

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

Before:

**The Hon'ble The Chief Justice T. S. Sivagnanam
and**

The Hon'ble Justice Hiranmay Bhattacharyya

**MAT 1310 of 2024
With
I.A. No. CAN 1 of 2024
Dayal Commercial Company Pvt. Ltd. & Anr.
Versus
The State of West Bengal & Ors.**

For the Appellants : Mr. Vivek Jyoti Basu
Mr. Uttam Kr. De
Mr. Jamuna Saha
Mr. Sandeep Prasad Shaw
Mr. Souvik Naskar
Mr. Abhishakti Basuadvocates

For the respondents 10 & 11 : Mr. S.N. Mitra, Sr. Adv.
Mr. Meghajit Mukherjee
Mr. Prantik Gorai
Ms. Sreejita Gupta ... advocates

For the State : Mr. Naba Kr. Das
Mr. Rajarshree Mukherjee ... advocates

Reserved on : 12.08.2024

Judgment on : 16.08.2024

Hiranmay Bhattacharyya, J.:-

1. This intra court appeal is at the instance of the writ petitioners and is directed against an order dated June 12, 2024 passed by the learned Single Judge in WPO 540 of 2024. By the order impugned the writ petition was disposed of by directing the police to keep strict vigil over the property and to ensure that no illegal activity takes place and no damage is caused to the subject property.
2. The case made out by the appellants before the writ Court, in a nutshell, is as follows:

The appellant no. 1 was inducted as a lessee by one Nopany Education Trust i.e., the 8th respondent herein in respect of 2 bighas and 2 cottahs out of 4 Bighas and 12 cottahs of land together with structures thereon at premises no. 13, Ramdhan Ghosh Lane (hereinafter referred to as the “said property”) by virtue of the Indenture of lease dated May 30, 1961. The said lease expired sometimes in the year 1981. The request for renewal of lease was denied by the 8th respondent. The appellants claim to have deposited rent before the Rent Controller, Howrah and paid the property tax in the name of the lessor. The appellants claim that the 8th and 9th respondent along with their men and agents and some police personnel came to the said property and threatened the appellants to vacate the said property failing which they would be forcibly thrown out. After conducting searches the 2nd appellant came to know that the 10th respondent has purchased the said property by virtue of 4 registered deeds of conveyance which were executed on different dates in the month of May 2024. The appellants claim that the private respondents committed criminal trespass, theft, attempt to murder and criminal intimidation on 17th May, 2024 and a complaint was lodged on 18th May 2024 before the concerned police station. Another complaint was lodged on 25th May 2024 alleging criminal trespass, theft and illegal demolition of the office room. The appellants approached the writ court alleging dispossession from the said property and prayed for a direction upon the police authorities to restore status quo ante by putting the appellants back in possession of the said property.

3. The learned Single Judge did not allow the prayer for restoration of possession. Being aggrieved, the writ petitioners have approached this Court.
4. Mr. Basu, learned Counsel contended that the appellants continued to remain in possession of the said property even after expiry of the period of lease. Mr. Basu contended that the appellant deposited rent before the Rent Controller and also paid Municipal taxes. Mr. Basu contended that since the appellants have been dispossessed from the said property without due process of law with the connivance of the police authorities, the Writ Court ought to have directed restoration of possession in favour of the appellants. In support of such contention, Mr. Basu placed reliance upon the decisions in the case of **Anju Devi vs. Commissioner of Police and others** reported at **1994 SCC Online Del 327**, **Anand Kishore Prasad Sinha vs. State of Bihar and others** reported at **AIR Online 2021 Pat 689** and **Bishan Das and others vs. State of Punjab & ors.** reported at **AIR 1961 (SC) 1570**.
5. Mr. Mitra, learned Senior Counsel for the 10th and 11th respondent seriously disputed the contentions of Mr. Basu. Mr. Mitra contended that the vendors namely the 8th and 9th respondent have put the 10th respondent in possession of the said property. By referring to the complaints made by the appellant and the statements made in the stay application, Mr. Mitra would contend that the appellants could have approached the Civil Court for protecting their possession as the appellants apprehended forceful dispossession from the property in question. Mr. Mitra concluded by submitting that the Writ Court is not the proper forum for adjudication of the issue of alleged dispossession which is entirely factual.
6. Heard the learned advocates for the parties and perused the materials placed.
7. The 1st appellant claims to have been inducted as a lessee in the property in question by Nopany Education Trust i.e., the 8th respondent herein by virtue of an Indenture of lease dated 30.03.1961. The said lease expired by efflux of time sometimes in the year 1981. The appellant claims that it continued to possess the said property as a monthly tenant after the expiry of the period of lease. In support thereof, the appellant has produced rent control challans as an

