



\$~29

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(CRL) 2505/2022

SANGEETA GAHLOT

..... Petitioner

Through: Mr. Jitender Kumar Jha, Mr. Jitender
Rathi and Ms. Pallavi Nandan, Advocates.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Amol Sinha, ASC for State with
Mr. Kshitiz Garg, Mr. Ashvini Kumar and Ms.
Chavi Lazarus along with SI Narender Kumar, PS:
Mehrauli.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

14.05.2024

%

1. This writ petition has been filed by the Petitioner under Articles 226/227 of the Constitution of India read with Section 482 Cr.P.C. seeking following reliefs:

"1. That an FIR U/s 177/ 181 / 182 / 191 / 192 / 196/ 197/ 198/ 199/ 200/ 219/ 409/ 420/ 464/ 466/ 467/ 470/ 471/ 474/ 120B IPC etc may be directed to be registered against all the accused persons.

2. That This Hon'ble Court may direct for Investigation of the alleged offence by any independent Investigating Agency such as CBI/ Crime Branch or by constituting an SIT under the supervision of this Hon'ble Court.

3. That this Hon'ble court may direct the respondent to initiate departmental enquiry/ proceedings against the guilty government officers who have committed apparent grave irregularities in the preparing the revenue records or Direct for a Judicial enquiry pertaining to lapses in the administrative action in this case and/or



4. Any other or further order as this Hon'ble court may deem fit and proper in the facts and circumstances of this case may also be passed in the interest of justice."

2. Read and understood broadly, petitioner in the present petition alleges that no action has been taken by the police despite multiple complaints against her brothers namely Naresh Kumar, Anil Kumar and Kuldeep Kumar, who allegedly in connivance with the Revenue officials including the Tehsildar (Hauz Khas), *Kanoongo* and *Patwari* of village Devli, illegally got mutated land bearing number 415-A, near bus stand, Village Deoli, New Delhi, ad-measuring 500 Sq. Yds. approximately, in their names and deprived the petitioner of her share in the ancestral property. From the petition, it is evident that a civil suit filed by the petitioner for partition etc. with respect to the same land is pending.

3. Short reply has been filed on behalf of the State, in which a preliminary objection is raised to the maintainability of the petition, in view of the remedies available to the petitioner under Section 156(3) of Cr.P.C. Reliance is placed on *Sakiri Vasu v. State of Uttar Pradesh and Others, (2008) 2 SCC 409; Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others, (2016) 6 SCC 277; Waseem Haider v. State of U.P. Thru. Prin. Secy. Home Lko. And Others, 2020 SCC OnLine All 1866; Lalit Raj v. Union of India, Ministry of Home Affairs and Others, 2022 SCC OnLine Del 799; and M. Subramaniam and Another v. S. Janaki and Another, (2020) 16 SCC 728*, in support of the objection. Learned counsel for the petitioner, on the other hand, disputes that there is any other remedy available to the petitioner and without prejudice submits that even if the petitioner takes a recourse to an application under section 156(3) Cr.P.C., it



is a long-drawn procedure. Brothers of the Petitioner are enjoying the ancestral property depriving the Petitioner of her legitimate share and in these circumstances, this Court must exercise its inherent jurisdiction to do justice to the petitioner.

4. Heard learned counsel for the petitioner and learned ASC for the State.

5. The grievance ventilated by the petitioner is essentially that her three brothers have, in connivance with the revenue officers, mutated the property in question in their favour thereby depriving her of her share in the ancestral property. In the petition itself, it is averred that Petitioner has filed a civil suit seeking partition of the property amongst other reliefs and the same is pending. Having heard the respective counsels, this court finds merit in the preliminary objection raised on behalf of the State that Petitioner has the remedy of approaching the police authorities under 154(3) Cr.P.C. and if the exercise does not yield any result, it is open to her to file an application under section 156(3) Cr.P.C. before the learned Magistrate concerned. In this context I may allude to the judgement of the Supreme Court in *Sakiri Vasu (Supra)* where the Supreme Court observed as under:

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.”



6. In ***Sudhir Bhaskarrao Tambe (supra)***, the Supreme Court observed as under:

“2. This Court has held in *Sakiri Vasu v. State of U.P.* [*Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] , that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, *prima facie*, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in *Sakiri Vasu* case [*Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if *prima facie* he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

7. For the same proposition, reliance is aptly placed on the judgments of the Supreme Court in ***M. Subramaniam (supra)*** and of the Allahabad High Court in ***Waseem Haider (supra)***. Ordinarily, High Court would not issue a writ of mandamus where alternate, statutory and efficacious remedy is available to a party *albeit* this is a self-imposed restriction, with certain exceptions. Petitioner has several remedies under Cr.P.C., which is a comprehensive and self-contained Code, with inbuilt safeguards. No extraordinary case is made out by the petitioner calling upon this Court to



exercise its inherent jurisdiction under 482 Cr.P.C. bypassing the remedies available to the Petitioner.

8. Petition is accordingly dismissed, with liberty to the petitioner to take recourse to appropriate remedies, available in law before the appropriate forum.

JYOTI SINGH, J

MAY 14, 2024/DU