

WPA 25943 of 2023

Bikash Mukherjee.

-vs-

The State of West Bengal & ors.

Mr. Uday Sankar Bhattacharya

Ms. Sudeshna Basu Thakur

Ms. Banasri Bhattacharya

...for the petitioner

Mr. Suman Sengupta

Mr. Dwaipayan Basu Mallik

...for the State

Mr. Soumen Bhattacharyya

Mr. Ankan Das

Mr. Debabrata Chakraborti

Ms. Doyel Dey

...for the respondent no.4

Affidavit of service filed on behalf of the petitioner is taken on record.

Report filed on behalf of the State is also taken on record.

An information slip filed on behalf of the respondent no.4 is also taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner was the owner of the property in question. He was possessing the same as well. The daughter of the petitioner after her husband's death, took shelter in the petitioner's residence. After some time, she fraudulently got a deed of gift registered in her name in respect of such property. He also obtained an ATM card of

the bank account of the petitioner and took out the entire cash. An FIR was registered by the petitioner in this regard. He also filed an application before the concerned authority under the Welfare and Maintenance of Parents and Senior Citizen Act, 2005, inter alia, challenging the transfer of the property. The Appellate Court set aside the deed of gift. The petitioner learnt that by that time, the daughter had sold away the property to the private respondent being respondent no.4. On 11.11.2023, the private respondent forcibly drove out the petitioner from his residence and took possession of the property. After requesting the local police authorities, they arranged the petitioner to stay below the stair case of the said property.

Learned counsel appearing on behalf of the State relies on the report and submits as follows. A thorough investigation was done into the FIR lodged by the petitioner against her daughter. It was found that the account was a joint one. A final report was filed as mistake of fact.

Learned counsel appearing on behalf of the respondent no.4 submits as follows. The respondent no.4 had purchased the property as a bonafide purchaser without notice of any defect in title from the daughter of the petitioner in November, 2021. Possession was also taken soon thereafter. In fact, the private respondent has now filed a civil suit and obtained an interim order of injunction in the same directing the defendant/petitioner from not changing the nature and character of the suit property without due course of law. The

next date fixed for hearing is on 02.03.2024.

First, the FIR lodged by the petitioner against his daughter has ended in a final report seeking discharge of the accused.

Even if one goes by the petitioner's version that he was forcibly ousted from the property on 11.11.2023 within two months of the same, he could have approached the Magistrate under Section 145 of the Code of Criminal Procedure for being given back possession. Alternatively, he could have approached the Civil Court. He has not done so.

On the other hand, the respondent no.4 claiming to be a bonafide purchaser of property without defect in title, filed a civil suit and obtained an injunction.

In such circumstance, there are no admitted facts for this Court to provide any amount of protection while sitting in the writ jurisdiction taking up police inaction matter.

Therefore, no further order need be passed in this regard.

However, the private parties are at liberty to establish their rights in respect of the property before a Civil Court.

The police authorities shall nevertheless keep a sharp vigil at the locale and ensure that no breach of peace takes place.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)