evidence for payment of rent. It is well settled that mere deposit of rent before the Rent Controller does not prove existence of landlord tenant relationship between the 8th respondent and the 1st appellant.

8. It has been alleged by the appellant that the 10th respondent has purchased the property in question and dispossessed the appellant from the said property without due process of law with the aid and assistance of the police personnel. Documents namely electricity bills, municipal tax receipts, tax audit reports etc have been produced by the appellant to prove their possession in the property in question prior to the date of alleged dispossession.
9. The appellants are not claiming title to the property in question. The claim of tenancy made by the appellant cannot be decided either in a writ petition or in an intra Court appeal arising out of an order passed in a writ petition. The appellant has to establish its tenancy right, if any, before the appropriate forum.
10. The appellant approached the writ Court praying for restoration of possession alleging that it has been dispossessed from the immovable property without its consent otherwise than in due course of law. The writ petition was filed alleging police inaction and/or over action. Several complaints appear to have been lodged by the appellant alleging commission of cognizable offences. It is evident from the records that FIR has been lodged and investigation is proceeding.
11. Insofar as the allegation of involvement of police personnel is concerned, this Court finds that except some vague and bald allegations in the complaints and the stay application, nothing has been produced in course of hearing of this appeal for this Court to arrive at the conclusion that the police personnel were involved in the alleged dispossession of the appellant.
12. This Court is conscious of the position of law that even a person having no title to an immovable property, if dispossessed therefrom without his consent, can claim to be put in possession.
13. A person dispossessed without his consent of immovable property otherwise than in due course of law can recover possession thereof by filing a suit under Section 6 of the Specific Relief Act notwithstanding any other title that may be

set up in such a suit. However, such suit has to be filed within the period of limitation prescribed thereunder. The appellant claims a relief which is available under Section 6 of the Specific Relief Act in a writ petition.

14. Now the question arises whether the writ Court under such circumstances could have directed restoration of possession to the appellant.
15. An aggrieved party can approach the writ court alleging that by an illegal and arbitrary action or even inaction of “State” within the meaning of Article 12 of the Constitution of India, any of the fundamental rights of such party has been infringed.
16. Record reveals that the Director of the appellant company by a letter dated May 14, 2024 lodged a complaint before the Officer-in-Charge, Belur Police Station. It was specifically stated in the said complaint that post lodgment of the complaint dated May 7, 2024 Hardwarilal Sharma, Rautlal Agarwal and their men and agents forcibly took over the possession of the demised godown along with machinery and equipments from the caretaker on May 11, 2024 and threatened him not to intimate such instance failing which he would be murdered. It was further stated in the said complaint that the said Director of the appellant company knew nothing about the forcible dispossession of the demised premises till 11 AM of May 14, 2024 and at around 11:30 AM where he visited the locale, he found that the aforesaid miscreants had taken over possession. It was further stated in the complaint that the aforesaid incident was brought to the notice of the Hon’ble Judge when the writ petition being WPO 446 of 2024 came up for hearing on 14.05.2024 and pursuant to the direction of the Hon’ble Court the complaint vide letter dated 14.05.2024 was lodged.
17. The said complaint appears to have been received on 15.05.2024 by the concerned Police Station. It is evident from records that an FIR being no. 81/24 dated 15.05.2024 of Belur Police Station under Section 447/352/506/34 of the Indian Penal Code was registered. It further appears from the report of the Inspector-in-Charge, Belur Police Station, Howrah Police Commissionerate dated 17.05.2024 that the investigation pursuant to the said FIR is under

process. From the report of the Inspector-in-Charge of Belur Police Station filed by the learned advocate for the State, it appears that on the basis of another complaint of the director of appellant company, Belur Police Station Case no. 97/2024 under Section 447/352/379/506/34 of Indian Penal Code has been started and investigation is under process.

