

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**Present:**

**The Hon'ble Justice Jay Sengupta**

**WPA 16370 of 2023**  
**Ajit Roy and Ors.**  
**Versus**  
**The State of West Bengal & Ors.**

**For the petitioners** : Mr. Srijib Chakraborty

.....Advocate

**For the State** : Mr. Jayanta Samanta  
Mr. Kushal Biswas

.....Advocates

**For the Respondent Nos. 5 & 6 :** Mr. Tapas Kumar Bhattacharya  
Mr. Aviroop Bhattacharya

.....Advocates

**Heard lastly on** : 19.09.2023

**Judgment on** : 02.02.2024

**Jay Sengupta, J:**

1. The present writ petition is filed being aggrieved by and dissatisfied with the non-action and/or inaction on the part of respondent police

authorities pursuant to the G.D.E. dated 17.06.2023 and the complaint dated 26.06.2023 filed by the petitioners against the unlawful activities perpetrated by the private respondents.

2. Learned Counsel for the petitioner submitted as follows. The petitioner nos. 2 and 3 were the owners of the RS and LR suit plot no. 1038 consisting of an area 08 decimals of land and another RS & LR suit plot no. 1039 consisting of an area 03 decimals of land previously belonged to Sushil Kumar Roy, Debendra Nath Roy, Sudhir Ranjan Roy and Shyamal Roy in equal share i.e., 04 annas share each and they used to possess the same with right, title, interest and their names were recorded in the LRROR in LR Khatian No. 1455/1. 541/1 and 140/1 and they paid rent to the suit property and two stored old building house and shop rooms were situated on the suit property. Sushil Kumar Roy during enjoying and possessing the RS & LR suit plot no. 1038 to the extent of an area 02 decimals of land and RS & LR plot no. 1093 to the extent of an area 0.75 decimal of land with right, title, interest died leaving behind his one son namely, Sudip Roy and his wife, namely Chhabi Roy as his only legal heirs and successors and they got the said property by way of inheritance. Thereafter, Sudip Roy and Chhabi Roy gifted away their share in favour of Priyabrata Roy i.e., the petitioner No.1 by way of registered Deed of Gift being No. 1217 dated 13.05.2017 and gave delivery of possession to him and petitioner No. 1 recorded his name LRROR in LR Khatian No. 4989 and he paid rent to the State of West Bengal and he used to possess the same with right, title and interest. Another original owner Debendra Nath Roy died leaving behind his only son namely, Debasish Roy as his only legal heir and successor. The

said Debendra Nath Roy during enjoying and possessing the said property gifted away his share to Debabrata Roy i.e., the petitioner No.2 by way of registered Deed of Gift being No. 1218 dated 15.05.2017 and gave delivery of possession to him and petitioner No.2 recorded his name in LRROR in LR Khatian no. 4988 and he paid rent to the State of West Bengal and he used to possess the same right, title and interest. The petitioner no. 2 and 3 were the owners and occupiers of 04 decimals of land over RS & LR suit plot No.. 1038 and 1.50 decimals of land over RS & LR suit plot no. 1039 and the petitioner no. 2 and 3 used to possess the same in ejmali and jointly with the other co-sharers. The suit plot was never partitioned amongst the co-sharers and the petitioner no. 2 and 3 were the owners and occupiers of 8 annas share over the suit plots. Thereafter, Sudhir Ranjan Roy died leaving behind his two sons namely, Barundeb Roy and Buddhadeb Roy as his only legal heirs and successors and they got the share of Sudhir Ranjan Roy and they used to possess the same with right, title and interest. Shyamal Roy died leaving behind his wife namely, Rama Roy and one son namely, Sujit Kumar Roy i.e., private respondent no. 1 as his only legal heirs and successors. Thereafter, Rama Roy, Sujit Kumar Roy jointly gifted away more than share to Baba Loknath Seba Samity Trust i.e., the private respondent no. 2 by way of registered Deed of Gift being No. 79 dated 06.01.2022 and he private respondent no. 2 recorded their names in the present LRROR being LR Khatian No. 6054. The petitioner no. 2 and 3 and the private respondent no. 2 recorded their names in the present LRROR being LR Khatian No. 6054. The petitioner no. 2 and 3 and the private respondents were the co-sharers of the suit property and they possessed the same in

