

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 2302 of 2023

With

CAN 1 of 2023

**West Bengal State Food Processing
And Horticulture Dev Corporation Ltd.**

VS.

State of West Bengal & Ors.

For the Appellant : Mr. Jaydip Kar, Sr. Adv.,
Mr. Siddhartha Banerjee
Mr. Dytiman Banerjee
Mr. Deb Kumar Deashi
Ms. Jyoti Rauth

For the Respondent No. 3: Mr. Jayanta Kumar Mitra, Sr. Adv.,
Mr. Abhimanyu Banerjee

For the State : Mr. Chandi Charan De, A.G.P.,
Mr. Sadhan Halder

Heard on : December 18, 2023

Judgment on : December 18, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment and order dated November 17, 2023 passed by the learned Single Judge in W.P.A. 17932 of 2023.

2. By the impugned judgment and order, the learned Single Judge, held that the respondents/appellants before us failed to produce any document to show that they obtained possession of the subject land lawfully. The learned Single Judge proceeded to direct the appellant before us not to disturb or obstruct the writ petitioner and his men and agents from their ingress and egress to and from the subject land otherwise than any due process of law. The learned Single Judge cancelled a notice dated April 27, 2023 issued by the appellant.
3. Learned Senior Advocate appearing for the appellant submits that, the appellant was put into possession of the land in question by an order dated October 13, 2020. The appellant was not granted any liberty to file any affidavit by the learned Single Judge and, therefore, the appellant could not draw the attention of the Court to the material documents with regard to possession of the property. He submits that, the State obtained possession of the land from the writ petitioner obtained the land and that the possession of the land was made over by the State to his client subsequent thereto.
4. Learned Senior Advocate appearing for the appellant submits that, four writ petitions in aggregate were filed in respect of the land in question. He submits that, the three previous writ petitions contained prayers with regard to the possession of the property concerned. The immediately

previous to the writ petition herein, was dismissed on the ground of disputed questions of fact being involved. He submits that, there is an appeal pending against such order of the learned Single Judge. He draws the attention of the Court to the pleadings and the prayers made in such writ petition. He submits that, one of the prayers made in such writ petition related to possession of the immovable property concerned. Here also in the present writ petition, the writ petitioner sought relief with regard to possession of an immovable property. He submits that, either the principles of *res judicata* apply to the parties since if it is held that the writ petitioner prayed for possession in the earlier writ petition, then such issue was decided, or the principles akin to those enshrined in Order II Rule 2 of the Code of Civil Procedure, 1908 apply since if the writ petitioner contends that in the earlier writ petitions, writ petitioners did not leave to pray for possession in a separate writ petition.

5. Learned Senior Advocate appearing for the appellant submits that, the writ petitioner acknowledged in several pleadings that, he lost possession of the land in question on August 8, 2021. Thereafter, he filed the writ petition seeking reliefs with regard to the possession in the immediately previous writ petition. However, the writ petitioner did not succeed in obtaining such relief. The learned Judge overlooked such fact while granting relief to the writ petitioner.

6. Learned Senior Advocate appearing for the appellant submits that, the learned Judge proceeded on an erroneous assumption of fact. Learned Judge proceeded on the basis of a Memorandum of understanding to be executed between the writ petitioner and the State while it was not so. Moreover, the learned Judge misappreciated the scope and ambit of the earlier writ petition.
7. Relying upon *(2023) SCC Online SC 1331 (State of U.P. & Anr. Vs. Ehsan & Anr.)*, learned Senior Advocate appearing for the appellant submits that, where disputed questions of facts are involved, the Writ Court should not intervene.
8. Learned Senior Advocate appearing for the writ petitioner/respondent no. 3 submits that, there are no disputed questions of fact involved. He submits that, the fact that his client was put into permissible possession of the land in question is admitted. Also admitted is the fact that the writ petitioner was dispossessed on August 9, 2021. He submits that, none of the parties are in position to demonstrate before the Court that, his client was dispossessed by a process known to law. He contends that, since, the possession of his client was disturbed wrongfully and illegally, he is entitled to the protection as granted by the impugned judgment and order.

