

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

FMA 1317 of 2021

With

IA NO: CAN 1 OF 2021

(Through Video Conference)

Reserved on : 14.07.2022

Pronounced on: 05.08.2022

Suvra Halder

...Appellant

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal, Advocates

... for the Appellant

Mr. Subhabrata Datta, Sr. Adv.
Mr. Sanatan Panja, Advocate

... for the Respondents

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the Learned Single Judge dated 17.08.2021 passed in W.P.A. No. 12224 of 2021 (Suvra Halder v. The State of West Bengal and Others) has been questioned by the appellant.
2. The writ petitioner/appellant is aggrieved by and dissatisfied with the order passed by Hon'ble Justice Rajasekhar Mantha as according to the appellant, the appellant despite having a decree of civil court regarding the absolute ownership on the land in dispute in her favour, the private respondents had entered into her property and demolished her boundary wall.
3. The appellant sought the intervention of police in helping her to construct the boundary wall as well as to prevent the private respondents from entering into her property. It was also submitted that the private respondent no.5 is an employee of the State police and was using his influence to discourage respondent no.4 from taking steps in the matter.
4. The Learned Single Judge was of the view that the remedy of the appellant was in execution of the civil decree that she had obtained against the private respondents. Additionally, the private respondent no.5 was not a party to the said civil suit.
5. The counsel for the appellant had relied upon the decision of the Supreme Court in the case of P.R. Murlidharan & Ors. vs. Swami Dharmananda Theertha Padar & Ors. (2006) 4 SCC 501. However, as the Learned Single Judge correctly pointed out, the said case has no application in the facts of this case.
6. However, the Learned Single Judge while disposing of the writ petition directed the officer-in-charge, Canning P.S. to ensure that no breach of peace in the area occurs and that he shall maintain strict vigil in the said area.
7. 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.
8. 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. 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. 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.

9. 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.

10. Having heard the learned counsel for the parties and on perusal of the record, this court has noticed that the right which the appellant is asserting is of pure civil nature, and therefore, the Learned Single Judge has not committed an error in reaching the said conclusion. Hence, in the circumstances of the case, we are of the opinion that no case for interference is made out.

11. For the foregoing reasons, the appeal is found to be devoid of any merit which is accordingly dismissed. All pending application are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

05.08.2022
PA(BS)