

02
29.01.2021
(Suvendu)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

WPA 10 of 2021

**Haldibari Tea Manufacturers LLP & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Joyjit Choudhury
Mr. Rohit Agarwal
.....for the petitioners

Mr. Anindya Lahiri,
Ms. Arpita Saha
..... for the respondent no.6

Mr. Bikramaditya Ghosh
Mr. Momenur Rahman
.....for the State

This writ petition has been filed for getting relief in the nature of mandamus directing the State respondents/police authorities to ensure that the order of injunction passed by the learned District Judge, Darjeeling on 24th December, 2020 is not violated by the private respondent no.6. By the order of injunction dated 24th December, 2020, the learned District Judge was of the view that the private respondent has forcibly entered into the business of tea garden being carried on by the petitioners without having any lawful authority to do the same and that in view of an order, passed by a coordinate Bench in WP 6651 (W) of 2020, the petitioner would be at liberty to approach the Commissioner of Police, Siliguri or the Superintendent of Police, Jalpaiguri for

police assistance for operating the petitioners' tea estate at Haldibari.

A point of maintainability of the writ petition has been taken by the private respondent in view of the provisions of The Code of Civil Procedure, 1908 and The Arbitration and Conciliation Act, 1996. According to learned counsel appearing for the private respondent, the order dated 24th December, 2020 was passed by the learned District Judge in an application under Section 9 of the 1996 Act and that such order cannot be enforced in a writ petition filed under Article 226 of the Constitution of India. Counsel takes a second point concerning the lack of inherent jurisdiction of the learned court below relying on the prayers in the Section 9 application which indicate that the pecuniary value of the dispute exceeded Rs. 3, 00, 000/- and would hence be covered under The Commercial Courts Act, 2015 and should therefore have been heard by a Commercial Court under Section 10 of the 2015 Act. It is submitted that since the order was not passed as envisaged under Section 10 of the 2015 Act, the order is a nullity and the point of jurisdiction can hence be taken up by the respondent at any stage of the proceedings.

Learned counsel appearing for the petitioners seeks to sustain the writ petition on the ground that

the issue of jurisdiction under Section 21 of the CPC must be taken at the first instance which the respondent failed to do in this case and on the other hand, submitted to the jurisdiction of the learned District Judge by participating in the proceedings under Section 9 of the 1996 Act. It is also submitted that an order passed in an application under Section 9 is not a decree which can be executed under the provisions of the CPC and counsel relies on Sections 35 and 36 of the 1996 Act in this regard. Counsel further submits that an order passed by a civil court can be enforced in writ proceedings provided the Court which passed the order had jurisdiction to do so. Additionally that lack of pecuniary or territorial jurisdiction would not go to the root of the matter rendering the order a nullity.

Counsel for the parties have relied on several decisions on Section 21 of the CPC and on the proposition that a point of lack of inherent jurisdiction of a Court can be urged at any stage of the proceedings. Decisions have also been relied on by learned counsel appearing for the petitioners on the power of a writ court to issue necessary direction on the police authorities to render assistance to the party in whose favour an order of injunction has been granted.

Upon hearing learned counsel for the parties, the question of maintainability of the writ petition centers around primarily on two issues.

First, whether the order passed by the learned District Judge was a nullity in view of Sections 10 and 12 of the Commercial Courts At, 2015, and second, whether the order of injunction passed by the learned District Judge on 24th December, 2020 can be implemented by a writ court under Article 226 of the Constitution of India.

With regard to the first issue i.e. whether the order passed by the learned District Judge was a nullity, the prayers in the section 9 application are required to be seen. In the said application the petitioners prayed for an order of injunction restraining the private respondent from disturbing the day-to-day functions and management of the Haldibari Tea Manufacturers LLP and for restraining the private respondent from entering the tea garden including its land, factory premises etc. which is being managed by the petitioners. The nature of the reliefs prayed for is not concerned with any conveyance for transfer or sale etc. of the tea garden or for any commercial transactions in respect of the tea garden. Hence the question of the Section 9 application being covered under Sections 10 or 12 of the Commercial Courts Act, 2015 namely,

jurisdiction in respect of the arbitration matter or determination of specific value, does not arise. Reference made to an isolated line in the order concerning payment of money in excess of a crore of rupees cannot be seen as the basis to hold that the court lacked inherent jurisdiction to pass the order.

