

JPD -2
Ct No.01
01.08.2025
(sss)

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 90 of 2025

Sri Sanjoy Ghosh and Ors.

Vs.

Sri Chandra Shekhar Choudhary and Ors.

Mr. Sudipto Kumar Mazumder, Sr. Adv.
Mr. Sourab Kar

...For the petitioners.

Mr. Milindo Paul,
Mr. Sandip Guha Roy,
Mr. Subham Das,
Mr. Deepsagar Dutta

...For the Opposite Parties.

1. The premise of the revisional application is short, but the history is a bit chequered. According to the petitioners, the predecessor-in-interest of the petitioners was a tenant in respect of the suit property under the predecessor-in-interest of the opposite parties. Subsequently, the property was gutted by a fire. Thereafter, the petitioners took a stand that they were in adverse possession of the property.

2. The present suit has been filed by the plaintiffs/opposite parties for permanent injunction restraining the petitioners from making any construction over the suit property without

permission of the Siliguri Municipal Corporation and the West Bengal Fire Safety Department.

3. In such suit, an interim order of injunction was obtained to that effect. The learned Trial Judge restrained the defendants/petitioners from making any sort of construction over the suit premises without obtaining prior permission from the Siliguri Municipal Corporation or the West Bengal Fire Safety Department as on that date till disposal of the suit.

4. In the suit, the petitioners have also filed a counter claim, claiming title on the strength of adverse possession. The petitioners also took out an application under Section 151 of the Code of Civil Procedure seeking permission to take necessary steps to unclog the drain and repair the existing water connection in the suit premises.

5. Learned senior counsel appearing for the petitioners contends that whatever remains of the suit premises is being utilized for running a small tea stall by the petitioners and as such, water is an essential commodity. Since there was an existing water connection and drainage system all along and the petitioners' possession of the property has not been disputed as such, it is contended that the learned Trial Judge acted

without jurisdiction in refusing such prayer merely on the ground of suppression of the fact that there is an subsisting demolition order from the Siliguri Municipal Corporation.

6. However, it is submitted by the petitioners that the said demolition order was subjected to a challenge before this court in a writ petition. In connection with the said writ petition, an interim order was passed to the effect that no coercive action shall be taken on the basis of the demolition order.

7. As such, non-disclosure of such fact was not germane.

8. Learned counsel for the opposite parties opposes the prayer made in the revisional application and submits that after the premises were razed by fire and turned to ashes, no construction remains on the same, apart from an illegally constructed temporary tin structure, and if a water connection is sought to be made now, it will tantamount to a new construction. It is submitted that it will be a contradiction in terms if in a premises which is under injunction from making further construction, in the garb of repairing water connection, a fresh construction is permitted to be made.

9. Learned counsel further submits that the demolition order still subsists and was a germane consideration. The suppression of the said fact before the learned Trial Judge by the petitioners tantamounted to a suppression of material fact and the learned Trial Judge was justified in refusing the permission prayed for by the petitioners, since there is already an existing demolition order.

10. Upon considering the submissions of the parties, it transpires that the injunction which has been passed in the suit restrains the defendants/petitioners only from making “any sorts of construction” over the suit premises without prior permission from the Siliguri Municipal Corporation or the West Bengal Fire Safety Department. However, the fact that the petitioners have all along been in possession of the property, in whatever capacity, has not been disputed as such.

11. It is well-settled that till a person is evicted by due process of law, the occupier has every right to basic amenities to the property.

12. The question which arises is whether in view of the demolition order, the petitioners are

entitled to get such order of repair of the water connection and unclogging the drainage system.

13. Mere existence of a demolition order does not obviate the fact that the petitioners are still in possession of the property. In fact, the demolition order itself indicates that there is an existing structure, of whatever nature, be it a tin shed or otherwise, on the property. In view of the “no coercive step” order passed by the writ court, it cannot be said that the demolition order has been set aside but in the same breath, it cannot also be said that the same is operative at the present moment.

14. Till the petitioners are, if at all, evicted by due process of law, the petitioners have every right to enjoy the minimum amenities to the premises.

15. Of course, whatever order is passed by this court would be subject to the outcome of the writ petition challenging the demolition order and the decision in the civil suit.

16. Be that as it may, as on date, as well as on the date when the impugned order was passed, there was an order of this court restraining coercive action on the basis of the demolition

order. Hence, the demolition order cannot be implemented as on date.

17. I do not find that there would be any material alteration of the suit property in the event the repair works and unclogging of the drain in respect of the existing water connection are undertaken. However, in order to ascertain whether there is at all any existing water connection which is required to be repaired, and a drainage system which requires unclogging, a local inspection would be necessary.

18. In view of the above considerations, CO 90 of 2025 is allowed on contest, thereby setting aside the impugned order bearing Order no. 14 dated March 13, 2025 passed by the learned Civil Judge, Junior Division at Siliguri, District – Darjeeling in Title Suit No. 65 of 2023 and remanding the application of the petitioners under Section 151 of the Code of Civil Procedure, directing the learned Trial Judge to appoint an Advocate Commissioner for the purpose of holding local inspection to ascertain whether there is any existing water connection at the suit premises and, if so, the nature of repair required thereto. The said learned Commissioner shall also ascertain as to whether there is an existing

drainage system in the property and if so, whether the same requires unclogging. For such limited purpose, the learned Trial Judge shall appoint an Advocate Commissioner at the earliest at the cost of the petitioners, at a remuneration to be fixed by the learned Trial Judge.

19. Upon such inspection being held and the report being filed, the learned Trial Judge shall assess the contents of the same and if it is found that there is an existing water connection and a drainage system which is clogged, the application for permission to repair the existing water connection and unclogging the drain shall be allowed.

20. In the event, however, the Commissioner's report indicates that there is no existing water connection or drainage system at all in the premises, such prayer shall be refused.

21. The entire exercise, keeping in view the urgency, shall expectedly be concluded within two months from the date of communication of this order to the learned Trial Judge.

22. It is made clear that nothing in this order shall create any special right or equity in favour of either of the parties and shall not prejudice the outcome of either the pending suit or the pending

writ petition and/or any proceeding, if going on or to be filed, before any statutory authority.

23. No order as to costs.

24. The parties shall act on the server copy of this order.

(Sabyasachi Bhattacharyya, J.)