9. In support of such contentions, learned Senior Advocate appearing for the respondent no. 3 relies upon *AIR 1961 SC 1570 [Bishan Das & Ors. vs. State of Punjab & Ors.]*, *AIR 1968 SC 620 [Lallu Yeshwant Singh (dead) by his legal representative vs. Rao Jagdish Singh & Ors.]*, *(1989) 4 SCC 131 Krishna Ram Mahale (dead) by his legal representatives vs. Mrs. Sbhubha Ram Venkat Rao]* and *(1997) 3 SCC 169 [M/s. Anamallai Club vs. Government of T.N. & Ors.]*.
10. Learned Senior Advocate appearing for the respondent no. 3 draws the attention of the Court to the chain of events commencing from the date of the advertisement. He submits that pursuant to an advertisement issued by the State, his client participated in the selection process. His client being successful was granted permissive possession of 5 hectre of land. He refers to the letters exchanged with regard to the possession being given. He submits that, possession of the land in question was made over to his client in 2003. Since then, there was no complaint as against his client till about 2010. He contends that, possession of the land in question was with his client till August 9, 2021. In fact, it would appear from a letter dated October 13, 2020 that his client was in possession of the land in question.
11. Learned Senior Advocate appearing for the respondent no. 3 submits that, all the earlier petitions related to police inaction. Orders passed in such

writ petitions cannot be held to decide the issue of possession. In any event, possession was taken over by the authorities, by a process not known to law. Therefore, taking over such possession, cannot be justified by the appellant in any manner or form.

12. Learned Senior Advocate appearing for the respondent no. 3 points out that the appellant was not in the picture when, the initial advertisement took place. He submits that, his client acted in terms of the grant. In any event, assuming that there was any breach, he submits that, his client was liable to be dispossessed only through a due process of law.
13. Referring to the impugned judgment and order, learned Senior Advocate appearing for the respondent no. 3 submits that, the learned single Judge noticed that, possession was taken by the authorities, arbitrarily and wrongfully. Therefore, the learned single Judge correctly directed that, the possession of the respondent no. 3 should not be disturbed other than a due process of law.
14. Learned advocate appearing for the State submits that, since no opportunity was granted by the learned single Judge, State was denied an opportunity to produce any document in support of their claim.
15. At the inception of the hearing of the appeal, we inquired from the learned counsel appearing for the respective parties as to whether all papers used before the learned single Judge were incorporated in the stay

application or not and whether, the application can be heard and disposed of finally. In response to such query, learned counsels appearing for the respective parties agreed that, all papers used before the learned single Judge were made part of the stay petition and that the appeal can be heard and disposed of today on the basis of such papers.

16. In such circumstances, the appeal was taken up for hearing, where, learned counsels for the respective parties advanced their arguments as noted above.
17. State of West Bengal invited expression of interest to set up hybrid high yielding seeds and seedlings production centre for vegetables, flowers, spices and other horticulture production at the Krishnanagar District, Nadia by an advertisement of February 2, 2001. The respondent no.3 participated therein. The administrative department of the State Government instructed the respondent no.3 to set up a seed production centre at such place on joint ventures basis by a letter dated March 30, 2001.
18. The scheme of the allotment of land for setting up of hybrid/high yielding seeds and seedlings production centre appears to be that, the Government was contemplating entering into a joint venture with the interested party for such purpose.

19. The respondent no.3 was identified as a person for entering into such joint venture through a company incorporated under the then Companies Act, 1956. Acting in terms of such understanding the petitioner by a letter dated June 23, 2003 requested the appellant to transfer the allotment the land in favour of a limited liability company and namely Santi Agro Hydro Private Limited. By a letter dated July 25, 2003, the State Government acknowledged that, the Land and Land Reforms Department was pleased to agree for transferring the land in favour of the appellant herein for a joint venture with the writ petitioner's company.
20. By a letter dated December 22, 2003, the State Government invited the writ petitioner for cultivation of plant and other horticulture on 5 hectares. The respondent no.3 was directed to take all necessary measures for trial cultivation and to submit statement mentioning the income and expenditure for the trial production.
21. By a letter dated June 16, 2004, the writ petitioner was informed that, the matter concerning statement of land with the joint venture company between the Corporation and Santi Agro Hydro Private Limited was already being taken up with the Land and Land Reforms Department.
22. By a letter dated August 11, 2014, a draft Memorandum of Understanding was sent to the writ petition for comments and approval.