Further, it is an admitted fact that the order of injunction dated 24th December, 2020 was passed on contest and the private respondent participated in the said proceedings which spanned over several months.

With reference to the second issue raised on behalf of the private respondent i.e. whether a writ court can step in to ensure that an order passed by a civil court is not violated, this court has been shown an order passed by a coordinate Bench in an earlier writ petition filed by the petitioners in WP 6651 (W) of 2020 for enforcing an order dated 24th July, 2020 passed in a Section 9 application filed by the petitioners before the learned District Judge, Darjeeling. It should be clarified at this stage that the order dated 24th July, 2020 was passed in the same proceedings which resulted in the order dated 24th December, 2020 passed by the same learned District Judge. The only difference was that the order of 24th July, 2020 was an ad-interim order which fructified into the order dated 24th December, 2020

after considering the arguments of both the parties. It should also be clarified at this stage that an application filed by the petitioners under Section 151 of The Code of Civil Procedure directing the police authorities to ensure implementation of the earlier order dated 24th July, 2020 and for the police authorities to keep a strict vigil over the Haldibari Tea Estate was taken up for consideration by the District Judge as would appear from an order dated 28th September, 2020 with a direction on the respondents to file a written objection. It is not clear from the order dated 24th December, 2020 whether the application under Section 151 of the C.P.C. forms part of the said order.

What is germane, however, is whether the order of injunction passed by the learned court below can be urged before a writ court for proper implementation. The order passed by the co-ordinate Bench on 28th August, 2020 in relation to the ad interim order dated 24th July, 2020 opined that the petitioners had a remedy under Order 39 of the C.P.C. and the provisions of The Arbitration and Conciliation Act, 1996. There is no subsequent event after the order of the co-ordinate Bench, except the application filed by the petitioners under Section 151 of the C.P.C., which would compel this court to take a different view in the matter. It is clear from the provisions under Part II of

the CPC, particularly, Section 36 which provides that judgments and orders passed by a civil court can be executed in terms of the provisions of the CPC. An order passed in a Section 9 application under the Act, 1996 can similarly be implemented under the said provisions of the CPC. This court is of the view that if a writ court intervenes to implement orders passed by a civil court that may lead to risky consequences resulting in litigants using the writ jurisdiction of a High Court instead of availing of the remedy available under the CPC or under any other specialized law. Since the order passed by the co-ordinate Bench was not challenged and the final order passed in the same proceedings by the learned court below is sought to be enforced in the present proceedings, this Court cannot take a divergent view until and unless compelling circumstances exists.

The decisions relied on by learned Counsel for the petitioners on Section 21 of the CPC are not been discussed in detail since this court has already expressed its view on the first point of maintainability.

The decisions relied on by the petitioners with regard to a writ court being empowered to direct police assistance did not involve any issue of proceedings under The Arbitration and Conciliation Act, 1996 or any other specialized law. Since the prayers in this writ petition are for a direction on the police authorities

for strict enforcement of the order of injunction passed by the learned District Judge and in the nature of implementing an order passed by a civil court under the 1996 Act, the point of maintainability must be answered in favour of the private respondent and against the writ petitioners.

It is indeed unfortunate that despite the liberty being given to the petitioners by the learned court below to approach the Commissioner of Police, Siliguri/Superintendent of Police, Jalpaiguri, for police assistance for the purposes of implementing the order, it does not appear from records that the said authorities have taken necessary action in that regard. There is absolutely no excuse for the inaction of the concerned police authorities. The petitioners will hence be at liberty to pursue their remedies before an appropriate civil court.

The observations made above are the views of this court and may not influence any proceedings which the parties may ultimately pursue.

W.P.A. 10 of 2021 is dismissed for the reasons stated above without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Moushumi Bhattacharya, J.)