

December 8, 2022
Sl. No.2
Court No.1
s.biswas

MAT 1838 of 2022
With
CAN 1 of 2022

Md. Sariful Mondal
vs.
The State of West of West Bengal and others

Mr. Mohinoor Rahaman,
Ms. Maria Rahaman,
Ms. Iqra Rahaman, Advocates

... for the appellant

Mr. Himadri Sekhar Chakraborty,
Mr. Dipankar Ghosh, Advocates

... for the State

Mr. Mahamudul Hassan, Advocate

... for the respondent Nos.7 & 15

Mr. Manas Kumar Das, Advocate

... for the respondent Nos.8 to 14

This intra-court appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 21st November, 2022 dismissing the WPA 23230 of 2022.

The appellant had approached the writ court with the plea that he is the legal heir of the original owner of the land in question on which the respondents were raising construction of a mosque. Hence the prayer was made to issue a direction to the official respondents especially the District Magistrate and Collector, North 24 Parganas to take immediate action for demolishing the construction of mosque raised on the land in question.

Learned Single Judge has taken note of the pending suit and the order passed therein on the application for temporary injunction and thereafter has refused to interfere in the matter.

Submission of learned counsel for the appellant is that under Section 5 of the West Bengal Religious Buildings and Places Act, 1985, the permission is required for construction of public religious building and in terms of Section 9 of the Act, jurisdiction of the Civil Court is barred. His further submission is that learned Single Judge ought to have entertained the petition and granted relief as prayed therein.

Learned counsel for the respondents have opposed the appeal. Submission of learned counsel for the respondent Nos.7 and 15 is that the temporary injunction has already been refused by the trial court and that after an agreement with the appellant, the construction of the mosque has been started, therefore at this stage no interference is required.

Learned counsel for the other private respondents has also opposed the appeal.

Learned counsel for the State has submitted that the mosque was constructed in the year 2019 and there is no construction going on at this stage.

We have heard the learned counsel for the parties and perused the record. Undisputedly one of the appellant has filed Title Suit No.122 of 2018. In that suit ad-interim temporary injunction was granted by the trial court on 18.05.2018 by directing the parties to maintain status quo with regard to possession of suit property and also restraining them

from changing the nature and character of the said land, thereafter the parties were heard by the trial court on the application for temporary injunction on 22nd September, 2022. The trial court on 22nd September, 2022 had declined the prayer for temporary injunction by taking note of the report of the Commissioner dated 25.02.2019 disclosing that the mosque on the suit property is surrounded by fencing. The trial court had also taken note of the agreement dated 24.02.2018 between the plaintiff and the concerned defendants, granting permission to erect mosque on the land in question. The trial court, while rejecting the application for temporary injunction, has reached to the conclusion that if the defendants are restrained from making any further construction, they will suffer irreparable loss and injury.

It is undisputed that against this order of the trial court, an appeal has been preferred which is pending for consideration. Hence, the issue which the appellant is raising in this appeal can be raised in the pending appeal against the order of rejection of the temporary injunction.

That apart, it is also noticed that the petitioner by way of writ petition has raised the private dispute with the respondents, which is not permissible in view of the judgment of the Hon'ble Supreme Court in the matter of ***Radhey Shyam vs. Chhabi Nath***

reported in **(2009) 5 SCC 616** where the following decision in this regard has been held:

“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.”

Having regard to the aforesaid, we find that the learned Single Judge has rightly reached to the

conclusion that no interference in the writ petition is required. Thus, we do not find any illegality in the order of the learned Single Judge. 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.]

[Subhedu Samanta, J.]