

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

Reserved on: 07.12.2022
Pronounced on: 23.12.2022

MAT 1365 of 2022
with
CAN 1 of 2022
with
CAN 2 of 2022

Arun Kumar Sahdu

...Appellant

-Vs-

The State of West Bengal and Ors.

...Respondents

Present:-

Mr. S.N. Biswas, Advocate

... for the appellant

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

THE HON'BLE JUSTICE SUBHENDU SAMANTA,
JUDGE

Prakash Shrivastava, CJ:

1. By this intra-court appeal, writ petitioner has challenged the order of the learned Single Judge dated 8th of June, 2022 whereby WPA 21093 of 2021 has been disposed of with certain directions. There is a delay of 34 days in filing the appeal, therefore, appellant had filed CAN 1 of 2022 seeking condonation of delay. Having regard to the reasons disclosed in the application and submission of learned counsel for the appellant, CAN 1 of 2022 is allowed and delay in filing the appeal is condoned.
2. Having heard the learned counsel for the appellant and on perusal of the record, it is noticed that the appellant had approached the Writ Court with the plea that the respondent no. 5 is his daughter-

in-law and that the appellant and his wife are senior citizens. Further plea was raised that the appellant is the owner of the house at holding no. 141/23, Ward no. 9 under Suri Municipality. It is alleged that the respondent no. 5 is forcibly occupying the 1st floor of the house, therefore, the appellant is residing in an alternative accommodation and in spite of representations to the authorities, no action was taken.

3. In the writ petition, the appellant had made a prayer to restore the accommodation to the appellant of whole 1st floor being holding no. 141, Ward no. 9 under Suri Municipality by removing respondent no. 5.

4. Learned Single Judge has taken note of the stand of the respondent no. 5 that no disrespect or disturbance will be caused to the petitioner and his wife and further that the police authorities had also found that the rooms which were used by the appellant and his wife were kept secured under lock and key and in this background, learned Single Judge has disposed of the petition with liberty to the appellant to enter into the household at any point of time and use the other rooms which are available on the 1st floor and for that purpose, observation of necessary police assistance has been made.

5. Submission of learned counsel for the appellant is that the learned Single Judge in the facts of the case ought to have granted the prayer for restoration of possession of the appellant in the entire 1st floor by evicting the respondent no. 5.

6. Having heard the learned counsel for the appellant and on perusal of the record, it is noticed that the appellant is seeking a relief for eviction of the respondent no. 5 which is a pure private dispute and a family matter and such a direction cannot be issued in exercise of

the writ jurisdiction under Article 226 of the Constitution. Learned Single Judge has already extended adequate protection to the appellant. The issue of title and entitlement of the appellant to have possession of the entire 1st floor of the premises is a factual dispute for which the appellant is required to approach the appropriate forum in accordance with law. This Court in the order dated 12th of July, 2022 in the matter of **Swati Das vs. The State of West Bengal and Others** passed in **MAT 683 of 2022** has considered the similar issue and has held that:

“8. Now, the question arises, if in exercise of writ jurisdiction, learned Single Judge could have entered into the private dispute between the father-in-law and daughter-in-law and could have directed the eviction of daughter-in-law from the premises in question. Hon’ble Supreme Court in the matter of **N. Sankaranarayanan vs. Chairman, Tamil Nadu Housing Board and Others** reported in **(2020) 14 SCC 457**, in a case where a private property dispute between the family members was raised in the writ petition, had held that by indirect means in such a manner by filing a writ petition, a dispute *inter se* private parties could not be allowed to be raised in a writ petition under Article 226/227 of the Constitution and a writ petition for seeking issuance of mandamus against the State and its authorities in relation to the private property dispute is not maintainable.

9. In the matter of **Jacky vs. Tiny alias Antony and Others** reported in **(2014) 6 SCC 508**, Hon’ble Supreme Court considering the issue of maintainability of writ petition in a landlord-tenant dispute has held that a writ petition under Article 226 or 227 of the Constitution can neither be entertained to decide the landlord-tenant dispute nor is it maintainable against a private individual to determine an intense dispute including the question whether one party is harassing the other party.

10. In the matter of **K.K. Saksena vs. International Commission on Irrigation and Drainage and Others** reported in **(2015) 4 SCC 670**, Hon’ble Supreme Court has held that private law obligations of the State/public authorities not amenable to writ jurisdiction and that private law remedies are not enforceable through extraordinary writ jurisdiction though brought against public authorities. It has further been held that even if writ petition would be maintainable against the authority, before issuing any writ, particularly writ of mandamus, the Court, has to satisfy itself

that action of such an authority which is challenged is in the domain of public law as distinguished from private law.

11. Hon'ble Supreme Court in the matter of **Radhey Shyam and Another vs. Chhabi Nath and Others** reported in **(2009) 5 SCC 616** has taken note of earlier judgment on this issue as under:

“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* [AIR 1957 SC 529] 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 1957 SC 529] , 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.

17. Subsequently also in *Hindustan Steel Ltd. v. Kalyani Banerjee* this Court relying on the ratio in *Sohan Lal* held that since serious questions as to the validity of the respondent's title were raised and the dispute is on the possession of land and as the respondent failed to produce any clear, conclusive and unimpeachable documentary evidence, the matter cannot be dealt with by a writ court. Referring to *Sohan Lal* in para 16, the learned Judges held: (*Kalyani Banerjee case* , SCC p. 282)

“16. ... proceedings by way of a writ were not appropriate in a case where the decision of the court would amount to a decree declaring a party's title and ordering restoration of possession. This Court further held that the proper remedy in such a case is by way of a title suit in a civil court and the alternative remedy of obtaining relief by a writ of mandamus or an order in the nature of mandamus could only be had if the facts were not in dispute and the title of the property in dispute was clear.”

12. The Division Bench of this Court also in **Smt. Papiya Sengupta (nee Mukherjee) vs. State of West Bengal and Others** reported in **2014 SCC OnLine Cal 10724**, in a matter where the daughter-in-law making allegations of harassment and torture had filed the writ petition, has held that the relief prayed for could not have been granted to the petitioner and various disputed questions as to right of occupation of premises cannot be decided in the writ jurisdiction and writ cannot be said to an appropriate remedy in such a private dispute.

13. In the matter of **Partha Sarathi Chandra and Others vs. The State of West Bengal and Others** by order

dated 8th of June, 2022 passed in **MAT 1288 of 2021** in a case where similar order of eviction was passed by learned Single Judge in respect of the daughter-in-law and grandson in a writ petition at the instance of father-in-law, the Division Bench of this Court had set aside the order of the learned Single Judge by holding that in exercise of writ jurisdiction under Article 226 of the Constitution, such a direction was not warranted.”

7. Thus, in view of the above legal position, relief as prayed for cannot be granted in writ jurisdiction. Hence, we are of the opinion that no interference in the order of the learned Single Judge is required. The appeal is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(SUBHENDU SAMANTA)
JUDGE

Kolkata
23.12.2022

PA(RB)

(A.F.R./N.A.F.R.)