the part of the statutory authority is alleged.

Only the competent civil court can adjudicate upon the issues relating to the respective rights of the parties in respect of an immovable property and to decide as to whether an order for eviction is to be passed.

In Ramapada (supra) the petitioners were ousted from their own house and they were prevented from entering into their own house. The facts of the said case being clearly distinguishable cannot come to the aid of the petitioners in the case on hand.

With the above observations and directions, this writ petition stands disposed of.

Since the complaint has been made by the petitioners alleging that the private respondents are regularly threatening the petitioners, the Inspector-in-Charge, Dum Dum Police Station, being the 4th respondent, shall ensure that no breach of peace takes place at the property in question.

The petitioners are left free to approach the proper forum for appropriate reliefs in accordance with law, if so advised.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.)