

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Acting Chief Justice SUJOY PAUL
&
The Hon'ble Justice PARTHA SARATHI SEN

MAT 1855 OF 2025
With
IA NO: CAN NO. 1 OF 2025

Uttar Kolkata Sanhati Sporting Club
-Vs-
Timir Baran Hatai & Ors.

For the Appellant:	Mr. Anirban Mitra, Adv., Mr. Amit Halder, Adv., Mr. Amit Roy, Adv., Ms. Madhumita Sadhukhan, Adv.
For the Respondent State:	Mr. Suman Ghosh, Sr. Govt. Adv., Ms. Ratna Das, Adv.
For the Respondent No. 1:	Mr. Subhojot Seal, Adv., Ms. Sarbani Dutta, Adv.
For the Respondent No. 6 to 8:	Mr. Iftekar Munshi, Adv.
Hearing concluded on:	27.11.2025
Judgment on:	03.12.2025

PARTHA SARATHI SEN, J. : –

1. In this intra Court appeal, the order dated 25.09.2025 as passed in WPA 23367 of 2025 is assailed at the instance of the appellants who are the private Respondent Nos. 5 and 6 in the original writ petition.

2. By the order impugned, learned Single Bench of this Court while disposing the said writ petition found that a criminal case has already been registered for investigation which prima facie ensures that there has been violation of law regarding alleged breaking open the padlock of the temporary gate installed in front of the ground floor of the concerned building and thus directed the police authorities to ensure that the trespassers are not allowed to use the property.
3. At the time of hearing Mr. Mitra, learned Advocate appearing on behalf of the appellants/ private Respondent Nos. 5 and 6 in the writ petition at the very outset draws our attention to the prayer portions of the said writ petition a copy of which has been annexed with the IA No. CAN 1 of 2025.
4. It is submitted by Mr. Mitra that from prayer (b) of the said writ petition it would reveal that the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent authorities for removal of the appellants/private Respondent Nos. 5 and 6 from the said property which categorically indicates that the present appellants being the private Respondent Nos. 5 and 6 of the writ petition are in settled possession of the property in question.
5. It is argued by Mr. Mitra that a writ Court has no authority to issue a writ of mandamus for removal of the appellants since a writ Court lacks the power to adjudicate the right, title and interest of a litigant and such jurisdiction falls within the domain of jurisdictional Civil Court. It is argued by Mr. Mitra that the third paragraph of the internal Page no. 2 of the impugned

order is in the nature of eviction of the present appellants inasmuch as by the said order, the learned Single Bench directed the police authorities to ensure that trespassers are not allowed to use the property.

6. Drawing attention to a photocopy of the report dated 10.11.2025 as filed by a police official of the Burtolla Police Station in connection with Case No. M/481 of 2025 in a proceeding under Section 163(2), BNSS as pending before the jurisdictional Magistrate, it is argued by Mr. Mitra that from the said police report it would reveal that the present appellants being the private Respondent Nos. 5 and 6 in the writ petition were in settled possession in a room situated on the ground-floor of premises No. 32/ 9, Beadon Street, Kolkata- 700006 P.S. Burtolla (hereinafter referred to as the said premises in short). It is further submitted by Mr. Mitra that the order impugned has been passed by the learned Single Bench even without exchange of affidavits.

7. Mr. Mitra thus submits that it is a fit case for setting aside the order impugned.

8. Such contention is vehemently opposed by Mr. Seal, learned Advocate appearing on behalf of the Respondent No. 1 herein who is the petitioner before the learned Single Bench in the said writ petition. It is submitted that before the learned Single Bench as well as before this Court no material could be placed by the present appellant to substantiate their prima facie possession in a room of the said premises. It is further submitted on behalf of the Respondent No. 1/writ petitioner that the impugned order has been passed by the learned Single Bench considering the materials as placed before it and for

preventing criminal activities at the instance of the present appellants who are the private Respondent Nos. 5 and 6 in the said writ petition.

9. It is further submitted that on careful perusal of the order impugned it would reveal that by no stretch of imagination learned Single Bench has passed an order for eviction of the present appellants as wrongly alleged.

10. Learned Advocate appearing on behalf of the Respondent Nos. 7 and 8 adopts the argument of learned Advocate for the Respondent No. 1 by saying that from the materials as placed before the learned Single Bench it would reveal that his clients being the owners of the said premises entered with a development agreement with the Respondent No. 1 herein and pursuant to such development agreement a building was raised in the said premises wherein the present appellants most wrongfully made an attempt to occupy one room forcefully. It is submitted that in absence of any illegality and/or infirmity in the impugned order there cannot be any occasion to interfere with the same.

