

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 22146 of 2024
Bhaben Mandal**

Vs.

The State of West Bengal & Ors.

For the petitioner	: Mr. Sanjib Kumar Mukhopadhyay	
	Mr. Timir Kanti Biswas	
	Ms. Aparupa Bhattacharya	advocates
For the Respondent		
nos. 5 and 6	: Mr. Falguni Majhi	advocate
For the State:	:Ms. Jhuma Chakraborty	
	Ms. Arpita Mondal	advocates
Heard on	: 27.09.2024	
Judgment on	: 27.09.2024	

Hiranmay Bhattacharyya, J.:-

1. Affidavit of service filed in Court is taken on record.
2. The petitioner claims to be the owner of a shop room by virtue of a Deed of Conveyance dated July 21, 2009. According to the petitioner, his name has been duly recorded in the Record of Rights. The petitioner started running business from the said shop room under the name and style "M/s. Shree Shree Gopalchander Rakomari Khelaghor" and engaged the 5th and 6th respondents as his employees. The petitioner claims that due to his illness, he could not carry on the day to day affairs of the business for a certain period and was completely dependent upon 5th and 6th respondents for running the business from the said shop room. Taking advantage of

such situation, the 5th and 6th respondents have taken control of the business and the shop room and is not allowing him to even enter into the shop room.

3. The petitioner approached this Court praying for a direction upon the respondent authorities to ensure absolute physical possession of the house building and the shop room from the clutches of the 5th and 6th respondents.
4. The learned advocate for the petitioner submits that the petitioner has been forcefully ousted from his shop room by the 5th and 6th respondents and seeks a mandamus to be issued commanding the police authorities to evict the 5th and 6th respondents from the shop room.
5. Learned advocate for the private respondent submits that the petitioner has instituted a suit for recovery of possession, mandatory and permanent injunction against the 5th and 6th respondents herein being T.S. No. 38 of 2021, which is pending before the learned Civil Judge (Junior Division), 2nd Court at Burdwan. The learned advocate places reliance upon a decision of the Hon'ble Supreme Court in the case of **Roshina T. Vs. Abdul Azeez K. T. & Ors.** reported in **AIR 2019 SC 659** in support of his contention that a claim regarding ownership and possession of an immovable property can only be decided by the Civil Court and the writ petition under such circumstances is not maintainable.
6. The learned advocate for the petitioner places reliance upon a decision of the Hon'ble Supreme Court in a case of **Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (Dead) through LRS.** reported at **(2012) 5 SCC 370** in support of his contention that the possession of a servant or agent in respect of a property is that of his master or principal and they cannot claim to remain in possession of the said property thereby denying the right of the lawful owner.
7. Learned advocate for the State submits that the police authorities have already taken steps and have submitted a prosecution under Section 107/116(3) of the Code of Criminal Procedure being Jamalpur P.S. N.C.R. No. 195 of 2024 dated March 24, 2024. The report of the Inspector-in-Charge dated September 16, 2024 is taken on record.
8. After going through the averments made in the writ petition, this Court finds that the writ petitioner alleges that he has been forcibly ousted by a person from an immovable property without due process of law. Such

person does not fall within the definition of State under Article 12 of the Constitution. In effect, the petitioner has sought for an order of restoration of possession of an immovable property from a private party in this writ petition.

9. The petitioner has already approached the Civil Court praying for recovery of possession of the shop room, which is the subject matter of dispute in this writ petition. The question as to who is the owner of the immovable property more particularly the shop room, as to how the private respondents came into possession, whether the private respondents have any legal right to remain in possession and to carry on business from the shop room etc. are some of the materials questions which requires an adjudication by trial on evidence in the pending civil suit.
10. In *Roshina T. (supra)* the Hon'ble Supreme Court reiterated that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between the private parties. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged. It was further held that the High Court cannot allow its Constitutional jurisdiction to be used for deciding disputes for which remedies under general law, civil or criminal are available. It was further held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 being special and extraordinary should not be exercised casually or lightly on mere asking by the litigant.
11. The Hon'ble Supreme Court further held that an application under Articles 226/227 of the Constitution of India for grant of relief for restoration of possession of an immovable property was not maintainable and the same ought to have been dismissed *in limini* as not been maintainable. The Hon'ble Supreme Court further observed that the High Court ought to have declined to entertain the writ petition in exercise of Extra Ordinary Jurisdiction under Articles 226/227 of the Constitution of India for grant of reliefs in the nature of restoration of possession of an immovable property.
12. The aforesaid decision squarely applies to the facts of the case on hand.
13. In *Maria Margarida Sequeira Fernandes (supra)*, the caretaker filed a suit for injunction against the true owner. In the said suit the plaintiff did not

claim any title over the suit property and it was established beyond doubt that the plaintiff/ respondent before the Hon'ble Supreme Court was only a caretaker. On such facts it was held that the caretaker or agent holds property of the principal only on behalf of the principal and he acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession. The said decision is clearly distinguishable on facts. That apart, in the said reported case a suit for injunction was filed before the Civil Court. For such reason the said decision cannot come to the aid of the petitioner. The police authority is not vested with the power or authority to decide the aforesaid civil disputes between the private parties. The police authority is only duty bound to implement the order of civil court.

14. The writ petitioners failed to make out any case of violation of statutory duty on the part of the statutory authorities. This Court accordingly holds that the reliefs claimed is not legally permissible in a writ petition.
15. For all the reasons as aforesaid, this Court is not inclined to grant any relief in favour of the petitioner.
16. With the above observations and directions, the writ petition stands disposed of.
17. It is, however, made clear that this Court has gone into the merits of the claim and counter-claim of the private parties and the findings recorded hereinbefore are only for the purpose of supporting the ultimate conclusion and the same shall not prejudice the private parties in the pending civil suit.
18. There shall, however, be no order as to costs.
19. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)