

25.09.2020.

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W.P.A No. 6706 of 2020

IA No: CAN/1/2020(Old No. CAN 5604 of 2020)

Rafija Begum and others
Versus
State of West Bengal & Ors.

Mr. Fasiur Rahaman Molla,
Mr. P. S. Chakraborty,
Mr. Soumya Roy

...For the petitioners.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. Kaustav Bhattacharya
for the respondent nos 4 to 6.

Ms. Chama Mukherjee

... for the State.

Considering the urgency pleaded by the petitioner in CAN 5604 of 2020, the instant writ petition is taken up for hearing via video conference.

Accordingly, the application being CAN 5604 of 2020 is disposed of.

The instant writ application has been filed complaining violation of an order of status quo dated 21.01.2020 passed by the learned Civil Judge (Senior Division), Third Court, Howrah in T. S. No. 29 of 2020. The said order was extended from time to time and according to the petitioners, still in force.

Counsel for the petitioners submits that in view of the blanket orders passed by this Court and the Supreme Court of India automatically extending the

interim orders passed by Courts during the Pandemic for non-availability of the courts below, the order of the Civil Judge gets transformed into an order of this Court.

He further submits that this Court has jurisdiction to direct the police authorities to enforce the order of status quo in his favour. He relies upon two judgements of the Supreme Court of India in this regard, namely, **State of Rajasthan and another Vs. Karamchand Thappar and Bros. reported in AIR 1965 SC 913** and **A. V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and another reported in AIR 1961 Supreme Court 1506.**

On the other hand, Mr. Mukherjee, learned counsel for the respondent nos. 4 to 6, submits that his clients are not effecting any construction in violation of the order of status quo in question. He submits that the remedy of the petitioners would in any event lie before the court below under the provisions of the Civil Procedure Code. He relies upon the decision of Supreme Court of India in the case of **P. R. Murlidharan and others Vs. Swami Dharmananda Theertha Padar and others reported in (2006) 4 SCC 501** and a decision of Single Bench of this Court in the case of **Asgar Ali Vs. The State of**

**West Bengal and others reported in 2016 SCC
Online Cal 3377.**

Having considered the rival submissions of the parties, this Court is of the view that the blanket order passed for a formal extension of all interim orders passed by Court in West Bengal by this Hon'ble Court, cannot be deemed to have a merged and become orders of this Court to enable this Court to treat the same as its own order and enforce it much less under Article 226 of the Constitution of India.

The said order of extension was necessitated in view of the unprecedented pandemic and not specific to the status quo order of the Civil Judge or in any specific proceeding arising therefrom.

The decision in the case of **A. V. Venkateswaran, Collector of Customs, Bombay** relied upon by the petitioner dealt with a matter under the Indian Tariff Act, 1934 in which the issue was whether an appellate forum under the said Act was sufficient and alternative to compel the respondents therein to avail, thereby denying him rights under Article 226 of the Constitution. The facts of such case are clearly different in the instant case.

The second decision i. e. the case of **Karamchand Thappar and Bros. (supra)** also dealt with a statutory alternative remedy under the Sales Tax Act. In both the cases the Supreme Court of India

went on to hold that the principles of alternative remedy are not a complete bar to the jurisdiction of this Court under Article 226 of the Constitution of India.

It is now well settled that the jurisdiction under Article 226 of the Constitution of India can still be invoked in the face of an alternative remedy where there are jurisdictional errors committed by the court below or the authority concerned. No such plea is available in the instant writ petition.

The decisions relied upon by the counsel for the respondents, namely, the case of P. R. Murlidharan and others (supra) and Asgar Ali (supra) would definitely throw some light on the question in issue but this Court is, however, of the view that when an efficacious civil remedy in the form an application under Order 39 Rule 2A is available to the petitioner, the Writ Court should not interfere to enforce an order of the civil court.

Ms. Chama Mukherjee, learned advocate and Mr. Mukherjee, learned advocate appearing for the private respondents submit that the court below is functional. The remedy of the petitioner is before the court below.

Therefore, there shall be no order on this writ application and the same is dismissed.

No order as to costs.

Since no affidavit has been called for, the allegation contained in the writ petition shall not be deemed to have not been admitted by the respondents.

If the petitioners make any application seeking enforcement of the order of status quo, the court below is requested to take up the same expeditiously and dispose of the same in accordance with law.

All parties are to act on a server copy of this order on the usual undertakings.

(Rajasekhar Mantha, J.)