23. It appears that the writ petitioner entered into agreement with Bidhan Chandra Krishi Vidyalaya for the purpose of horticulture on September 25, 2006 for the plot in question.
24. By a letter dated April 30, 2010, the appellant alleged that, the writ petitioner was carrying on commercial cultivation in unauthorized manner and was not submitting any accounts with the Corporation. The writ petition was directed to vacate the land by June 30, 2010 positively. To such letter, the writ petitioner replied by a writing dated May 18, 2010 claiming that, the joint venture is yet to be entered into. Writ petitioner reiterated that, he was not in unauthorized possession of the land.
25. By a letter dated June 20, 2010, appellant revoked the permissive possession of the land by the writ petitioner and called upon the writ petitioner to vacate the same. Several meetings apparently were held thereafter or at least, the writ petitioner was called to such meeting. Nothing fruitful transpired. The writ petitioner thereafter, suffered a show cause notice dated September 25, 2010 which was issued under the provisions of West Bengal Public Land (Eviction of unauthorized occupants), Act, 1962. Challenging such notice, writ petition being WPA 1947 of 2021 was filed by the writ petitioner. Such writ petition was disposed of by an order dated February 10, 2021 where it was recorded that the Corporation withdrew the notice dated September 25, 2020 with a

leave of the Court to take fresh steps in accordance with law for evicting the writ petitioner.

26. The writ petitioner lodged a police complaint regarding the alleged high handed actions of the authority on December 30, 2021. The writ petitioner approached the Writ Court for the second time by way of WPA 16404 of 2021 on September 9, 2022. Prayers of such writ petition are as follows:-

“ a) Leave be granted for dispensation of the formalities of the Rules stated in Rule 26 of the Rules relating to the application under Article 226 of the Constitution of India;

b) Issue a writ of and/or in the nature of Certiorari do calling upon the Respondents and each of them to forthwith certify and transmit to this Hon'ble Court the records of the instant proceeding;

c) Issue a writ of and/or in the nature of Mandamus commanding the Respondents authorities and/or their subordinates, specifically the Respondents no.3 and 4, to forthwith take steps pursuant to the complaints made by the Petitioner dated August 9, 2021 and September 21, 2021 being Annexures “P-18” and “P-20” respectively, including restoration of the possession of the Petitioner to the said property being premises at, Ayespur, Barajaguli, P.S-Haringhata, District-Nadia, Pin-741249;

d) Direction to forthwith take steps pursuant to the complaints made by the Petitioner dated August 9, 2021 and September 21, 2021 being Annexures “P-18” and “P-20” respectively, including restoration of the possession of the Petitioner to the said property

being premises at, Ayespur, Barajaguli, P.S. – Haringhata, District-Nadia, Pin-741249;

- e) Issue a writ of and/or in the nature of Mandamus commanding the Respondents authorities and/or their subordinates, specifically the Respondents no.4 and 5, to ensure protection to the Petitioner and his men and agents upon being returned to the possession of the said premises being Shanti nursery, Ayespur, Barajaguli, P.S-Haringhata, District-Nadia, Pin-741249;
 - f) Interim order of injunction restraining the Respondents from entering the said premises being Shanti nursery, Ayespur, Barajaguli, P.S-Haringhata, District-Nadia, Pin-741249, or causing harm to the Petitioner's property or person;
 - g) Rule NISI in terms of the prayers above;
 - h) Ad-interim order in terms of prayer above;
 - i) Cost of and incidental to this application;"
27. The writ petition being WPA 16404 of 2021 was disposed of by an order dated September 30, 2022. Such writ petition was allowed to be withdrawn with liberty to file afresh on the selfsame cause of action with better particulars.
28. The writ petitioner thereafter, filed a third writ petition being WPA 24290 of 2022 praying *inter alia* for the following reliefs:
- a) Leave be granted for dispensation of the formalities of the Rules stated in Rule 26 of the Rules relating to the application under Article 226 of the Constitution of India.

