

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

W.P.A. 14585 of 2025

***Samrat Sekh*
versus
The State of West Bengal & Ors.**

For the Petitioner : Mr. Debasish Kundu
Mr. Sayan Mukherjee.

For the State : Mr. Anand Farmania
Mr. Dhananjay Banerjee.

Heard On : 08.07.2025

Judgement On : 08.07.2025

Tirthankar Ghosh, J. :

Petitioner has approached this Court invoking the jurisdiction under Article 226 of the Constitution of India advancing the following prayers:

- a) *A writ in the nature of mandamus commanding the respondent authority specifically respondent no.4 and 5 to show cause as to*

why the private respondents No.8 to 9 should not be arrested immediately upon proper criminal case being registered against the private respondent by the police authority;

- b)** *A writ in the nature of mandamus directing the respondent authority specifically the respondent Nos.4 and 5 to show as to why they should not be restrained from pro-activeness/over action for helping the private respondent and perform their statutory duty;*
- c)** *A writ in the nature of mandamus commanding the respondent authority to restrained the private respondents from making any obstruction to construct the house of the petitioner immediately and stop the private respondents from creating nuisance over the petitioner's property;*
- d)** *A writ in the nature of mandamus commanding the respondent authority to show cause as to why the proper investigation of the instant case should not be conducted by arresting the accused persons immediately;*
- e)** *A writ in the nature of certiorari commanding the respondent to certify and transmit to this Hon'ble Court the record of the case so that conscionable justice may be done;*
- f)** *Rule NISI in terms of prayer (a), (b), (c), (d) and (e) above;*

- g)** *Ad-interim order do issue restraining the private respondents from entering into the land of the petitioner till disposal of this writ petition;*
- h)** *Ad-interim direction to the police authority to give police help and/or assistance to the petitioner till the disposal of the writ application;*
- i)** *Costs;*
- j)** *Such other or further order(s) and/or direction(s) as to this Hon'ble Court may deem fit and proper."*

Learned advocate appearing for the petitioner has drawn the attention of the Court to the photostat copy of the record of rights which has been enclosed and claimed to be the owner of the land referred to therein. Attention of the Court was drawn to a text message advanced through the Government of West Bengal wherein an installment of Rs.60,000/- for Awas Yojona was advanced from the Panchayat and Village Development, Government of West Bengal. Petitioner also approached the learned Civil Judge (Junior Division), 3rd Court, Krishnagar by way of filing T.S.75 of 2025 wherein an application was preferred under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure. The learned Civil Judge by its order dated 02.04.2025 directed the defendants to be restrained from creating any disturbance in the peaceful enjoyment and possession over the suit property referred to in the plaint and also directed not to change the nature and character of the property. Learned advocate has also

referred to the representation made to the Superintendent of Police, Krishnagar Police District, Officer-in-Charge, Chapra Police Station and the Pradhan, Kalinga Gram Panchayat wherein the learned advocate representing the petitioner communicated to the police authorities in respect of construction of the house under Awas Yojana. Learned advocate has also drawn the attention of the Court that the order passed by the learned Civil Judge in T.S.75 of 2025 was communicated to the police authorities and after receiving the said order, the police authorities did not put in efforts to protect the order of the Hon'ble Court and had been directing not to make any construction, although there was a direction to restrain the anti-socials from obstructing the construction of the petitioner.

Learned advocate for the State has submitted a report. Report reflects that the petitioner and the private respondents both have initiated cases. Chapra P.S. Case No.116 of 2025 dated 03.02.2025 was registered for investigation wherein private respondents lodged a case and consequently after conclusion of investigation charge-sheet was submitted. Series of cases have been filed under Section 163 of the BNSS. In course of enquiry in the cases arising out of Section 163 of the BNSS, police authorities ascertained relating to the offences which have been committed and further while investigating the case being Chapra P.S. Case No.116 of 2025 it was unearthed that the construction work was done forcefully on the disputed land, the original deed was not produced before the police authorities by the petitioner. No document was provided in course of investigation, consequently, police authorities had no other option except to take

steps in accordance with law. Police authorities, however, on or about 19.06.2025 and on 23.06.2025 drew up proceedings under Sections 126/135 of the BNSS against the private respondent nos.8 and 9.

I have considered the submissions advanced by the petitioner and the State. Although, according to the petitioner, service was effected upon the private respondents but the private respondents were not represented at the time when the writ petition was taken up for hearing. The emphasis of the petitioner is that the civil court's order which was passed in T.S.75 of 2025 should be implemented by the police authorities and the police authorities should not be allowed to restrain the petitioner from carrying out the construction which was under the Scheme (Awas Yojana).

It has been a settled proposition of law that, for breach of an order of a civil court it is the civil court itself which can pass directions upon the police authorities. The infraction of any direction passed by the Civil Court cannot be acted upon by the police authorities until and unless there is a specific direction being passed by the said Court.

The subject matter of the present application essentially deals with a private dispute wherein the police authorities have been introduced in order to invoke the jurisdiction of this court under Article 226 of the Constitution of India.

