

July 13, 2023
Sl. No.19 & 20
Court No.19
s.biswas

CO 658 of 2023

Sarbeswar Jana and others

vs.

Kanailal Jana and others

WITH

CO 3254 of 2022

Bankim Chandra Jana and another

vs.

Sarbeswar Jana and others

Mr. Debaprasad Adhikari

Mr. Nirmalendu Patra

Mr. Gautam Das

Mr. Deb Narayan Patra

... for the petitioners in CO 658 of 2023
& for the opposite parties in CO 3254 of 2022

Mr. Amit Baran Dash

Ms. Ankana Sarkar

... for the opposite party nos.2, 3 and 7
in CO 658 of 2023
& for the petitioners in CO 3254 of 2022

Both the revisional applications arise out of the orders passed in Title Suit No.38 of 2021 disposing of two applications filed by the plaintiffs/petitioners in CO 658 of 2023. One such application was for an order directing the removal of the bamboo fencing from the northern and southern edge of 'Ka' Schedule property and the second application was for implementation of the said order. The first application was allowed and the second application was rejected.

The petitioners in CO 3254 of 2022 are some of the defendants and they have assailed the order passed by the learned Civil Judge Junior Division First Court at Contai, dated September 16, 2022, by

which the defendant nos.3, 8, 9, 10 and 11 were directed to remove the obstructions created by the bamboo fencing which had been erected on the northern and southern edge of the Ka Schedule property, after the order of status quo was passed. It is submitted by the learned advocate for the petitioners/defendants in the said revisional application, that the main relief in the suit had been allowed by the learned court below, while disposing of the application under Section 151 of the Code of Civil Procedure on September 16, 2022.

CO 658 of 2023 arises out of the December 20, 2022 passed by learned court rejecting an application filed by the petitioners/plaintiffs praying for implementation of the order dated September 16, 2022.

Mr. Adhikary, learned advocate appearing for the petitioners in CO 658 of 2023 submits that the learned court below wrongly refused to implement its own order dated September 16, 2022.

The facts of the case are as follows:-

- a) The plaintiffs in Title Suit No.38 of 2021 who are the revisionists in CO 658 of 2023, filed the suit claiming easementary right in respect of the Plot No.1098 of Mouza-Junbani, which has been recorded as 'bastu' and 'path' in the record of rights;

- b) The land owned by the plaintiffs had been delineated as 'Kha' Schedule property and the pathway through which the plaintiffs claimed easementary right, was delineated as Ka Schedule property on plot No.1098.
- c) Upon hearing the plaintiffs, an ad interim order of injunction was passed. Learned court below directed the parties to maintain status quo with regard to the Ka Schedule property. Such order was duly communicated to the police authorities and the Inspector-In charge, Contai police station, was directed to implement the order and file a report.
- d) Alleging that the entrance to the Ka Schedule property had been blocked by erection of bamboo fencing at the northern and southern edge of 'Ka' Schedule property.
- e) An application under Section 151 of the Code of Civil Procedure was filed for removal of the bamboo fencing.
- f) By order dated September 16, 2022, the bamboo fencing was directed to be removed and the application was allowed.
- g) The petitioners in CO 2354 of 2022, have challenged the said order before this court.

- h) The plaintiffs prayed for implementation of the order dated September 16, 2022 on the ground that the order dated September 16, 2022 had not been complied with. The learned court below rejected the said application on contest, inter alia, on the ground that any direction for implementation of the order passed in the application under Section 151 of the Code of Civil Procedure on September 16, 2022 would amount to granting the main relief. CO 658 of 2023 has been filed challenging the said order dated December 20, 2022.
- i) The defendants who are revisionists in CO. 3254 of 2022, submit that if the bamboo fencing was removed by order of court, the same would amount to grant of the prayers filed in the main suit.
- j) The court held that the entire issue should be decided on the basis of the records and while deciding the application for injunction. In the meantime, if any order was passed with regard to 'Ka' Schedule property, in that event, the defendants would suffer irreparable loss and injury and the order of removal of the fencing if implemented, would

amount to allowing the main relief in the suit.

Having heard the learned advocates for the respective parties, this court is of the view that the order of ad interim injunction was passed in aid of the main relief. The learned court below, upon being satisfied that there was an existence of a village pathway as reflected in the record of rights which was to be protected, directed all the parties to maintain status quo with regard to the nature and character of the 'Ka' Schedule property and further directed the parties not to create any obstruction with regard to 'Ka' Schedule property.

Upon, prima facie, being satisfied with the case of the plaintiffs, such order was passed. Had the plaintiffs not been able to show any, prima facie, case, the court would have refrained from passing any order. Such ad interim order of injunction has not been challenged before any superior forum by the defendants. The application for temporary injunction is yet to be disposed of.

