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MAT/1968/2022
IA NO: CAN/1/2022
ARIJIT MAJUMDAR
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Kamalesh Bhattacharya,
Mr. Ashoke Kumar Nath
..for the Appellant.

Mr. Debashis Sarkar
..for the State.

By this intra court appeal the appellant (writ petitioner) has challenged the order of the learned Single Judge dated 29th November, 2022 whereby WPA 1001 of 2022 has been disposed of by giving liberty to the petitioner to approach the Civil Court against the private respondent.

The appellant had filed the writ petition with the plea that the father of the appellant was the owner of the plot of land having Holding No.RA-513, Santinagar, Salt Lake, Sector-IV, Kolkata and after the death of the appellant's father the appellant had become the owner of the said plot wherein he was residing. It was alleged in the writ petition that the private respondent had unauthorisedly and forcibly entered into the property of the appellant and had tried to construct a building. Further plea was raised that though the complaint was made, but no action was taken by the police. Hence, in

the writ petition a prayer was made to direct the official respondents to restrain the private respondent from entering into the property of the appellant or causing any violence upon the appellant.

Learned Single Judge had called for the police report and after examining the same has reached to the conclusion that the title dispute to the property is involved, therefore, has permitted the appellant to approach the Civil Court against the private respondent.

Submission of learned counsel for the appellant is that the appellant is the owner of the property whereas there is no title document with the private respondent, therefore, the appellant should not be required to approach the Civil Court but in exercise of the writ jurisdiction protection should have been extended to the appellant.

As against this, learned counsel for the State has opposed the appeal.

We have heard the learned counsel for the parties and perused the record.

Learned counsel for the State has read out the police report, which was produced before the learned Single Judge. The said police report clearly reflects that both the rival parties had produced the respective documents in respect of their claim over the property

and in view of the same, learned Single Judge has rightly reached to the conclusion that the title dispute in respect of the property exists. The report reflects that on the complaint of the appellant, police had taken adequate steps and had tried to ascertain the position of the spot and had, accordingly, submitted the report disclosing the title dispute.

The law is very well settled that in exercise of the jurisdiction under Article 226 of the Constitution of India the Writ Court cannot enter into the arena of the private and civil dispute and such title disputes cannot be the subject matter of adjudication in exercise of the writ jurisdiction.

Hon'ble Supreme Court in the matter of *Radhey Shyam & Another v. Chhabi Nath & Others* reported in (2009) 5 SCC 616 in this regard has settled.

“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.

17. Subsequently also in *Hindustan Steel Ltd. v. Kalyani Banerjee* this Court relying on the ratio in *Sohan Lal* held that since serious questions as to the validity of the respondent's title were raised and the dispute is on the possession of land and as the respondent failed to produce any clear, conclusive and unimpeachable documentary evidence, the matter cannot be dealt with by a writ court. Referring to *Sohan Lal* in para 16, the learned Judges held : (*Kalyani Banerjee case*, SCC p. 282)

“16. ... proceedings by way of a writ were not appropriate in a case where the decision of the court would amount to a decree declaring a party's title and ordering restoration of possession. This Court further held that the proper remedy in such a case is by way of a title suit in a civil court and the alternative remedy of obtaining relief by a writ of mandamus or an order in the nature of mandamus could only be had if the facts were not in dispute and the title of the property in dispute was clear.”

Having perused the order of the learned Single Judge, we find that the view which has been taken in the impugned order is in consonance with the law which has been settled by the Hon'ble Supreme Court, therefore, no case for interference in the present appeal is made out. The appeal is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

