

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

APPELLATE SIDE

HEARD ON: 21.04.2025

DELIVERED ON: 21.04.2025

CORAM:

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND**

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

F.M.A. 1345 of 2024

With

I.A. No. CAN 1 of 2024

Sk. Hasan Jahangir

Vs.

The State of West Bengal & Ors.

Appearance:-

Mr. Biswaroop Biswas

Md. Mojnu Sk.

.....For the Appellant

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioner is directed against the order dated 25th September, 2024 in W.P.A. 19739 of 2024. The writ petition was filed praying for issuance of a writ of mandamus to direct the respondents, particularly, the respondent nos.2 to 4 to take necessary steps to ensure protection to the life and property of the appellant/writ petitioner and to see that no disturbance and/or wrongful or unlawful activities are caused by the private respondents and their associates in any manner.
2. The learned Single Bench took note of the report submitted by the State, which showed that a Title Suit being, Title Suit No.352 of 2022 is pending before the learned Civil Judge (Senior Division), Bardhaman at the instance of the private respondent. Further, the report stated that the police authorities on receipt of the complaint, has already drawn a proceeding under Sections 126/ 135 (3) of the B.N.S.S. vide Bhatar P.S. NCR No. 316 of 2024 dated 12.08.2024. The learned Single Bench also took note of the submission made on behalf of the

appellant/writ petitioner that the Panchayat has granted permission to the appellant/writ petitioner for construction and plastering the property. However, the private respondent objected to the same contending that the property is an undivided property and the appellant under the garb of plastering and construction is trying to encroach into the property and the matter is now pending before the learned Civil Court. The learned Single Bench disposed of the writ petition directing the Officer-in-Charge to ensure strict vigil to be kept so that no disrupts or there is any disturbance of law and order in respect of the subject matter of the property referred to in the writ petition.

3. Being dissatisfied of such direction, the appellant has filed the present appeal.
4. The learned advocate reiterated the submission, which was made before the learned Writ Court and submitted that the Gram Panchayat has already granted permission and the appellant is entitled to carry out the construction/plastering work in accordance with the permission and the private respondents are not justified in objecting to the same.
5. Further, it is submitted that the private respondent though the plaintiff in the suit has not been appearing before the Civil Court and the learned Civil Court has also issued a show-cause to the plaintiff in this regard.
6. After elaborately considering the factual position of the instant case and taking note of the submission of the learned advocate appearing for the appellant as well as the photograph of the building, which has been annexed as Annexure – A/3, it is seen that one portion of the building remained un-plastered and according to the appellant, the appellant is in enjoyment of the said portion of the un-plastered building.
7. In any event, a suit for partition is pending and the private respondent is a co-owner. It is not clear as to whether the Gram Panchayat had issued notice to

the co-owners before granting permission. Since, civil rights are involved between the parties, it is but appropriate that the petitioner invokes the remedy before the Civil Court and these issues cannot be adjudicated in a writ petition.

8. Therefore, in our view, the learned Single Bench rightly directed the Officer-in-Charge of the concerned police station to maintain strict vigil so that no law and order issue arises in the locality concerning the said property.
9. Therefore, we find no ground to interfere with the order impugned passed in the writ petition.
10. Accordingly, the appeal and the connected application (I.A. No. CAN 1 of 2024) stand dismissed.
11. However, this will not prevent the appellant/petitioner from moving the civil court either in the pending suit or by way of a separate suit, if so advised and in such event, the learned Civil Court shall decide the matter on merits and in accordance with law uninfluenced by any observation made in this judgement and order.
12. No costs.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)