

**FMA 1218 of 2009
with
IA No. CAN 5 of 2022**

**(Sri Nanigopal Das Vs. Sri Debabrata
Bhattacharya & Ors.)**

**Mr. Prantick Ghosh
Mr. Bidyut Baran Biswas**

..... For the appellant

Mr. Biswarup Biswas

..... For the respondents

The present appeal has been preferred against an order dated 18th December, 2007 passed in W.P. No. 24451 (W) of 2007.

Records reveal that the writ petition was preferred by one Debabrata Bhattacharya primarily praying for the following relief: -

‘(a) Writ in the nature of Mandamus commanding the respondent authorities particularly the respondent no. 3 and 4 to hand over the key and peaceful possession of the shop room (decreetal property) situated at Plot No. 267 Khidirpur J.L. No. 48 under Nakashipara Police Station District – Nadia which was delivered to the petitioner by the Naib-Nazir Sri Bimal Kanti Halder on 16.5.2006 pursuant to the order of the Court under execution proceeding in presence of the private respondent namely Nani Gopal Das and other witnesses including police personnel forthwith.’

Mr. Ghosh, learned advocate appears for the appellant along with Mr. Biswas, learned advocate and submits that the writ petition was allowed without considering the arguments as advanced on behalf of the

appellant. As the issues involved disputed questions of fact, the learned Single Judge ought not to have entertained the writ petition.

Per contra, Mr. Biswas, learned advocate appearing for the writ petitioner/respondent no. 1 herein submits that there is no infirmity in the order impugned. The possession of the concerned shop room (decreetal property) was delivered in execution of a decree. The appellant herein forcibly dispossessed him and locked the room. As such, the said respondent approached the writ Court praying for issuance of necessary direction upon the police authorities so that he may be put back in possession. Considering the records, the learned Single Judge rightly issued the necessary directions as contained in the order dated 18th December, 2007. The said order was complied with and the writ petitioner was put back in possession.

Records reveal that in connection with the present appeal, an application being CAN 5 of 2022 has been preferred for bringing on record certain documents. Mr. Biswas submits that the said documents were not available at the time the appeal was preferred. Referring to paragraph 6 of the said application, Mr. Biswas submits that during pendency of the present appeal the land in question had been acquired under the provisions of National Highway Act, 1956. Considering such submissions and as the documents pertain to

subsequent events, the said application is allowed. Mr. Ghosh has, however, disputed the averments as made in the said application.

It appears that the possession of the concerned shop room was handed over to the respondent no.1 herein on the basis of an order passed in Title Execution Case No. 10 of 1981. Considering such fact, the learned Single Judge directed the Superintendent of Police, Nadia and the Officer-in-charge, Nakashipara Police Station ‘to make an enquiry, particularly in regard to the veracity of the document appearing at pages 54 and 55 of the writ petition and if it is found that possession was delivered to the petitioner and he has been ousted illegally, the petitioner shall be put back in possession within forty-eight hours from the date of holding such enquiry’.

We do not find any infirmity in the order impugned. The same is also a reasoned one and as such, no interference is called for in the present appeal.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)