- b) Issue a writ of and/or in the nature of Certiorari do calling upon the Respondents and each of them to forthwith certify and transmit to this Hon'ble Court the records of the instant proceeding.
- c) Issue a writ of and/or in the nature of Mandamus commanding the Respondents authorities and/or their subordinates, specially the Respondents no. 3 and 4, to forthwith take steps pursuant to the complaints made by the Petitioner dated August 9, 2021 and September 21, 2021 being Annexure "P-19" and "P-21" respectively.
- d) Direction to forthwith take steps pursuant to the complaints made by the Petitioner dated August 9, 2021 and September 21, 2021 being Annexures "P-19" and "P-21" respectively.
- e) Issue a writ of and/or in the nature of Mandamus commanding the Respondents authorities and/or their subordinates, specially the Respondents nos. 4 and 5, to ensure protection to the Petitioner and his men and agents.
- f) Rule NISI in terms of the prayers above;
- g) Interim order of injunction restraining the Respondents from interfering with the user and egress and ingress of the petitioner to and from the said premises being Shanti Nursery, Ayespur, Barajaguli, P.S-Haringhata, District-Nadia, PIN-741249, or causing harm to the Petitioner's property or person;
- h) Interim order of injunction restraining the Respondents from entering the said premises being Shanti Nursery, Ayespur, Barajaguli, P.S-Haringhata, District-Nadia, Pin-741249, of causing harm to the Petitioner's property or person;
- i) Ad-interim order in terms of prayer above;
- j) Cost of and incidental to this application;

- k) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper."
29. Such writ petition was disposed of by an order dated February 13, 2023, where, learned Single Judge held that, there exists disputed questions of fact which cannot be gone into by a Writ Court. The writ petitioner was granted liberty to pursue other remedies in accordance with law.
 30. Respondent no.3/Writ petitioner filed an appeal against the order dated February 13, 2023 passed in WPA 24290 of 2022. The Court is informed that such appeal is pending.
 31. By a letter dated March 21, 2023, the respondent no.3 wrote a letter to the appellant claiming that the appellant was making false claims. This was responded to by the appellant by letter dated April 23, 2023. Thereafter the respondent No.3 filed WPA 17932 of 2023 which gave rise to the impugned judgment and order.
 32. The respondent No.3 was put in permissive possession of land in question in 2003. It is admitted to be so by the respondent No.3 himself. Respondent No.3 is not claiming any higher right than permissive possession of the land in question. The respondent No.3 was thereafter dispossessed from the land question on August 9, 2021. The date of dispossession was acknowledged and admitted by the respondent No.3.

Issue is whether, the respondent No.3 after being dispossessed on August 9, 2021 and after filing a writ petition being WPA 24290 of 2022 which contained at least two prayers with regard to possession, can file a separate writ petition and obtain an order with regard to possession or not.

33. The earlier writ petition being WPA 24290 of 2022 contained two prayers namely prayers (g) and (h) albeit as interim orders, relating to possession of the premises in question. The other prayers in the writ petition related to police inaction. Such writ petition was disposed of by order dated February 13, 2023 after holding that disputed question of facts were involved. The learned Single Judge was pleased to hold that there were disputed question of facts involved and therefore proceeded not to entertain the writ petition. The writ petition stood relegated with the respondent No.3 being directed to seek his remedies before appropriate forum. As noted above, there is an appeal pending against such order.
34. No leave was granted to the respondent No.3 to seek his remedy with regard to possession by way of a writ petition rather all reliefs sought by the respondent No.3 was relegated a forum other than a Writ Court. The appeal against the order dated February 13, 2023 is yet to be decided. After such an order being passed, the respondent No.3 approached the Writ Court again for relief with regard to possession.

