

03.06.2026
Ct. No. 2
S.L. No. 3
Vacation Bench
SM

WPA 11920 of 2026
M/S. Onkar Parivahan Finance Pvt. Ltd. And Anr.
Versus
The State of West Bengal & Ors.

Mr. Saptangshu Basu, ld. Sr. adv.
Mr. Anjan Bhattacharya
Ms. Sucheta Das
.....for the petitioners
Mr. Joy Chakraborty
Ms. Ipsita Ghosh
.....for the respondent nos. 10 & 11
Mr. D.N. Roy, ld. G.P.
Ms. Sabita Roy, ld. Jr. Govt. adv.
Ms. Tanushree Ghosh
.....for the State of West Bengal
Mr. Abhilash Chatterjee
.....for the private respondent nos. 7, 8 & 9

1. The petitioners in the instant case are the absolute owners and occupiers of the property in question. The petitioners pray, inter alia, for a direction restraining respondent nos. 7 to 11 from interfering with the construction of the main gate and boundary wall and the eastern side adjacent to the National High Way 6 (NH6) and western side of the boundary wall of the said premises.

2. The petitioners submit that the civil suit has already been filed. The private respondents have instituted T.S. No. 25 of 2006 and obtained an order of injunction on 10.09.2025 restraining change in the nature and character of the suit property till the disposal of the suit which is reproduced below.

Ordered

“that both the parties are directed not to transfer the suit property to any 3rd party and

also not to change the nature and character of the suit property as it stands on this date, till the disposal of the suit.

The instant injunction petition U/O 39 Rule 1 & 2, CPC is hereby disposed of on contest but without any order as to costs.

The petition for extension of the injunction order is disposed of accordingly.

The Plaintiffs are directed to file a fresh plaint in view of the order dated 24.11.2021.”

3. It is submitted that on 08.05.2026, the private respondent nos. 7 to 11 along with their associates, damaged and destroyed the valuable assets situated on the premises, committed theft of valuable thereform, and also damaged the CCTV and boundary wall of the premises. Pursuant thereto, Panchla Police Station registered a FIR vide Panchla Police Station Case No: 190/26 dated 14.05.2026, Under Section 115(2)/126(2)/223/303(2)/324(5)/329(4)/351(2)/61(2)/61(2)/62 BNSS. However, no effective action has been taken by police authorities.

4. In this context, the petitioner relies upon a judgment of the Hon’ble Apex Court in the Case of ***P.R. Murlidharan And Others Versus Swami Dharmananda Theertha Padar And Ors. (2006) 4 SCC 501: 2006 SCC Online SC 296*** to contend that a writ of mandamus for police protection can be

issued when there is threat to person and authorities have failed to perform their duties. The relevant Paragraph Nos. 18 and 19 are reproduced below.

“18. In the case on hand, various disputed questions arose based on a deed of trust and the facts pleaded by the writ petitioner and controverted by the other side. The High Court should have his rights adjudicated upon, in an appropriate suit in a civil Court. The fact that a writ petitioner may be barred from approaching the civil Court, in view of Order 9 Rule 9 of the Code of Civil Procedure, or some other provisions, is no ground for the High Court to take upon itself, under Article 226 of the Constitution, the duty to adjudicate on the civil rights of parties for the purpose of deciding whether a writ of mandamus could be issued to the police authorities for the protection of the alleged rights of the writ petitioner. A writ of mandamus directing the police authorities to give protection to the person of a writ petitioner can be issued, when the Court is satisfied that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting relief for the first time to a person either to allegedly protect his right to property or his right to an office, especially when the

pleadings themselves disclose that disputed questions are involved. My learned Brother has rightly pointed out that the High Court was in error in proceeding to adjudicate on the rights and obligations arising out of the trust deed merely based on the affidavits and the deed itself. It fully agree with my learned Brother that the High Court should not have undertaken such an exercise on the basis that the right of the writ petitioner under Article 21 of the Constitution is sought to be affected by the actions of the contesting respondents and their supporters and that can be prevented by the issue of the writ of mandamus prayed for.