ejmali and jointly and the suit property was never divided amongst the co-sharers. In the middle of COVID-19 pandemic, the petitioner no. 1 being the father along with his wife wanted to shift to the said property for isolation as suggested by the Government. Thus, the petitioner no. 2 and 3 assisted their old aged parents to shift in the said property as it was vacant for a long time after the purchase of the said property. On the day of shifting, for some unknown reason one of the co-owners named Sujit Roy along with other associates started abusing the petitioner no. 1 and his wife in a very ill manner and obstructed them from entering into the said property. It was pertinent to mention herein that the petitioner no. 1 was aged about 86 years and his wife was about 65 years old, respectively. It was still unknown to the petitioners as to why the private respondent no. 5 namely, Sujit Roy obstructed them to enter into the said property. The said private respondent also replaced the padlock with a new one so that the petitioners could not enter into the said property. Having no other alternative, the petitioner no. 2 and 3 lodged a complaint before the Krishnaganj Police Station being G.D.E. No. 565 dated 14.05.2022 stating the whole incident to the respondent authorities. Despite the petitioners' complaint, no action was taken against the said private respondents. Having no other option, the petitioners filed a Title Suit being T.S. No. 232 of 2022 before the Learned Civil Judge (Senior Division), 3<sup>rd</sup> Court, Krishnagar, Nadia, for partition by metes and bounds according to their shares per the schedule of the plaint against the defendants (i.e. private respondents herein) which was still pending for adjudication before the Learned Trial Court. On 17.05.2022, after hearing the petitioner and due to long non-appearance of the private respondent the

Learned Court was pleased to pass an order of ad-interim injunction exparte. The learned Court was also pleased to direct for the defendants (private respondents) and the plaintiffs (petitioner no. 2 and 3) to maintain status-quo in respect of nature, character and possession over the property in-question as it stood for a period till 21.06.2022. Despite the order passed by the Learned Court, the private respondents barely complied with such order. Even after the order was passed, the petitioners were obstructed from entering into the suit property by the private respondents. The petitioner nos. 2 and 3 further lodged a complained before the Krishnaganj Police Station being G.D.E. No. 1172 dated 27.06.2022 stating the above mentioned facts and the fragile condition between the petitioners and the private respondents. As no action was taken by the respondent police authorities the petitioners filed an application before the Learned Court for police help and such petition was heard by the Learned Court and on 04.11.2022 an injunction order was passed. The parties were bound to comply the order of the Learned Court until it was reversed by the competent Court of Law. Therefore, under such circumstances, the I/C, Krishnaganj Police Station was directed to look into the matter and see whether the parties as stated above had complied with the Order dated 17.05.2022 in the strict sense and submit a report on 15.11.2022. It was still unknown to the petitioners whether the respondent police authorities complied with such report of the Learned Court as no steps were taken by the respondent police authorities till date. No inspection was conducted in the aforesaid property so far. The respondent police authorities called both the parties for a hearing but thereafter no steps were taken to resolve the

property breaking the padlock. The petitioners filed another application under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure. It is stated that by an order dated 08.12.2022 the Learned Court was of the opinion that the ad-interim injunction order as passed by the Learned Court on 17.05.2022 should be made absolute till the disposal of the suit to avoid any future complications. Hence, the Learned Court was pleased to allow the petition dated 13.05.2022 under Order 39 Rule 1 and 2 read with section 94 of the Code of Civil Procedure as submitted by the plaintiff. It was pertinent to state that at this stage the Certified Copy of the Commissioner's report pursuant to the allowance of the application under Section 151 of the Code of Civil Procedure, 1908 was yet to be taken out by the petitioners due to departmental red-tapism. The petitioners lodged another complaint being G.D.E. No. 709 dated 17.06.2023, stating the facts that time and again the private respondents were trying to change the nature and character of the said property. Yet, the respondent police authorities denied any help and any assistance to the petitioners. The present scenario was that the private respondents by use of force had put padlock in the said property, but were not in possession of the same. Reliance was placed on a judgement delivered by the Hon'ble Division Bench in the case of Md. Izhaar & Ors. Vs The State of West Bengal [MAT 560 of 2023]. It contended that the police authority was under a legal duty to obey and/or enforce and implement the orders passed by the Civil Court and merely because an execution case was pending, that would not however curtail the power of the High Court under Article 226 of the Constitution of India. Reliance was also placed on a judgement delivered by the Hon'ble Apex

Court in the case of Awadh Bihari Yadav & Ors. Vs State of Bihar & Ors., reported at (1995) 6 SCC 31 to distinguish a judgement reported at (1977) 1 SCC 1 relied in the said judgement of Kanak Kumar Bar Vs State of West Bengal as shown by the Learned Advocate behalf of private respondent nos. 5 and 6 on the earlier day, to establish the point that parallel proceedings were indeed maintainable.