35. **Ehsan and another (supra)** is of the following view with regard to maintainability of a writ petition where serious disputes regarding taking of possession are raised:-

“35. In view of the discussion above and having regard to the following: (a) that there was a serious dispute with regard to taking of possession of the surplus land; (b) that there was a delay of about seven years in filing the first writ petition from the date when possession was allegedly taken by the State, after publication of the vesting notification; (c) that no documentary evidence such as a Kharsra or Khatauni of the period between alleged date of taking possession and filing of the first writ petition was filed by the original petitioner; (d) that in the earlier two rounds of litigation, the High Court refrained from deciding the issue of possession of the surplus land even though that issue had arisen directly between the parties; and (e) that infraction of the prescribed statutory procedure for taking possession cannot be the sole basis to discard State’s claim of possession, when it is stated to have been taken long before the date the issue is raised, we are of the considered view that the High Court should have refrained from deciding the issue with regard to taking of actual possession of the surplus land prior to the cut off date specified in the Repeal Act, 1999. Instead, the writ petitioner should have been relegated to a suit.”

36. On the aspect of dispossessing a person in possession of an immovable property, the Supreme Court in **Bishan Das (Supra)** is of the view that, a person who is in bona vide possession could not be removed except by an authority of law. In the facts of that case, the authorities were found to violate the then fundamental right to property of the writ petitioner therein without a process known to law.
37. In **Lallu Yeshwant Singh (Supra)**, the Supreme Court was concerned with a claim for tenancy. The landlord there, sought to take up possession of tenanted premises without a process known to law. In such circumstances, the Supreme Court held that, possession taken was beyond the process known to law. Such decision was rendered in a suit.
38. Again in a suit, relating to a claim for trespass the Supreme Court in **Krishna Ram Mahale (Supra)**, observed that, while a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser successfully accomplished his possession to the knowledge of the true owner. In such circumstances, the law requires the true owner should dispossess the trespasser by taking recourse to the remedies under the law.

39. In **M/s. Anamallai Club (Supra)** the Supreme Court considered the provisions of Tamil Nadu Public Premises (Eviction of unauthorized Occupants) Act, 1976 and observed as follows:

“8. Law makes a distinction between persons in juridical possession and rank trespassers. Law respects possession even if there is no valid title to support it. Law does not permit any person to take law into his hands and to dispossess a person in actual possession without having recourse to a Court. The object thereby is to encourage compliance of the rule of law and to deprive the person who wanted, a person in lawful possession removed from possession according to proper form and to prevent him from going with a high hand and eject such person. Undoubtedly, the true owner is entitled to retain possession even though he had obtained it by force or by other unlawful means but that would not be a ground to permit the owner to take law into his own hands and eject the person in juridical possession or settled possession without recourse to law.”

40. In the facts of the present case two writ petitions were filed by the respondent No.3 subsequent to his dispossession on August 9, 2021 being WPA 24290 of 2022 and the present writ petition. Again as noted above, WPA 24290 of 2022 contained a prayer with regard to possession. Such prayer was not granted. An appeal against the disposal of such writ

petition is pending. During the pendency of such appeal, the second writ petition was filed in which the impugned order was passed.

41. We are of the view that since the earlier writ petition contained prayers with regard to possession and since the same was not granted and since, the appeal from the order of disposal of such writ petition is yet to be disposed of, learned Single Judge erred in granting relief regarding possession of the same immovable properties concerned in the present writ petition, which is second in point of time. Moreover, we find from the records that, the learned Single Judge proceeded to dispose of the writ petition without granting any opportunity to the contesting respondent in the writ petition an opportunity to file affidavits. Therefore, the respondent No.3 cannot take the stand that, no document was produced before learned Single Judge to establish that, possession was taken rightfully. In any event, issue of possession stood adjudicated in the earlier writ petition and it was not open to the respondent No.3 to reagitate the same by a subsequent writ petition. We need not enter into the arena as to whether possession was rightfully taken or not as the same is the subject matter of the earlier writ petition. Consequently, we refrain ourselves from applicability of the ratio of the judgments relied upon on behalf of the respondent No.3 in this regard, in the facts and circumstances of the present case.

42. In view of the discussion above, we set aside the impugned judgment and order of the learned Single Judge.
43. MAT 2302 of 2023 along with IA NO: CAN/1/2023 are **disposed of** without any order as to costs.
44. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

45. I agree.

(Md. Shabbar Rashidi, J.)

SD/DD/CHC