

FORM NO. J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE APURBA SINHA RAY

MAT 60 OF 2024

CAN 1 OF 2024

(Ranajit Mondal & Ors. Vs. M/s. Rajputana Realty Private Limited & Ors.)

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MAT 67 OF 2024

CAN 2 OF 2024

(M/s. Rajputana Realty Private Limited & Anr. Vs. The State of West Bengal & Ors.)

FOR THE APPELLANT (In MAT 60 of 2024) & FOR THE RESPONDENT (In MAT 67 of 2024)	: MR. PARTHA PRATIM ROY, ADVOCATE MR. BIKRAMJIT GHOSH, ADVOCATE MR. DEBASISH MUKHOPADHYAY, ADVOCATE MR. SOUMYAJIT DUTTA, ADVOCATE MS. SUPRIYA SINGH, ADVOCATE MS. MADHUSHREE DUTTA, ADVOCATE
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FOR THE RESPONDENT (In MAT 60 of 2024) & FOR THE APPELLANT (In MAT 67 of 2024)	: MR. SUDDHASATVA BANERJEE, ADVOCATE MR. SASHWAT NAYAK, ADVOCATE MR. SUMIT BISWAS, ADVOCATE MS. RISHITA CHAKRABORTY, ADVOCATE
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FOR THE STATE	: MR. JOYJIT CHOUDHURY, LD. AAG MR. PRETOM DAS, ADVOCATE MS. BEDASRUTI BOSE, ADVOCATE MS. RIMA SARKAR, ADVOCATE
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HEARD ON : SEPTEMBER 10, 2024.

JUDGMENT ON : SEPTEMBER 10, 2024.

THE COURT:

1. By the consent of the parties the main mandamus appeal is taken up for final disposal. The dispute pertains to the

alleged over action of the police authorities in relation to the properties being the subject matter of dispute in the civil proceedings. It is alleged that the police authorities on their own not only pasted the notice at the conspicuous part of the property belonging to the appellant but have also imposed an order under Section 144 of the Code of Criminal Procedure meaning thereby the enjoyment, access and the possession were intervened.

2. The challenge came up before the Writ Court and by the impugned order the Writ Court set aside the order passed under Section 144 of the Code of Criminal Procedure with the categorical finding that the Executive Magistrate has acted in violation of the ratio laid down in case of ***Gulam Abbas vs. State of Uttar Pradesh & Ors.*** reported in ***(1982) 1 SCC 71***. The Writ Court was conscious that passing an order under Section 144 of the Code of Criminal Procedure in a manner, as has been done, in effect, violates or infringes the fundamental rights and, therefore, such order is unsustainable in law.
3. Despite the appellant in MAT 67 of 2024 having emerged successful in the said writ-petition, the instant mandamus appeal is filed on a limited contour that the notice pasted at the conspicuous part of the property by the police administration is in exercise of an excessive power not supported by any provisions of law, more particularly, when the order passed by the Executive Magistrate under Section 144 of the Code of Criminal Procedure was

declared as bad in law and not in tune with the mandate of the Supreme Court in Gulam Abbas (supra). There is another set of appeal being MAT 60 of 2024 filed by a non-party to the writ-petition with the leave to file an appeal challenging the self-same order on the score that they were denied a right of hearing as the application for addition of party filed before the Writ Court was not entertained nor appears to have been disposed of at the time of final order.

4. We invited all the Counsels to address us on the merit without venturing to go into the nitty-gritty of the respective stands taken in their appeals. After hearing the respective Counsels, it is evident that the dispute is of civil in nature and, in fact, the parties have approached the Civil Court i.e. Civil Judge (Junior Division), Jalpaiguri by filing a Title Suit No. 542 of 2022 seeking declaration and permanent injunction. The appellant-company is not *ad idem* to the stand taken by the appellant of another appeal that it was a plaintiff in the said suit. According to the company, one of the directors in his individual capacity instituted the said suit in respect of the property exclusively belonging to him and unconnected with the properties of the company and, therefore, the contention of the other appellants who filed a separate appeal, is untenable and factually incorrect.
5. Be that as it may, it appears that the defendant no. 12 in the said suit after service of the summons appeared and filed the written-statement along with the counter-claim. The record would further reveal that on an application filed by

the plaintiff of the said Title Suit no. 542 of 2022, an order of *status-quo* was passed which, later on, could not be sustained. However, the dispute revolves around the order of *status-quo* to be implemented through the police administration. Initially there was a confusion in the mind of the appearing Counsels as to what order is sought to be implemented by the police but our attention is drawn to the order dated 31.08.2023 passed in the said suit on the basis of an application for temporary injunction taken out by the defendant no. 12 therein, wherein an order of *status-quo* in respect of a scheduled property with regard to the nature, character and possession was passed.

6. We further find that immediately after passing of the order of injunction in the form of *status-quo*, an application under Section 151 of the Code was taken out for direction upon the police to implement the said *ad interim* order of injunction, which was disposed of on 24.04.2024 directing the Inspector-in-charge of the Kotwali Police Station, District Jalpaiguri, to comply the said order and to see that the order dated 31.08.2023 is not violated in any manner.
7. Learned Additional Advocate General appearing for the police administration submits that pursuant to the said order passed by the Civil Court, it is imperative on the part of the police administration to implement the said order and whatever steps have been taken in this regard is on the basis of an order of the Civil Court and not otherwise.

8. Mr. Banerjee is very much vocal on the aforesaid stand to the extent that all the actions taken by the police administration was prior to 24.04.2024 that itself indicates that the police exceeded its power or jurisdiction in taking a step, obviously on the basis of an extraneous factor.
9. Though the learned AAG do not approve the aforesaid contention but after perusal of the aforesaid two orders, we do not intend to delve much deep into the said matter, more particularly, when the Civil Court has already directed the Police Authorities to see that the order of *status-quo* dated 31.08.2023 is duly implemented.
10. The parties are not *ad-idem* whether the *status-quo* engulfs all the properties including the properties which are not the subject matter of dispute in the said suit to which we do not find any difficulty in assimilating the facts and the law in this regard. The moment the Court passes an order of *status-quo* in respect of the property, it encompasses the properties being the subject matter of the said suit and does not transgress its barriers on the other property *de hors* the subject matter of the said suit. We do not find any misconception could arise in the minds of the litigating parties in this regard as the Court cannot pass an order in respect of a property which is not a subject matter of dispute in the said suit.
11. So long the orders dated 31.08.2024 and 24.04.2024 are operative and staring at the face of the litigant, we cannot issue a writ of mandamus upon the police authorities to act

in defiance to the order of the Civil Court. However, we make it clear that the police administration shall strictly act within the precincts of the order of the Civil Court which is the minimal expectation from the police administration.

12. All the parties are at liberty to approach the Civil Court, in the event, they are so advised and redress their grievance by taking a proper recourse to law as permissible.
13. None of the observations made hereinabove shall have any persuasive value on the merit of the said suit and the Civil Court shall be free to decide the same independently in accordance with law.
14. With these observations, both the appeals being **MAT 60 of 2024** and **MAT 67 of 2024** along with the connected applications are **disposed of**. No order as to costs.

(HARISH TANDON, J.)

(APURBA SINHA RAY, J.)