3. Learned Counsel for the respondents 5 and 6 submitted as follows. The petitioners as plaintiffs filed a suit for partition in the court of Learned Civil Judge (Sr Division) 3<sup>rd</sup> Court at Krishnanagar, Nadia, in 2022 being T.S. 232 of 2022 against the private respondents and others praying for preliminary Decree with regard to his share 0.04 decimal of the undivided suit property. The answering respondents no. 5 and 6 were co-sharers of the property and they were residing in the undivided suit property. The respondent no. 6 being Loknath Seva Samity Trust was a co-sharer of suit property. The private respondent no. 6 became owner of part of the suit property by way of gift executed by two co-sharers, Rama Roy and Sujit Kumar Roy. Baba Loknath Seva Samity Trust being the private respondent no. 6 had been possessing suit property as co-sharer of the same and the said religious trust had been performing puja since long from part of the suit property. The respondent no. 5 had a shop room of the suit property and he had been residing on the first floor of suit property. The plaintiffs/petitioners were not residing in the suit property in the suit property as co-sharers since long. The plaintiffs nowhere in the plaint and injunction application field in connection with the said suit for partition made any averments that the respondent no. 5 and 6 had put padlock to the

suit property and replaced the padlock with a new as alleged in the paragraph 5 writ petition. The plaintiffs of said suit as writ petitioners for the first time pleaded in writ petition in para 5 that the respondent nos. 5 and 6 had replaced the padlock. The petitioners did not mention the date when new padlock was put into the suit property. The petitioners had stated in para 19 of the writ petition that private respondents had put padlock in the property by force, but was not in possession of the same. The private respondents 5 and 6, who were also co-sharers of the undivided joint property were in possession of their respective portion of share to the suit property. The private respondents 5 and 6 said that they did not put any padlock to the suit property by replacing new, as alleged in the writ petition for the first time. The private respondents said that the donor of the petitioners named Debasish Roy, Sudip Roy and Chhabi Roy who gifted their share of the suit property to them were not possessing the suit property as a co-sharer for about more than 30 years and they were residing at Haringhata, district Nadia and Ultadanga. The private respondents nos. 5, 6 stated that on the ground floor there was a room on the western side of the suit property which was under lock and key since long years. On the eastern side also one door was under lock and key since long years. If physical inspection was caused at the suit property it would be found that the padlocks of the room were very old. The private respondents never put any padlock to any of the portion of the suit property by replacing new one as alleged by the writ petitioners. The entire matter was sub-judice before the Learned Trial Judge and no preliminary decree had yet been passed. The private respondents who were in possession of the undivided suit property

as co-sharer had not changed any nature and character of the suit property and they were carrying out the order of status quo passed by the Learned Trial Judge. According to the petitioners despite communication of the order of Learned Trial Judge passed in Title Suit No. 232 of 2022 no action had yet been taken by the Inspector in Charge of police station. This Court in exercise of the writ jurisdiction under Article 226 of the Constitution of India could not function as an executing court. The petitioners had alternative remedy under Order 39 Rule 2A of Civil Procedure Code so far as private respondents were concerned as also under the provision of contempt of courts Act so far as Officer in Charge of the police station was concerned. In support of the above submissions reported decision in CalLt 1996(2) HC 418 was cited. Following reported decisions were also cited in support of submissions made above.

(i) 1996(2) Cal LT 418

(ii) 1977(1) SCC 1

(iii) AIR 1993 (SC) 1225.

4. Learned counsel appearing on behalf of the State submitted as follows. The matter pertains to a civil dispute pending between the private parties. Suits were pending from both sides in the suit filed by the petitioners. There was an interim order of injunction granting status quo. However, no restraining order had been passed. The police were keeping a close watch on the developments in the locality and trying to ensure that no one violated the order passed by the Civil Court.

5. It appears that a civil dispute exists between the private parties. A title suit was filed by the petitioners. In fact, they obtained an interim order of injunction directing status quo to be maintained in respect of the property. Subsequently, an order was passed in terms of the Section 151 of the CPC directing police to ensure that the order was not violated. On the other hand, the private respondents also filed a partition suit, which is pending.

6. It is abundantly clear that if any of the parties wants to establish any further right in respect of the said property, the same has to be done before the Civil Court. This Court while sitting in the writ jurisdiction for police inaction would not pass a direction for transfer of property.

7. However, that does not mean that without obtaining any order from the Civil Court to such effect, any of the parties can put a padlock on the gate of the property so as to exclude the other from exercising his rights. In fact, putting a padlock on a property without an admitted or established legal right can only be termed as a mischief and can hardly be a means to take possession of a property.

8. When a Civil Court asks the police to ensure that its order is not violated, it does not necessarily mean that the police should all along keep their eyes glued to the situs to detect a violation and catch the violator in the act. Rather, if a violation is found to have taken place, it shall be open to the police to act in terms of the Court's order and remedy the wrong. Any other interpretation would give premium to unscrupulous violators of law.

9. In view of the above, although all the reliefs sought in the writ petition cannot be entertained due to the foregoing reasons and in the absence of the required admitted facts, the writ petition is disposed of by

directing the respondent police authorities to ensure that the interim order of injunction of status quo as granted by the Learned Civil Court is not violated by any of the parties. If any padlock has been put in violation of the Civil Court's order, the police authorities shall be at liberty to look into the same and break it open. This would be quite in continuation of the mandate given by the Civil Court as referred to above.

10. Even otherwise, the police shall keep a sharp vigil of the locale and ensure that no breach of peace takes place.

11. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

**(Jay Sengupta, J.)**