

December 22, 2022
Item No. 10
Court No.1
PA(RB)

MAT 1768 of 2022

With

CAN 1 of 2022

CAN 2 of 2022

Manju Jaiswal & Ors.

vs.

State of West Bengal & Ors.

Mr. Dhiraj Trivedi,
Mr. Bikash Kumar Singh,
Mr. Sunil Gupta,
Ms. Swapna Jha, Advocates

... for the appellants

Mr. T.M. Siddique
Mr. Sutanu Chakrabarti, Advocates

... for the State

Mr. Sayantan Bose,
Ms. Ankita Choudhury,
Mr.S. Rout, Advocates

... for the respondent nos. 6 to 8

By this intra-court appeal, writ petitioners have challenged the order of the learned Single Judge dated 31st of August, 2022 whereby WPA 7081 of 2022 has been disposed of with certain observations.

Appellants had filed the petition with the plea that they have inherited as co-owners and/or coparceners owners of the property in question along with the boundary wall and that private respondents are in occupation of the land adjoining to it. It was further pleaded that the boundary wall demarcating the appellants' premises was in a dilapidated condition, therefore, they had tried to repair it but were obstructed by the agents of the private respondents. It was further pleaded that the

appellants had filed the Title Suit No. 906 of 2018 for declaration and permanent injunction praying for the interim injunction restraining the private respondents 6 to 8 from stopping the work of repair and reconstruction of the boundary wall. It was also pleaded that finding merit in the case of the appellants, learned Trial Judge by order dated 27th of November, 2020 had passed the order of temporary injunction restraining the respondent nos. 6 to 8 from creating any disturbances in the peaceful possession and enjoyment of the appellants' property. It was alleged in the petition that inspite of the order of temporary injunction, the respondent nos. 6 to 8 had threatened the appellants to dispossess and had tried to break their padlock. In the writ petition, a prayer was made to issue a direction to the respondents not to interfere in the peaceful possession of the appellants and not to obstruct the egress and ingress of the appellants in the premises.

Submission of learned counsel for the appellants is that the Civil Suit is pending and police officers are restraining the appellants in peaceful enjoyment of the property and the appellants are only seeking protection of their right. His further submission is that appellants are co-sharers and that appellants' padlock is on the gate of the

premises but they are restrained when they try to enter the premises.

Learned counsel for the State has opposed the appeal and has submitted that the complaint of the appellants was inquired into and no substance was found about the obstruction by the respondents. He further submits that on the complaint of the private respondents about breaking the wall, action was taken and the accused persons were arrested.

Learned counsel for the respondent no. 6 has submitted that the injunction order is operating against the respondent no. 6 who has filed the appeal. He has disputed the possession of the appellants and has also submitted that the appellants are not the plaintiffs in the suit and they have come up with a false plea in the writ petition.

We have heard the learned counsel for the parties and have perused the record. The plaint on record indicates that the appellants are not the plaintiffs in the suit and they are only the proforma defendants, therefore, we find substance in the submission of learned counsel for the private respondents that appellants have filed the writ petition taking the incorrect plea that the suit was filed by them. That apart, we find that the dispute is pure private in nature which involves adjudication of

factual questions which are not permissible in exercise of the writ jurisdiction.

Learned Single Judge has already considered the report filed by the police authorities and has noted that on the allegation of violation of injunction order, a case was registered and after investigation, charge-sheet was filed. It has also been noted that on the allegation of the appellants about obstruction of possession by the private respondents, an inquiry was made but the allegation was not substantiated.

Such a factual allegation on the possession of the disputed facts cannot be adjudicated upon by the Court while exercising jurisdiction under Article 226 of the Constitution. The civil suit is already pending wherein parties will have an opportunity to lead evidence and establish their right. If there is any breach of the order of temporary injunction, then also remedy has been provided under the Civil Procedure Code.

That apart, it has also been pointed out that against the order of the Trial Court granting temporary injunction, an appeal is pending wherein correctness of the order of temporary injunction will be decided by the Appellate Court.

Thus, learned Single Judge has rightly reached to the conclusion that any adjudication by the Writ Court would become an adjudication of possession in respect of the property. Thus, we find that no error has been committed by the learned Single Judge in passing the impugned order and no case for interference is made out.

The appeal is accordingly dismissed.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]