

July 28, 2022
AD 20
Court No.1
PA (RB)

MAT 463 of 2022

With

CAN 1 of 2022

Jaladhar Jhamuri and Another

vs.

The State of West Bengal and Others
(Through Video Conference)

Mr. Raghunath Chakraborty, Advocate

... for the appellant

Mr. Anirban Ray, Id. G.P.

Mr. Raja Saha,

Mr. Debasish Ghosh, Advocates

... for the State of West Bengal

By this intra-court appeal, writ petitioners have challenged the order of the learned Single Judge dated 3rd of January, 2022 whereby WPA 15037 of 2021 has been dismissed.

Submission of learned counsel for the appellants is that the appellants only want to put a tin shed in the mud house in question and that they are the owners of the premises and therefore, learned Single Judge has committed an error in dismissing the petition.

Learned counsel for the State has opposed the appeal and has submitted that the dispute is of pure civil nature which can be decided by the Civil Court.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the appellant had approached the learned Single Judge by raising the plea in the writ petition that they are residing

in a mud house and at the time of putting the tin shed, an objection was raised by the private respondents. A plea was also raised that the appellants are in settled possession of the property and in that background, a prayer was made in the writ petition to restrain the private respondents from interfering with the appellants in making their residential houses habitable and also a direction was sought to the police authorities to ensure that the private respondents do not obstruct installing of sheds in the house.

Learned Single Judge has duly considered the matter and has noted that the civil suit being T.S. No. 11 of 2016 filed by the appellants against the private respondents is pending and accordingly, learned Single Judge has found that the appellants has remedy before the Civil Court where the civil suit is already pending.

The plea which the petitioner has raised in the writ petition relates to private dispute between the parties for which the civil suit is the proper remedy and for such a dispute writ cannot be maintained. Hon'ble Supreme Court in the matter of **Radhey Shyam and Another vs. Chhabi Nath and Others** reported as **(2009) 5 SCC 616** in this regard has held that:

“9. From the aforesaid narration of events, it is clear that the proceedings in this case arose out of purely civil disputes relating to property and the parties have filed suits before the civil court, and the suits are pending. The parties to the

proceedings are all private individuals. Neither the State nor “State” nor an authority under Article 12 is a party to this proceeding. This is clear from the cause-title of this appeal. Now the question is: whether private individuals are amenable to the jurisdiction of writ court in connection with the private disputes relating to property, possession and title between private individuals?

10. As early as in 1957, a Constitution Bench of this Court in *Sohan Lal v. Union of India* held that a writ of mandamus or an order in the nature of mandamus is not to be made against a private individual. A writ of and/or in the nature of mandamus normally is issued asking a person to do a particular thing which is in the nature of his public duty.

11. In *Sohan Lal* rival claims of property were in issue and the learned Judges held in para 5 that the writ courts should refrain themselves from entering the said field. Since in view of the Court such an exercise calls for

“entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a court exercising the prerogative of issuing writs” (emphasis supplied) (see AIR p. 531, para 5).

The learned Judges held that if only it can be proved that the appellant Sohan Lal acted in collusion with Union of India in evicting the respondent Jagan Nath, then an order of mandamus can be issued (see *Sohan Lal case*, AIR p. 532, para 7), but it will not issue otherwise.

12. Only in the case of a writ of habeas corpus, can it be issued against a private individual, if it is proved that the private individual is illegally holding

another person in detention (see *Mohd. Ikram Hussain v. State of U.P.*).

13. Following the aforesaid principle, this Court fails to understand how can the writ court intervene in a dispute over property rights between private individuals.

14. Apart from the decision in *Sohan Lal*, subsequently in *Mohd. Hanif v. State of Assam* a three-Judge Bench of this Court explaining the general principle relating to the High Court's jurisdiction under Article 226 held that the jurisdiction of the High Court is extraordinary in nature and is vested in the High Court not for the purpose of declaring the private rights of the parties but it is conferred for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of the jurisdiction (see SCC p. 786, para 5).

15. The learned Judges in *Hanif case* reiterated the principle further by saying: (SCC p. 786, para 5)

“5. ... In a proceeding under Article 226 the High Court is not concerned merely with the determination of the private rights of the parties; the only object of such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction.”

16. The learned Judges in *Hanif* referred to the decision of this Court in *T.C. Basappa v. T. Nagappa* and held that: (*Hanif case*, SCC p. 786, para 5)

“5. ... It is obvious that the remedy provided under Article 226 is a remedy against the

violation of the rights of a citizen by the State or statutory authority. In other words, *it is a remedy in public law.*”

(emphasis supplied)

This principle holds good till today.”

Having regard to the above factual and legal position, we are of the opinion that the order of the learned Single Judge does not suffer from any error and no case for interference is made out.

Appeal is accordingly dismissed.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]