18. To the mind of this Court, the police authorities have acted on the basis of the complaints lodged by the appellant company.
19. In the case on hand the alleged dispossession of a private party from an immovable property is by a party who is not a “State” within the meaning of Article 12 of the Constitution of India. Such a dispute is entirely a private dispute between the appellant and the private respondents which is civil in nature. That apart whether the appellant was in possession of the immovable property on the date of alleged dispossession is also a disputed question of fact which cannot be decided by a writ court by way of exchange of affidavits..
20. The documents which the appellant has produced in support of its possession of the said property has to be tendered in evidence and proved in accordance with law in a suit, if instituted, before the competent Civil Court and the same has to be tested in cross-examination and the opponent has to be given an opportunity to controvert such evidence by way of adducing evidence in support of the defence case. Such a factual dispute cannot be decided by way of exchange of affidavits by a Writ Court.
21. This Court has already observed that involvement of police personnel in the alleged dispossession has not been substantiated. This Court, therefore, holds that the factual issue of alleged dispossession from an immovable property by a private party cannot be decided by a Writ Court and, therefore, the question of issuing direction to restore back possession in favour of the appellant by a Writ Court does not arise.
22. The police authority is not vested with the power to decide as to whether the appellant was in possession of the immovable property on the date of alleged dispossession. The police authority had no right to put back the appellant in possession of an immovable property merely on the basis of its allegation that

the petitioner company was in possession at one point of time. Only after an adjudication is made by a competent Court that the appellant should be put back in possession of the property in question, the police authority is duty bound to implement such order. That stage is yet to be reached in the case on hand.

23. In **Anju Devi** (supra) the Hon'ble Division Bench of Delhi High Court on the facts and circumstances of the said case noted that it is evident that the police has taken law into their own hands and dispossessed the petitioner in complete disregard of the rule of law. The Hon'ble Delhi High Court observed that it is only in exceptional cases and sparingly that the Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India would direct delivery of possession. On the facts of the reported case the Hon'ble Delhi High Court directed restoration of *status quo ante* and directed the respondent nos. 1 and 2 therein to put the petitioner back in possession in the property in question within a specified time frame.
24. In **Anant Kishore Prasad** (supra) the Hon'ble High Court at Patna after noticing that there is no denial of the statements made in the writ petition wherein the petitioner has claimed that he was asked to remove his lock and under duress of the police personnel the petitioner was asked to open his lock whereafter the police personnel put their own lock on the premises and took away the keys, the Superintendent of Police was directed to restore *status quo ante* by allowing the petitioner to restore his possession to the extent over the lawyer's chamber by opening the lock within the time limit specified therein.
25. In **Anju Devi** (supra) and **Anant Kishore Prasad** (supra) the police personnel were found to be actively involved in the matter of dispossession.
26. In the case on hand this Court has already observed that the petitioner has failed to substantiate its allegations against the police personnel in their alleged dispossession from the immovable property. The said decisions, therefore, cannot come to the aid of the appellants in the case on hand.
27. In **Bishan Das** (supra), the petitioners were dispossessed of the properties by an executive order passed by the S.D.O on pursuance of the directions of the

Deputy Commissioner. The Hon'ble Supreme Court on the facts of the said reported case held that the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society. The said decision being distinguishable on facts cannot be applied to the case on hand.

28. For all the reasons as aforesaid, this Court holds that the learned Single Judge was right in rejecting the prayer of the appellant for restoration of possession. Accordingly, the appeal and the connected application stand dismissed. There shall be, however, no order as to costs. The appellants are left free to approach the proper forum for appropriate reliefs in accordance with law.
29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, C.J.)

(Hiranmay Bhattacharyya, J.)