19. *A writ for “police protection” so-called, has only a limited scope, as, when the Court is approached for protection of rights declared by a decree or by an order passed by a civil Court. It cannot be extended to cases where rights have not been determined either finally by the Civil Court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.”*

- 5.** Learned counsel appearing for the respondent relies upon a judgment of the Hon’ble Apex Court in the Case of ***M.M. Dutt, Jitendra Nath Chaudhuri Versus Prabir Kumar Sun, 1985 Supreme (Cal)***

352. The relevant Paragraph nos. 10 & 11 which are reproduced below.

“10. IN Manohar Lal v. Seth Hiralal, AIR 1962 SC 527, it has been observed by the Supreme Court that a Court can issue an interim injunction under circumstances which are not covered by O. 39 of the Code, if the Court is of opinion that the interests of justice require issue of such interim injunction. In laying down the said proposition the Supreme Court has, amongst others, relied upon the decision in Bhagat Singh's case (AIR 1941 Cal 670) (supra). The Supreme Court has also reiterated that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. Further, the Supreme Court observes that it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it.

11. THUS it is apparent from the said observation of the Supreme Court that no technicality can prevent the Court from doing justice in exercise of its inherent power. O. 39, R. 2a lays down a punitive measure for the

purpose of compelling a party to comply with the order of injunction. The process as contemplated by the said provision may or may not be ultimately effective but, in any event, the procedure laid down in O. 39, R. 2a is incapable of granting an immediate relief to a party who has been forcibly dispossessed in violation of an order of injunction. We do not think that in such a case the Court is powerless to grant relief to the aggrieved party in exercise of its inherent power. The very object for which O. 39, R. 2a has been enacted will be fulfilled by the grant of a temporary mandatory injunction and restoration of possession of the aggrieved party. The inherent power of the Court as recognised in S. 151 of the Code is in addition to the power conferred on the Court under the provisions of the Code. All that the Court is concerned is to prevent abuse of the process of Court and to do justice by immediately intervening under circumstances which require such intervention by the Court.

6. The Learned Commissioner appointed in Title Suit 25 of 2006 has filed a Report dated 02.05.2026, wherein the existence of the boundary wall has been recorded. The said boundary wall has been allegedly demolished by the private respondents subsequent

thereto on 08.05.2026 in violation of the subsisting Order of Injunction dated 10.09.2025.

7. The Learned Counsel appearing for the state respondents, upon instruction submits before this Court that pursuant to the complaint lodged by the petitioners, an investigation has already commenced and is presently in progress. The report of the Inspector in charge, Panchala Police Station be kept on record.

8. It is further submitted that the Investigating Officer has also arrested the FIR named alleged person namely Harbinder Singh @ Pappu on 29.05.2026 and on the same day he has produced before the Ld. Chief Judicial Magistrate, Howrah.

9. The Learned Counsel appearing for the private respondents vehemently opposes the Writ Petition and raises an objection with regard to its maintainability. It is contended that the matter is pending before the competent Civil Court being T.S. 25 of 2006 and the same has not yet attained finality. Therefore, the Writ petition is not maintainable and is liable to be dismissed in view of the existence of an alternative remedy.

10. After hearing the rival contention of the parties and upon perusing the records, this Courts observes as follows:-

i) That the petitioner has an efficacious alternative remedy before the Civil Court where T.S.

25 of 2006 is pending, as well as before the Criminal Court in connection with Panchala Police Station Case No. 190 of 2026.

ii) The Writ petitioner seeks to enforce property rights and adjudicate disputed facts which is beyond the limited scope of Article 226 as laid down in P.R. Murlidharan (Supra).

iii) The State has demonstrated that the investigation is in progress and action has been taken by arresting one accused.

iv) The Writ Court cannot in the garb of Police Protection decide disputed question of facts regarding demolition or violation of injunction which are matters for the Trial Court in T.S. 25 of 2006.

v) In light of P.R. Murlidharan (Supra) case, the Writ Court cannot adjudicate civil rights or grant relief for the first time to protect property rights since a Writ for police protection has limited scope and cannot be extended to cases where civil rights are disputed and have not been determined finally or at least at an interlocutory stage in an unambiguous manner, by a Civil Court.

11. Therefore, in view of the observations made herein above, the writ petition cannot be allowed to be succeeded.

12. However, this order will not preclude the petitioner from approaching the competent civil court for appropriate relief regarding enforcement of the

injunction order dated 10.09.2025 or the competent Criminal Court for monitoring investigation or presentation of evidence in accordance with law.

13. The said writ petition is hereby dismissed.

14. Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

[Smita Das De, J]