

CONSTITUTIONAL WRIT

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on : June 22, 2010
W.P.No.13002(W) of 2010

Smt. Dipali Chel
-vs-
The State of West Bengal & Ors.

POINTS

SCOPE OF WRIT– Petitioner's claim is based purely on contract and private law- Whether Petitioner can seek the public law remedy before the Hon'ble High Court– Constitution of India, Article 226.

FACTS

Petitioner had let out her vehicle to the Superintendent of Police, Burdwan on Rs.410 per day with effect from March 17, 2009. On August 8, 2009 a mob, trying to violate a prohibitory order under s.144, set fire to the vehicle and as a result it was completely burnt. An FIR was lodged on that same day. Though the police incurred the obligation to pay compensation, they did not pay it and also rent arrears. Therefore she has decided to approach the High Court under art.226.

HELD

The petitioner's claims are based on contract, if any, between the parties. What she is seeking to enforce is her pure private law contractual right. She is trying to enforce a pure private law contractual obligation or duty, if any, of the police, not any constitutional or statutory obligation or duty. Hence in the whole thing absolutely no public law element is involved.

Para 7

Whether the petitioner is entitled to any rent arrears and compensation is to be decided by taking down evidence. The Civil Court is the appropriate forum. The petitioner is not entitled to any relief from the Writ Court.

Para 8

CASES CITED

National Insurance Company Ltd. v. Deepa Devi & Ors., AIR 2008 SC 735.

Mr. Tapan Chakraborti

Mr. Tapan Kumar Ray (II)

...for the petitioner

Mr. Supriya Basu

Mr. Kamalesh Jha

.....for the state

THE COURT : 1)The petitioner in this art.226 petition dated June 16, 2010 is seeking the following relief :

“a) A writ of Mandamus or a writ in the nature thereof commanding the Respondents to act and proceed in accordance with law and directing them to rescind, recall, cancel and/or withdraw the Memo. No. 46/MT/BWN dated 15.1.2010 and Memo. No. 360/RO (HC) dated 19.04.2010 and directing them to pay the Compensation and arrear hire charges in respect of Vehicle bearing Registration No. WB-41B/6647 (Armada).”

2)Case of the petitioner is this. She had let out her vehicle to the Superintendent of Police, Burdwan on Rs.410 per day with effect from March 17, 2009. On August 8, 2009 a mob, trying to violate a prohibitory order under s.144, set fire to the vehicle and as a result it was completely burnt. An FIR was lodged on that same day. Though the police incurred the obligation to pay compensation, they did not pay it and also rent arrears.

3)Counsel for the petitioner does not dispute that remedy, if any, of the petitioner was available before the Civil Court. He says that since the respondents are not disputing the petitioner’s claims for compensation and rent arrears, she has decided to approach the High Court under art.226. In support of the petitioner’s case he relies on the documents produced with the petition.

4)Counsel for the State submits that the police have never admitted the petitioner’s claims. According to him, the police are not liable to pay anything at all; for payment, if any, is to be made only by the insurance company. To this, counsel for the petitioner relies on a decision of the Supreme Court in National Insurance Company Ltd. v. Deepa Devi & Ors., AIR 2008 SC 735.

5)The question is whether power under art.226 should be exercised for adjudicating the petitioner's claims. The decision cited does not lay down the law that in such a case as this the claimant can seek the public law remedy before the High Court under art.226.

6)The petitioner's claims are based on contract, if any, between the parties. What she is seeking to enforce is her pure private law contractual right. She is trying to enforce a pure private law contractual obligation or duty, if any, of the police, not any constitutional or statutory obligation or duty. Hence in the whole thing absolutely no public law element is involved.

7)Besides, correctness of the petitioner's claims has been categorically disputed by the police represented by their counsel. Whether the petitioner is entitled to any rent arrears and compensation is to be decided by taking down evidence. The Civil Court is the appropriate forum. The petitioner is not entitled to any relief from the Writ Court.

8)For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J)

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