

AD-05
Ct No.01
Jalpaiguri
10.02.2023
TN

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

MAT 78 of 2022
With
IA No: CAN 1 of 2022

Sri Pankaj Saha
Vs.
The State of West Bengal and others

Mr. Hillol Saha Podder,
Ms. Mousumi Das

....for the appellant

Mr. Bikramaditya Ghosh,
Mr. Pretom Das

....for the State

Mr. Biprajit Das

....for the writ petitioner/respondent

We find *prima facie* that the impugned order was patently perverse inasmuch the learned Single Judge, merely on the basis of certain observations to the effect that there is a civil dispute amongst the parties as to the ownership of the concerned lodge and that the police is quite at a loss as to against whom to take steps if some untoward incident happens in the lodge, directed the police authorities to close the lodge and to seize it forthwith and, till the civil disputes are settled between or amongst the parties, not to hand over

the lodge to the real owner as per order of the competent court of law. That apart, all the boarders of the lodge, if any, were to be told to leave the lodge immediately. The order was directed to be carried out by 3 p.m. the next day and the police were directed to give a report as to the carrying out of the court's order.

Upon hearing learned counsel for the parties, it transpires that there are three different civil suits pending before competent courts of law with regard to the property which is the subject-matter of the present *lis*.

In the said three suits, apparently contradictory orders of injunction were passed directing the defendants in each of the said suits not to disturb the possession of the plaintiffs therein with regard to the suit property, that is, the lodge-in-question.

However, such contradiction in the orders of the civil court cannot empower the writ court to enter into the specific domain of the civil court, particularly since the matters are *sub judice* before three competent civil courts, and to pass an order whereby the suits were virtually decided. In fact, the relief granted by the writ court was beyond the reliefs sought in the suits as well.

It is for the civil court, if so approached by one of the parties, to come to a specific finding as to whether there was a violation of the order of court, as to who was in possession of the property at the time of passing the restraint order and regarding what was the status of the property at the relevant juncture when the injunction order was initially passed and as to whether police help should be directed in the context. However, since the writ court assumed jurisdiction which it does not have in law, we are constrained to set aside the order impugned in the present appeal.

Accordingly, MAT 78 of 2022 along with IA No: CAN 1 of 2022 are allowed, thereby setting aside the impugned order dated August 11, 2022 passed in WPA 2126 of 2022 and dismissing the said writ petition as well. However, nothing in this order shall preclude the petitioner or any of the private respondents from approaching the competent civil court for appropriate relief for the purpose of implementation of the injunction orders and/or alleging violation of the same.

If such applications are made, the respective concerned civil courts shall decide such applications as expeditiously as possible, preferably within four weeks from the date of filing

of the applications, upon giving an opportunity of hearing to all concerned.

Any action, if taken pursuant to the impugned order dated August 11, 2022 in WPA 2126 of 2022, is hereby set aside and reversed.

We hereby restore the *status quo ante* with regard to the disputed lodge as at the time immediately prior to the execution of the order dated August 11, 2022. The police authorities shall restore the said property to its original condition prior to the said order of the learned Single Judge as well as the possession of the parties at that point of time, insofar as feasible.

However, all orders passed and observations passed herein are subject to the ultimate decision of the civil suits and the merits of the respective contentions of the parties have not been gone into by this court in any manner whatsoever.

The parties as well as all concerned shall act on the server copy of this order, accompanied by the communications by the learned Advocate(s) for the parties, without insisting upon prior production of a certified copy, for the purpose of compliance of the same.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)