The Hon'ble Supreme Court in *Prasanna Kumar Roy Karmakar Vs. State of West Bengal* reported in 1996(3) SCC 403; *Rashina T. vs. Abdul Azeez K.T.* reported in 2019 (2) SCC 329; *Radhey Shyam v. Chhabi Nath* reported in (2009) 5

SCC 616 have deprecated the interference under Article 226 of the Constitution of India in respect of disputes which are purely private and personal in nature and wherein the civil court is already in seisin of the issue.

In view of the subject matter involved in the present writ petition the following paragraphs 9,10,14,15,16,19 and 21 of *Radhey Shyam -versus- Chhabi Nath* (supra) is relevant, the same as such is set out below:-

“9. From the aforesaid narration of events, it is clear that the proceedings in this case arose out of purely civil disputes relating to property and the parties have filed suits before the civil court, and the suits are pending. The parties to the proceedings are all private individuals. Neither the State nor “State” nor an authority under Article 12 is a party to this proceeding. This is clear from the cause-title of this appeal. Now the question is : whether private individuals are amenable to the jurisdiction of writ court in connection with the private disputes relating to property, possession and title between private individuals?

10. As early as in 1957, a Constitution Bench of this Court in Sohan Lal v. Union of India [AIR 1957 SC 529] held that a writ of mandamus or an order in the nature of mandamus is not to be made against a private individual. A writ of and/or in the nature of mandamus normally is issued asking a person to do a particular thing which is in the nature of his public duty.

14. Apart from the decision in Sohan Lal [AIR 1957 SC 529] , subsequently in Mohd. Hanif v. State of Assam [(1969) 2 SCC 782] a three-Judge Bench of this Court explaining the general principle relating to the High Court's jurisdiction under Article 226 held that the jurisdiction of the High Court is extraordinary in nature and is vested in

the High Court not for the purpose of declaring the private rights of the parties but it is conferred for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of the jurisdiction (see SCC p. 786, para 5).

15. *The learned Judges in Hanif case [(1969) 2 SCC 782] reiterated the principle further by saying : (SCC p. 786, para 5)*

“5. ... In a proceeding under Article 226 the High Court is not concerned merely with the determination of the private rights of the parties; the only object of such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction.”

16. *The learned Judges in Hanif [(1969) 2 SCC 782] referred to the decision of this Court in T.C. Basappa v. T. Nagappa [AIR 1954 SC 440 : (1955) 1 SCR 250] and held that : (Hanif case [(1969) 2 SCC 782] , SCC p. 786, para 5)*

“5. ... It is obvious that the remedy provided under Article 226 is a remedy against the violation of the rights of a citizen by the State or statutory authority. In other words, it is a remedy in public law.”

19. *Same caution was sounded in a subsequent decision of Mohan Pandey v. Usha Rani Rajgaria [(1992) 4 SCC 61 : AIR 1993 SC 1225] wherein the learned Judges held that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons. Remedy under Article 226 of the Constitution is not available except where violation of some statutory duty on the part of a*

statutory authority is complained of. The Court made it very clear by making the following observations : (SCC p. 63, para 6)

“6. ... The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly.”

21. *Rather recently in P.R. Murlidharan v. Swami Dharmananda Theertha Padar [(2006) 4 SCC 501] P.K. Balasubramanyan, J. (as His Lordship then was) in a concurring but a separate opinion held that it would be an abuse of the process for the petitioner to approach the writ court seeking for a writ of mandamus directing the police authorities to protect his property without first establishing his possession in an appropriate civil court. The learned Judge made very pertinent observations by saying that : (SCC p. 506, para 17)*

“17. ... The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations.”

The same has been consistent view of this Court in *Maharani Mondal @ Biswas vs. State of West Bengal* reported in 1999 SCC OnLine Calcutta 387; *CPA Consultancy Services Private Limited, Employees Union vs. CPA Consultancy Services Private Limited* 1994 SCC OnLine Calcutta 77, *Mohinul Haque @ Mohinur Haque Chowdhury vs. State of West Bengal* 1995 SCC OnLine Calcutta 369.

Having regard to the catena of judgments which have settled the issue relating to a private dispute and interference of the police authorities without being aided by an order of the court, I am of the view that the police authorities exercised their restraint in not interfering themselves in a private dispute and has only taken into consideration the issue relating to alleged offences being committed.

Consequently the act and action of the police authorities were in consonance with the provisions of law and the over action as has been complained by the petitioner is not substantiated. The practice of invoking Article 226 of the Constitution of India when the civil court is already in seisin of the issue is in gross violation of the mandate of the Hon'ble Apex Court. The petitioner has circumvented the provisions of the Civil Procedure Code and attempted to invoke the jurisdiction under Article 226 of the Constitution of India for the purposes of depriving the civil court from exercising its jurisdiction although the petitioner himself has approached the civil court for establishment of his right by way of praying for permanent injunction.

Having considered that the manner in which the provisions of this Court under Article 226 of the Constitution of India has been invoked, I am of the view that the same is in gross ignorance of the provisions of law and the same is with the oblique purpose of abusing the process of law. Consequently, the writ petition being WPA 14585 of 2025 is dismissed.

There will be no order as to costs.

Affidavit of service filed by the petitioner be kept with the record.

Report submitted by the State be kept with the record.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)