

12.06.2024
Ct. No. 02
Sl. No.29
Cp

Calcutta High Court
In the Circuit Bench at Jalpaiguri

WPA No. 925 of 2024

Sri Gautam Das @ Biswajit Das & anr.

Vs.

The State of West Bengal & ors.

Mr. Arijit Ghosh
Mrs. Swarnali Ghosh
Ms. Angana Rakshit

.....for the petitioners.

Mr. Subir Kumar Saha
Mr. Hirak Barman

.....for the State.

Mr. Saumyajyoti Dutta
Mr. Gopal Sah

....for the respondent no. 5.

It appears that the Sub-Divisional Officer, Alipurduar, directed the police authorities to ensure that the petitioners left the ancestral home. Proceeding was initiated under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the said Act) by the respondent no. 5/mother who was allegedly tortured by the son. The orders passed by the Sub-Divisional Officer, Alipurduar, do not indicate that the fact that the petitioner no. 1 was residing in his ancestral home, which originally belonged to his father, i.e., the husband of the respondent no. 5, had been taken into consideration.

It appears that a partition suit is pending between the parties and an interim order of status quo had been granted by the competent civil court. Under such circumstances, ousting the petitioners without considering whether the petitioner no. 1 had a share in the said house, was illegal.

The order impugned is set aside.

However, the court takes serious note of the allegation that the son and the daughter-in-law had been torturing the mother. The complaint of the mother reveals that the mother had taken refuge at her daughter's house, owing to such torture. The said Act has been promulgated to protect the life and property of senior citizens. Under no circumstances, could the mother be tortured by the son. No harassment should be caused to her. She has a right to reside in the premises upon enjoying her own area, till the partition suit is finally decided.

The petitioners will report to the Officer-in-charge, Madarihat Police Station and the Officer-in-charge along with a female constable shall accompany the petitioners and restore possession to a portion of the house in which the petitioners were residing. Continuous vigil shall be maintained to ensure that the mother is not tortured in any way.

If any grievance of future torture or harassment is raised by the mother at a later stage, the police authorities shall register a case and shall act and proceed in accordance with law and take all steps for protection of the mother.

The claims and the counter claims of the parties in the partition suit shall be decided independently and in accordance with law.

As no affidavits have been called for, the allegations made in the writ petition are deemed to be denied.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)