

November 30, 2022
Sl. No. 5
Court No.1
s.biswas

MAT 1790 of 2022
With
CAN 1 of 2022
CAN 2 of 2022

Amalendu Pal and another
vs.
Tapan Kumar Guria and others

Mr. Satyajit Mandal,
Mr. Amar Nath Sen,
Mr. Malay Dhar,
Mr. Shouvik Naskar,
Mr. Amit Bikram Mahata, Advocates

... for the appellants

Mr. Anil Jana,
Ms. Rita Patra, Advocates

... for the respondent Nos.1 and 2

Mr. Partha Pratim Roy,
Ms. Sayantanee Bhattacharjee, Advocates

... for the State

By this intra-court appeal the respondent Nos.6 and 7 in the writ petition have challenged the order of the learned Single Judge dated 7th September, 2022 whereby WPA 6602 of 2022 filed by the respondent Nos.1 and 2 herein (writ petitioners) has been disposed of with certain directions.

The writ petitioners had approached the learned Single Judge with the plea that they were the owner and in possession of the land in question and the appellants herein were disturbing their peaceful possession. It was further pleaded that the Title Suit No.286 of 2013 was filed by the writ petitioner No.1 wherein the order of status quo was passed and was operating and the recording of name of the appellants as *Bargadar* was the subject matter of challenge wherein the order impugned was stayed.

In this background the writ petitioners had prayed for a direction to the police authorities to render protection to the writ petitioners to possess and cultivate the land in question.

Learned Single Judge by the impugned order has directed the Officer-in-Charge of the concerned police station to ensure that the writ petitioner is able to enjoy his land peacefully without disturbance and if necessary, deploy the police personnel thereat.

Submission of learned counsel for the appellants is that the dispute relating to possession is still pending and there is no conclusive order holding the writ petitioners to be in possession of the land, therefore the Writ Court ought not have issued a direction to protect the possession of the writ petitioners. Further submission is that the order of status quo passed on the temporary injunction application in the pending suit has been misread by the learned Single Judge and that the writ petitioners have suppressed the earlier order dated 28.07.2014 passed by this Court in WP 20607(W) of 2014. Further submission is that the possession of the appellants has been put under threat by virtue of the direction of the learned Single Judge.

Per contra learned counsel appearing for the writ petitioner has supported the impugned order of the learned Single Judge by submitting that the appellants are claiming themselves to be *Bargadar*

and the order of the competent authority recording of name of the appellants as *Bargadar* has already been stayed by the Division Bench of this Court, therefore the appellants cannot claim any right over the land in question. He has also submitted that earlier this Court in WP 20607(W) of 2014 had rejected the prayer.

We have heard the learned counsel for the parties.

Undisputedly the writ petitioner has filed the Title Suit No.286 of 2013 before the Civil Judge (Junior Division), Kakdwip, South 24-Parganas. In that suit an *ex parte* ad interim temporary order of injunction was passed by the Trial Court on 04.12.2013, which reads as under:

“It is ordered that the plaintiff and defendant no.1 to 4 are hereby directed to maintain status quo in respect of the right, title, possession and interest over the suit property as it stands on this day till 10.01.2014.

Plaintiff is directed to comply with the provisions of Or-39 R-3(a) & (b) CPC.

Requisites at once.”

Learned Trial Judge while passing the aforesaid order of status quo had not recorded any prima facie finding about the possession of any of the parties on land in question.

It has been pointed out that the application for temporary injunction filed under Order XXXIX Rule

1 and Rule 2 of the Code of Civil Procedure in the Title Suit is still pending and it has not been finally decided.

There was another stream of dispute between the parties as the appellants were claiming themselves to be *Bargadar* of the land in question. Appellant had filed an application before the competent authority which was allowed by the order dated 22nd April, 2013 recording the name of the appellants as *Bargadar* in respect of plot of land in question. The said order was the subject matter of challenge before the appellate authority and the appellate authority by order dated 16th January, 2017 had affirmed the order of the original authority. Against these orders a prayer for stay was made by the appellants before Tribunal, which was refused. In WBLRT 44 of 2018 the Division Bench of this Court by order dated 29.08.2018 had stayed the order of the original authority as well as the appellate authority by expressing hope that the Tribunal will dispose of the original application expeditiously.

It has been pointed out that the issue relating to recording of name of the appellants as *Bargadar* is still pending before the Tribunal.

The above sequence of events clearly reveal that neither the right of the appellants for recording their name as *Bargadar* has finally been determined

nor the issue relating to claim of possession or as to who was in possession of the land on the date of passing of the order of status quo by the Trial Court has been decided till now.

The writ petitioners had sought police protection in the present writ petition. Earlier also similar application for police protection was filed and the writ petition being WP 20607(W) of 2014 was moved before this Court by the present writ petitioner, which was dismissed by the learned Single Judge by order dated 28.07.2014 by observing as under:

“It is not in dispute that the injunction application is yet to be disposed of. In any view of the matter, question of directing the police to provide protection does not arise having regard to the law laid down in paragraph 19 of the decision reported in (2006) 4 SCC 501 (P.R. Murlidharan v. Swami Dharmendra Theertha Padar). Paragraph 19 of such decision reads as follows:

“19. A writ for ‘police protection’ so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.”

Since the rights of the petitioner have not been conclusively determined even at the

interlocutory stage in an unambiguous manner, this writ petition is not maintainable.

That apart, it appears that the petitioner has approached the civil court with an application under Section 151 of the Code of Civil Procedure for police protection. The said application is due to be considered on 15th September, 2014.

I am of the further view that the petitioner by seeking writ remedy has been pursuing parallel remedy, which is impermissible in view of the law laid down by the Supreme Court of India reported in (2010) 4 SCC 393 [Manish Goel-vs.-rohini Goel].

The writ petition stands dismissed, without costs.”

While dismissing the above writ petition learned Single Judge had reached to the conclusion that if the rights of the petitioners (the writ petitioners herein) were not conclusively determined even at the interlocutory stage in an unambiguous manner, the writ could not be maintained. The position which was existing at that time continues to exist as on today.

The order dated 28.07.2014 in WP 20607(W) of 2014 was not filed nor it was brought to the notice of the learned Single Judge when the impugned order was passed in the writ petition. It appears that on account of the suppression of the aforesaid order, contrary view has been taken by the learned Single Judge while passing the order under appeal.

Without ascertaining as to who was in possession of the property in question as on date of passing the order of status quo, the possession of the particular party cannot be protected or disturbed.

In the aforesaid circumstances, we find that the order of the learned Single Judge cannot be sustained.

Hence, we set aside the order of learned Single Judge and direct the Trial Court to decide the pending application for temporary injunction as expeditiously as possible and while deciding the said application, trial court will prima facie ascertain the possession. Since the order of status quo passed on 04.12.2013 in the Title Suit is still operating, therefore we direct the parties to comply with the said order and maintain status quo existing as on 04.12.2013 i.e. the date of passing of temporary injunction order.

The appeal and connected applications are accordingly disposed of.

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

(Prakash Shrivastava, C.J.)

(Ananya Bandyopadhyay, J.)