

November 23, 2022
Sl. No. 9
Court No.1
s.biswas

MAT 1562 of 2022
With
CAN 1 of 2022

Amalendu Ghorai
vs.
The State of West Bengal and others

Mr. Uday Narayan Betal,
Mr. Bhaskar Hutait, Advocates

... for the appellant

Mr. Pantu Deb Roy, AGP
Mr. Subrata Guha Biswas, Advocates

... for the State

This intra-Court appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 14.09.2022 whereby the WPA 9226 of 2022 has been disposed of with certain observations.

Submission of learned counsel for the appellant is that the appellant is entitled to take out the belongings from his house and learned Single Judge has committed an error in not granting relief in the writ petition.

Opposing the appeal learned counsel for the State has submitted that the appellant is residing with the second wife and doing the business along with the son of his second wife and that the dispute is of civil nature.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the appellant had approached the writ court with the plea that he was the owner of the *bastu*

land described in paragraph 2 of the writ petition and he is also a ration dealer who has constructed a ration shop and godown on the said land. It has further been pleaded that he had gifted the said land to his wife in the year 2011 and is residing in new building consisting of two bedrooms. The plea raised in the petition is that the private respondent Nos.6 and 7 had mistreated the petitioner and they had thrown out the ration goods from the godown of the petitioner. With the aforesaid complaint, the appellant (writ petitioner) had made a prayer in the writ petition seeking direction to the police authorities to take immediate steps so that the appellant is able to stay at his own residence and to render adequate assistance for living at the residence.

The pleadings contained in the writ petition clearly reveal that the appellant has a civil dispute with his family members for which the writ is not the appropriate remedy. The relief of taking out the goods from the residential house cannot be granted in exercise of the jurisdiction under Article 226 of the Constitution of India. The Hon'ble Supreme Court in the matter of **Radhey Shyam vs. Chhabi Nath** reported in **(2009) 5 SCC 616** following decision in this regards has held 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* 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.”

In the above circumstances, no error has been committed by the learned Single Judge in holding that he is not inclined to enter into the civil rights between the parties and for such dispute the appropriate civil proceedings can be taken up. The view which is taken by the learned Single Judge in

the impugned order does not suffer from any error. Hence, no case for interference in this appeal is made out, which is accordingly dismissed. The stay application being CAN 1 of 2022 also stands dismissed accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)