

April 24, 2024
AD 4 & 5
Ct. No.14
SG

WPA 24274 of 2023

Mukesh Rajak
vs
The State of West Bengal and others

with

WPA 24282 of 2023

Arun Kumar Das
vs
The State of West Bengal and others

Mr. Moyukh Mukherjee
Mr. Koustav Lal Mukherjee
Ms. Sagnika Banerjee
... for the petitioners

Mr. Amitesh Banerjee
Ms. Ipsita Banerjee
Mr. Suddhadev Adak
... for the State in WPA 24274 of 2023

Mr. Somnath Ganguli
Mr. Balarko Sen
... for the State in WPA 24282 of 2023

Mr. Ranjan Kali
Mr. Avik Pramanick
... for the respdt Nos.8 & 9.

Mr. Avishek Guha
Ms. Sonal Agarwal
... for the respondent No.10.

The two connected matters are taken up for hearing together.

Report filed by the State in WPA 24282 of 2023 is taken on record.

Copies of documents including deed of conveyance dated 30.06.2018 and title search report of the property

in question filed by the respondent No.10 are also taken on record.

Learned counsel appearing for the petitioners submits as follows. The petitioners purchased the properties in question much before the respondent Nos. 8 and 9 allegedly purchased the same. The petitioners entered into a registered agreement for sale on 28.11.2016. They have been staying in the properties since October and November, 2016, respectively. The conveyance was done and registered on 15.12.2018. Suddenly, they received a notice under the SARFAESI Act on 11.01.2023. It appeared that the developer/respondent No.7 had re-sold the property to the respondent Nos.8 and 9. The police did not entertain a complaint. This prompted the petitioners to file an application under Section 156(3) of the Code. On 05.07.2023 an FIR was registered. However, till date no charge-sheet has been submitted. The petitioners moved this writ petition. Only after that, some of the accused have been arrested. Earlier, the duo of the respondent Nos. 8 and 9 had committed a similar fraud. The investigation needs to be transferred to a more specialised agency.

Learned counsel appearing for the State submits that the police have already arrested the respondent Nos.7 and 8. It appeared that the petitioners have been residing at the properties since December, 2018 and not 2016.

Learned counsel appearing for the respondent Nos.8 and 9 submits as follows. The allegations made in the writ petition are denied. The petitioners are bona fide purchasers of the properties in question without notice of any defect in title. They obtained loan from Aditya Birla Finance Limited and the finance company must have been satisfied upon necessary searches before granting such loan. In any event, the registration of the conveyance for the private respondents was done on 30.06.2018, much before the date on which the petitioners' conveyance was registered. Unfortunately, the respondent Nos.7 and 8 are still in custody. If the petitioners are entitled to any relief, the same lies under Section 17 of the SARFAESI Act.

Learned counsel appearing for the respondent No.10 submits as follows. The petitioners had not been in possession since 2016. The property was vacant when valuation was done by the finance company on 09.05.2018. Photos taken are appended to the report. Incidentally upon being granted loan, the sale deed for the respondent Nos.8 and 9 was registered on 30.06.2018, which is prior to 15.12.2018 when the petitioners' deed was registered.

Although the sale deed of the respondent Nos.8 and 9 might appear to have been registered before registration of the deed of the petitioners, there is no indication in the title search report about registration of an agreement for

sale that the petitioners had purportedly entered into on 28.11.2016. All these have to be properly investigated.

It appears that some investigation has been done after filing of the writ petition before this Court.

Further investigation shall be done under the supervision of the Deputy Commissioner of Police, South West Division.

Let the investigation be concluded expeditiously and in accordance with law.

With these observations, the writ petitions are disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

[Jay Sengupta, J.]