

**FMA 1209 of 2022
With
CAN 1 of 2022**

**Smt. Arati Mohanth
Vs.
The State of West Bengal & Ors.**

Mr. Subrata Bhattacharyya
Ms. Swagata Datta

... ... for the appellant

Ms. Jayeeta Sinha

... ... for the State

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chattopadhyay
Mr. Santanu Maji
Ms. Trisha Rakshit

... ... for the respondent nos.6 & 7

This intra-court appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 8th July, 2022 disposing of the WPA 11045 of 2022 with certain directions.

The appellant had filed the writ petition with the plea that she is residing in the property in question along with her husband and both of them are senior citizens. It was further pleaded that the respondent nos.6 and 7 are her daughter and son-in-law. There is allegation of misbehaviour and mistreatment to the appellant at the hands of the respondent nos. 6 and 7 and in that background the appellant had prayed for a mandamus to the official respondents to prohibit the respondent nos.6 and 7 from wrongfully restraining the appellant and her

husband from entering the premises and had also prayed for a direction to the official respondents to ensure that the respondent nos.6 and 7 vacate the premises. The appellant had claimed the property in question to be her own property.

Learned Single Judge has considered the issue and has reached to the conclusion that dispute is regarding ownership and title of the property and such a dispute can be decided by the appropriate Civil Court. Learned Single Judge has also noted that the appellant is claiming to be the exclusive owner of the property whereas the respondent no.6 is claiming share in the property.

In view of the aforesaid, learned Single Judge has refused to pass any order on the aforesaid prayers of the appellant but has directed the police to ensure that the appellant is able to reside in the premises peacefully and no harm is caused by the respondent nos.6 and 7.

Submission of learned counsel for the appellant is that the property belongs to the appellant and it is not a disputed property and the respondent nos.6 and 7 are misbehaving and mistreating the appellant and that the respondent no.7 is a rich person, hence, they should be restrained from residing in the premises.

Learned counsel for the respondent nos.6 and 7 has supported the impugned order.

Learned counsel for the State has produced the report which states that an attempt for amicable

settlement was made and that the dispute is of civil nature.

Having heard the learned counsel for the parties and on perusal of the record, we notice that the learned Single Judge has rightly reached to the conclusion that there is a civil dispute which can more appropriately be decided by the competent Civil Court. Writ Court cannot enter into the arena of disputed questions of fact which are involved in the present case. Hon'ble Supreme Court in the matter of Radhey Shyam and another v. Chhabi Nath and others, reported in (2009) 5 SCC 616 considering the earlier judgement on the point has clearly laid down that writ jurisdiction under Article 226 of the Constitution cannot be exercised to decide the private dispute between the parties. In the said judgement it has been 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 [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 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 [AIR 1957 SC 529], subsequently in Mohd. Hanif v. State of Assam [(1969) 2 SCC 782] 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 [(1969) 2 SCC 782] 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 [AIR 1957 SC 529] 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.”

The view which has been taken by the learned Single Judge in consonance with the aforesaid judgement of the Hon’ble Supreme Court. That apart, it is also noticed that the learned Single Judge has already extended adequate protection to the appellant.

Thus, in the circumstances of the case, we find no error in the order of the learned Single Judge and no case for interference is made out.

The appeal is accordingly dismissed.

Connected application is also dismissed.

(Prakash Shrivastava, C.J.)

(Ananya Bandyopadhyay, J.)