At that juncture, alleging violation of the order of ad interim injunction, and obstruction created by some of the defendants, the plaintiffs filed an application under Section 151 of the Code of Civil Procedure, praying for removal of the bamboo fencing. The court, upon considering the facts and

the report of the learned advocate commissioner as also the report of the police, came to the conclusion that the obstruction, i.e., bamboo fencing in the northern and southern edge of the 'Ka' Schedule property, should be removed. Necessary direction was passed.

The contention of the learned advocate for the defendants and petitioners in CO 235 of 2022 that the remedy of the plaintiffs would be to file an application under Order 39 Rule 2A of the Code of Civil Procedure, is not accepted. The said section deals with punishment which can be imposed for violation of the order of injunction. However, an order for removal of obstruction and restoration of the property to its original position, can be passed if the court is satisfied that the ad-interim order had been violated. In order to ensure that the property is protected and the mischief committed is removed, status quo ante may be directed. Such orders are passed by invoking the inherent power under Section 151 of the Code of Civil Procedure.

In the decision of **Manoharlal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal** reported in **[1962] Supp. 1 S.C.R.**, the Hon'ble Supreme Court held as follows:-

“The provisions of s. 151 of the Code make it clear that the inherent powers are not controlled by the provisions of the Code. Section 151 reads:

‘Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of the justice or to prevent abuse of the process of the Court’."

If courts cannot pass such orders, there would be no meaning and relevance to the ad-interim order of injunction passed by courts. Rampant violation must be discouraged. The order dated September 16, 2022 does not suffer from any irregularity. Such order, are necessary to maintain the majesty of judicial orders and to preserve the rule of law. Such orders are passed to retain faith of the litigants in the administration of justice and to undo a wrong. The disobedience to an order is remedied and status quo ante is restored.

Reference is made to the decision of this Court in **Nandan Pictures Ltd. vs. Art Pictures Ltd. and ors.** reported in **AIR 1956 Cal 428**, the Hon'ble Division Bench of this High Court held as follows:-

“If a mandatory injunction is granted in an interlocutory application, it is granted only to restore the status quo and not granted to establish a new state of things, differing from the state which existed at the date when the suit was instituted. The one case in which a mandatory injunction is issued on an interlocutory application is where, with notice of the institution of the plaintiff's suit and the prayer made in it for an injunction to restrain the doing of a certain act, the defendant does that act and thereby alters the factual basis upon which the plaintiff claimed his relief. An injunction is issued in such a case in order

that the defendant cannot take advantage of his own act and defeat the suit by saying that the old cause of action no longer survived and a new cause of action for a new type of suit had arisen. When such is found to be the position, the Court- grants a mandatory injunction even on an interlocutory application, directing the defendant to undo what he has done with notice of the plaintiff's suit and the claim therein and thereby compels him to restore the position which existed at the date of the suit."

The order dated December 20, 2022 suffers from material irregularity, inasmuch as, the court found obstruction on the northern and southern edge of 'Ka' Schedule property, and passed an order for removal of the bamboo fencing. Thereafter, the same court refused to direct the police to implement the order on the ground that an order for implementation would amount to allowing the main relief in the suit. The main allegation in the suit was that the pathway in the plot No.1098 was being gradually destroyed and obliterated by the defendants. Hence a suit for declaration and permanent injunction was filed. The defence case was that the pathway never existed and the record of rights was erroneous. Finding, existence of a pathway, the ad-interim order of injunction was passed. Subsequent obstruction on the northern and southern edge of the 'Ka' Schedule was directed to be removed as the court was satisfied on the basis of the police report that such bamboo fencing had been

erected. The order did not amount to allowing the main relief. The property deserved to be preserved.

It appears that Plot No.854 as delineated in map of the learned advocate commissioner has been referred to as dhalai road for the use of the villagers. There is also an existence of a road in plot No.1098 from the dhalai road. The police report indicated that there was a bamboo fencing on the northern and southern edge of plot No.1098. The police report was prepared on dated June 24, 2022, that is, after the alleged date of violation of the ad-interim order. Any obstruction on the northern and southern edge of 'Ka' Schedule property must be removed, so that the order of ad-interim injunction is complied with and status quo ante is restored.

The bamboo fencing on the northern and southern edge of the 'Ka' schedule property shall be removed by the IC, Contait police station forthwith, as directed by the learned court, by order dated September 16, 2022.

This court has not expressed any opinion with regard to the easementary claim of the petitioners through Plot No.1098, which is the 'Ka' Schedule property. The injunction application will be disposed of within two months from the next date fixed.

This observation is tentative in nature and shall not influence the learned court below while deciding

the application for injunction. The learned court below shall proceed with the application independently. The learned court below shall ensure that the order of this court is complied with immediately and a report is filed by the police authorities before the learned court below.

CO 658 of 2003 and CO 3254 of 2022 are disposed of. The order dated September 16, 2022 is upheld and the order dated December 20, 2022 is set aside.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)