

19-08-2021

ct no. 13

Sl. 118

Pk/akd

**WPA 10810 of 2021
(Through Video Conference)**

**Malabika Ghosh
Versus
Union of India and others**

Mr. Vinay Shraff,
Mr. H. K. Ray

... for the petitioner.

Mr. Y. J. Dastoor, Ld. A. S. G.
Mr. Bhaskar Prasad Banerjee,
Mr. P. Baidya

... for the UOI.

Mr. Sirsanya Bandyopadhyay,
Mr. Arka Kumar Nag,
Mr. Rahul Kumar Singh

... for the respondent no. 3.

Affidavit of service filed in Court today is taken on record.

The writ petitioner challenges the constitutional vires of Section 39(7) of the Insurance Act, 1938 which was brought into force on 26th December, 2014 by the Insurance Laws (Amendment) Act, 2015. The petitioner has also prayed for writ of mandamus restraining the Insurance Company from disbursing any sum of money to the respondent no. 3 under two life insurance policies taken out by her deceased husband. The respondent 3 is the mother of the deceased and the mother-in-law of the writ petitioner.

The writ petitioner is aggrieved by the amendment insofar as it makes family members of the insured, who were named as nominees to be raised to the status of beneficial owners.

This Court is of the prima facie view that given the law as it stands laid down in the following decisions **Indrani Wahi Vs. Registrar of Cooperative Society & Ors.** reported in **(2016) 6 SCC 440** and **Sarbati Devi Vs. Usha Devi** reported in **AIR 1984 SC 346** a nominee even otherwise remains a trustee holding the proceeds of the insurance policy for and on behalf of the legal heirs of the deceased.

Subject to the maintainability of the writ petition as raised by the counsel for the Union of India as well as the private respondents, the writ petition is admitted.

The respondent no. 2 shall make over the proceeds of the insurance policy taken out by the deceased son in favour of the respondent no. 3 as expeditiously as possible preferably within a period of ten days from the date of receipt of a copy of this order.

It is made clear that in the event the writ petitioner is able to demonstrate before a civil court any rights and particularly, rights over and above the respondent no. 3 as directed hereinabove, the payment to the respondent

no. 3, shall abide by such decision of the Civil Court.

In view of the presence of the learned Additional Solicitor General, formal notice to the Attorney General is dispensed with. Pendency of the writ application shall not stand in way of the writ petitioner establishing her rights in respect of the policy before appropriate civil forum.

Let affidavit in opposition be filed within a period of six weeks from date. Reply, if any, be filed four weeks thereafter.

Liberty to mention after completion of pleadings.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)