

03
26.02.2020
Court No.2
DC

CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
APPELLATE SIDE

WPA 845 of 2019

**Mrs. Harbhajan Kaur & Another.
Vs.
The State of West Bengal & Ors.**

Mr. Sunil Kr. Sarkar
.....for petitioners

Ms. Paramita Sahu.....for the State

Mr. Joyjit Choudhury
Mr. Ajay Singhal.....for respondent No. 4

The issue relates to possession of a flat. The petitioners and the private respondent both claim possession of the said flat. Both the parties have furnished a Bond of rupees fifty lakh each before the learned Court of the Chief Judicial Magistrate, Jalpaiguri. A civil suit in connection with the said flat is subjudice before the learned Civil Court.

The petitioners claim that the keys of the flat ought to have been handed over to them. The police in collusion with the private respondent has handed over the possession of the flat to the private respondent disregarding their claim.

The writ court is not empowered to decide the title of the flat in question. The Court cannot pass any order declaring the title of the said flat. The Writ Court cannot also pass any order of granting possession of the flat in favour of a private individual without being satisfied with regard to its title.

The petitioners relied upon a judgment delivered by a Co-ordinate Bench of this Court in the matter of **M/s. Oshiya Industries Pvt. Ltd. Vs. Steel Authority of India Ltd. & Anr.** reported in ***(2016) 6 WBLR (Cal) 697*** on the issue that the alternative remedy ought not to be a bar for entertaining the writ petition.

Learned Advocate for the private respondent submits that his client is in possession of the flat in question. He relies upon a decision delivered by the Hon'ble Supreme Court in the matter of **Roshina T vs. Abdul Azeez K.T. & Ors.** reported in ***(2019) 2 SCC 329*** wherein the court held that the writ petition ought not to be converted into a civil suit for deciding question of facts as to who is in possession of the flat and to whom the possession of the flat may be restored. The court categorically held that a dispute regarding possession of flat between two private individuals can be decided only by the civil court in civil suit or by the criminal court under Section 145

Cr. P. C. proceeding but not in the writ petition under Article 226 of the Constitution.

Upon perusal of the aforesaid judgments, I am of the firm view that the prayer made by the petitioners in the instant writ petition shall not be maintainable under Article 226 of the Constitution of India before this Court.

In view of the above, the writ petition stands dismissed.

However, dismissal of the writ petition will not stand in the way of the writ petitioner from approaching the appropriate forum in accordance with law for necessary reliefs.

Urgent certified Photostat copy of this order, if applied for, be supplied to the parties upon observance of requisite formalities.

(Amrita Sinha, J.)