

**MAT 823 of 2021**  
**With**  
**CAN 1 of 2021**

**Kali Charan Lohia & Ors.**

**-Vs-**

**State of West Bengal & Ors.**

**(Via Video Conference)**

Mr. Uday Sankar Chattopadhyay  
Mr. Suman Sankar Chatterjee  
Mr. Dhrubanil Biswas  
Mr. Santanu Maji  
Ms. Snigdha Saha  
Mr. Pronay Basak  
Mr. Sayan Chattopadhyay  
Mr. S. Das

... for the Appellants

Mr. Jishnu Chaudhury  
Mr. Amrita Lal Chatterjee

... for the State-respondents

Ms. Roopa Mitra

...

for the Respondent no.8

Mr. Sumitabha Chakraborty

...

for the respondent no.9

Party/Parties is/are represented in the order of  
their name/names as printed above in the cause title.

Under challenge in this appeal is the order of the  
Hon'ble Single Bench dated 23<sup>rd</sup> July, 2021 in the writ  
petition being WPA 11020 of 2021. The writ petitioner  
is the appellant before this Court. The writ petitioner is  
also the son of the now deceased tenant of the  
premises in issue. The writ petitioner alleges that he is  
being ousted from the premises due to the actions of  
the alleged respondents in the writ petition, who are  
also the respondent nos. 8 and 9 to this appeal.

The Hon'ble Single Bench directed a report from

the local Phoolbagan Police Station. The local Phoolbagan P.S. has reported, *inter alia*, that the writ petitioners do not face any obstruction to their free ingress and egress out of the said premises from the respondent nos. 8 & 9. The relevant paragraph of the police report reads as follows:

*“Accordingly in compliance to the order of Honourable High Court at Calcutta dated 12<sup>th</sup> July, 2021 visited the premises i.e. 247, C.I.T. Road, Scheme-VIM, Kolkata-54 and contacted with the petitioners of the said writ petition and it could be learnt from them that at present they were not facing any obstruction into their free ingress and egress out of the said premises from Sri Siddhartha Mitra and Smt Rupa Mitra. Both Sri Siddhartha Mitra and Smt Rupa Mitra were instructed that the petitioners could not be prevented from free ingress and egress of the premises.”*

The police report also touches upon several complaints by and between the appellants and the respondent nos. 8 & 9 to this appeal. It is also recorded that the dispute has taken a civil colour with the filing of a Title Suit being numbered as T.S. 210 of 2021 by the appellant no.1 before the Learned Civil Court (Junior Division) at Sealdah. The suit is for declaration of tenancy.

*Per contra*, Mr. Sumitabha Chakraborty, appearing for the private respondent no.9 and Ms. Roopa Mitra, appearing for the private respondent no.8 in person, submit that the appellants were permitted entry into the said premises only for carrying out the last rites of their deceased father, the original tenant of the premises in issue. The appellants do not have any legal right to stay in the said premises and are permanent residents of Aswini Nagar, Baguihati, Kolkata-59.

It is alleged by both the private respondent nos. 8 & 9 that the appellants took the plea of leaving the said premises after completion of the last rites of their late father. It is submitted that no document claiming tenancy of the appellants at the premises in issue can be produced to show that the appellants continue in the tenancy of their late father.

The Hon'ble Single Bench in the fitness of things has therefore permitted the parties to settle their disputes in the civil suit being Title Suit No. 210 of 2021.

This Court, after hearing the parties and considering the materials placed, can hold no different opinion with regard to the parties being permitted to settle their disputes before the civil forum.

However, this Court is not *ad idem* with the view expressed by the Hon'ble Single Bench to the following

effect which reads as follows:

*“This Court is, therefore, of the prima facie view that the petitioners are infact not entitled to live in the said property.”*

This Court is of the considered view that the view expressed by the Hon’ble Single Bench even at the *prima facie* stage of the writ petitioners being not entitled to live in the said premises, does not correspond to the police report (supra) as submitted before the Hon’ble Single Bench in terms of the order dated 12<sup>th</sup> July, 2021.

This Court thus reiterates the contents as quoted from the police report in this order (supra) and sets aside the paragraph from the order impugned of the Hon’ble Single Bench as also quoted above. The *prima facie* observations of the Hon’ble Single Bench as quoted above have the additional avoidable effect of touching upon the civil rights of the parties which have been directed to be ventilated before the competent Civil Court. The remaining part of the order of the Hon’ble Single Bench remains untouched.

With the above modification, neither the appeal nor the application are detained.

Since affidavits are neither necessary nor invited to this appeal, allegations are deemed to be denied and disputed.

**MAT 823 of 2021** and **CAN 1 of 2021** stand accordingly **disposed of**.

Documents filed today be retained with the record.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

**(Kesang Doma Bhutia, J.)      (Subrata Talukdar,J.)**