

2 03.08.2022

gd/ssd

MAT/1203/2022
IA NO: CAN/1/2022, CAN/2/2022
SHIRAJUL MALLICK
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Saunak Bhattacharya,
Mr. Saunak Mandal
..for the Appellant.

Mr. Asim Kr. Ganguli,
Mr. Subrata Dasgupta
..for the State.

Mr. Mrinal Kanti Mukherjee
..for the Respondent Nos.8 to 10.

CAN 2 of 2022 has been filed by the appellant seeking condonation of delay in filing this appeal.

Having heard the learned counsel for the parties and on perusal of the record, we are of the opinion that the delay in filing this appeal has been sufficiently explained and the appellant was prevented from filing the appeal within time on account of bona fide reason. Hence, CAN 2 of 2022 is, accordingly, allowed. The delay in filing the appeal is condoned.

By consent of the parties, the appeal is taken up for hearing.

This appeal is at the instance of the respondent no.8 in the writ petition challenging the order of the learned Single Judge dated 23.06.2022 passed in WPA

19558 of 2021.

The respondent nos.8 to 10 herein (writ petitioners) had approached the writ court with the plea that they were the owners of the premises in question and after the demise of their father the premises was divided in three parts. The further plea was raised that the appellant herein had earlier filed a suit claiming 50% ownership of the suit property being the Title Suit No.862 of 2019, but that was later on withdrawn. It was alleged that the appellant herein had raised a brick wall over the common passage obstructing the egress and ingress of the writ petitioners. In the writ petition a prayer was made seeking a direction to the official respondents to take necessary steps for removal of the said obstruction.

Learned Single Judge after hearing learned counsel for the parties has taken note of the rival criminal cases launched by the parties against each other and filing of the charge-sheet in those cases.

The learned Single Judge in the operative part of the order has observed as under:

“The allegation of the petitioners has been accepted by the police authorities. Criminal cases are pending. However, the petitioners are at liberty to approach the appropriate forum for ensuring free passage to and from their building.

If the petitioners complain before the concerned panchayat authorities and police help is sought for, the police shall render necessary assistance to the panchayat authorities, in accordance with law. The rights of the parties over the common

passage and the legality of the construction, in the nature of a boundary wall, have not been decided by this court.”

Submission of learned counsel for the appellant is that since the learned Single Judge has directed for police help, therefore, the panchayat has subsequently issued the notice dated 26.07.2022 treating the said direction to be a direction for demolition and requiring the appellant to demolish the construction. He submits that the dispute is of pure civil nature.

Learned counsel for the State has also submitted that the dispute is of civil nature and required to be settled in the civil court but if the police authorities receive any order of police help, they are required to extend the police help.

Learned counsel for the respondent nos.8 to 10 (writ petitioners) has submitted that since egress and ingress to the house has been obstructed, therefore, the writ petitioners are entitled to maintain the writ petition and the order of the learned Single Judge does not suffer from any error.

Having heard the learned counsel for the parties and on perusal of the record, we find that the learned Single Judge has not committed any error in observing that the rights of the parties over the common passage and legality of the construction in the nature of boundary wall has not been decided by the writ court. Such

dispute is required to be decided by the competent civil court. Hon'ble Supreme Court in considering the scope of interference in exercise of the writ jurisdiction under Article 226 of the Constitution in a private dispute has already settled in the matter of *Radhey Shyam vs. Chhabi Nath* reported in (2009) 5 SCC 616 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."

Hence, the writ court cannot enter into the arena of the private civil dispute between the parties. Any contrary observation made by the learned Single Judge touching upon the private civil right will not entitle any of the parties to approach the administrative authorities for action without proper adjudication of civil right by the competent Court.

Hence, we clarify the order of the learned Single Judge accordingly.

So far as the appellant's grievance against the notice dated 26.07.2022 is concerned since the same is a subsequent action of the Gram Panchayat, therefore, the appellant will be at liberty to challenge it before the appropriate forum in accordance with law.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