11. Mr. Ghosh, learned Advocate appearing on behalf of the Respondent/ State in course of his submission draws attention of this Court to the report dated 15.11.2025 as submitted by the Officer-in-charge of the Burtolla Police Station. It is argued by Mr. Ghosh that from the report as submitted in connection with the instant appeal it would reveal that the appellants herein used to use one room on the ground-floor of the said premises and when the said property was developed, an assurance was given by the Respondent No. 1/ developer that he would give a space at the said

premises to the appellants for keeping utensils for Puja as well as on account of temporary residence of Dhaki during Durgapuja.

12. It is further submitted that the said report further reveals that since the Respondent No. 1/ developer was not agreeable to hand over the said place to the appellants over which a dispute cropped up and the present Respondent No. 1 lodged a complaint on 10.09.2025 with the Officer-in-charge of the Burtolla Police Station alleging that the appellant No. 2 herein and its associates broke open the padlock of the temporary gate of the said premises and trespassed into the open space of the ground-floor of the said premises and on the basis of which Burtolla Police Station Case No. 156 dated 24.09.2025 under Section 329(4)/ 351(2)/ 54 BNS was initiated and investigation is still in progress.

13. We have carefully gone through the entire materials as placed before us. We have given our due consideration over the submissions of the learned Advocates for the contending parties.

14. For effective adjudication of the instant appeal we propose to look to the prayers made in the said writ petition, the relevant portion of which are as under:

“In the premises the petitioners here most humbly pray that Your Lordships may graciously be pleased to:

a).....

b) Issue a Writ of and/or in the nature of Mandamus commanding to the respondents police authorities and each of them and/or its men and agents to act as per law and to forthwith take due steps against the illegal criminal

activities of the private respondent no. 5 and 6 and their men, agent and associates;

c) Issue a Writ of and/or in the nature of Mandamus commanding to the respondents police authorities and each of them and/or its men and agents to act as per law and to forthwith take due steps to remove the illegal occupation and/or criminal trespass by the private respondent no. 5 and 6 and their men, agent and associates into the subjected property of the petitioner.

d).....

e).....

f).....

g).....

h).....

i).....

j).....

k).....”

15. The relevant portion of the impugned order is also required to be looked into and the same is quoted hereinbelow:

“.....State has submitted a report which reflects that Burtolla PS Case No. 156 dated 24.09.2025 under Sections 329(4)/ 351(2)/ 54 of the BNS has already been registered for investigation.

Since the criminal case has already been registered for investigation, prima facie, it ensures that there has been violation of law so far as breaking open the padlock of the temporary gate which has been installed in front of the ground floor of the building is concerned.

Having considered that the criminal case is pending, the police authorities would ensure that trespassers are not allowed to use the property. To that effect, if there is any violation of law, it would be incumbent upon the police authorities to ensure that peace and tranquility is maintained.....”

16. On careful perusal of the averments made in the said writ petition more specifically, the prayer portion thereof it appears to us that the Respondent No. 1 herein who is the writ petitioner before the learned Single Bench has prayed for issuance of appropriate writ/ writs against the respondent authorities, commanding them to take appropriate steps for removal of the present appellants who are the private Respondent Nos.5 and 6 in the writ petition since according to the writ petitioner the present appellants illegally trespassed into the said property.
17. Materials have been placed before the learned Single Bench as well as before us that on account of such alleged incident the respondent No. 1/ writ petitioner lodged a written complaint with the jurisdictional Police Station over which FIR was registered and PS Case was started under the relevant sections of BNS.
18. On perusal of the order impugned it appears to us that the learned Single Bench while applying his judicial mind noticed the action of the police authorities and came to a prima facie finding that there has been violation of law as regards breaking of the padlock of the temporary gate of the said premises.
19. It further appears to us that the learned Single Bench went on further directing the police authorities to ensure that no trespasser be allowed to use the property.
20. The question as to whether the present appellants are at all trespassers or not in respect of the said premises is a disputed questions of fact which

requires due adjudication. We have already noticed that the learned Single Bench while passing the impugned order directed the police authorities to prevent the access of any trespasser into the said premises even without calling for affidavits.

21. It thus, appears to us that in the event the impugned order is allowed to stand, the same may affect the right, title and interest of the appellants in the said premises, if there be any.
22. In view of the discussion made hereinabove we thus find sufficient merit in the instant appeal.
23. The instant appeal thus succeeds and is hereby allowed.
24. Consequently, the impugned order dated 25.09.2025 as passed in WPA 23367 of 2025 is hereby set aside.
25. With the disposal of the instant appeal, CAN 1 of 2025 is disposed of.
26. WPA 23367 of 2025 is remanded for fresh consideration to the Bench having appropriate determination forthwith with a request to the learned Single Bench to dispose of the said writ petition in accordance of law after exchange of affidavits.
27. Urgent Xerox certified copy, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, A.C.J.)

(PARTHA SARATHI SEN, J.)