

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. No.3752 of 2025

KALINATH SASMAL

-VERSUS-

THE STATE OF WEST BENGAL AND ANOTHER

For the petitioner : Mr. Ayan Bhattacharya, Sr. Adv.,
Mr. Chiranjib Sinha, Adv.,
Ms. Suchitra Chatterjee, Adv.,
Mr. Aniruddha Bhattacharya, Adv.

For Opposite Party No.2 : Mr. Sabyasachi Banerjee, Sr. Adv.,
Mr. Pradip Sancheti, Adv.,
Mr. Pratim Panja Dasgupta, Adv.,
Mr. Biswajit Chowdhury, Adv.,
Mr. Amit Dey, Adv.

Hearing concluded on : 18.05.2026

Judgment on : 22.05.2026

Kausik Chanda, J.:-

The present revisional application raises a question of considerable significance touching upon the jurisdictional limits of criminal courts vis-a-vis disputes concerning possession and custody of immovable property purportedly treated as “unclaimed property” by the police authorities under the provisions of the Police Act, 1861.

2. The application has been preferred challenging the judgment and order dated 23rd June, 2025 passed by the Learned Additional District and Sessions Judge, Fast Track Court, 8th Court at Alipore, South 24 Parganas in Criminal Appeal No. 92 of 2024 whereby the Learned Appellate Court was pleased to affirm the order dated 18th January, 2024 passed by the Learned Chief Judicial Magistrate, Alipore in connection with Tollygunge Police Station General Diary Entry No. 2483 dated 28th August, 2012 directing handing over of the keys and interim possessory control of premises situated at 159, S.P. Mukherjee Road, Kolkata – 700026 in favour of opposite party no. 2.

3. The records reveal that one Nirmalya Sasmal, who admittedly resided at the aforesaid premises, was found lying unconscious on 28th August, 2012. He was removed to SSKM Hospital where he was declared dead. It appears from the materials on record that the local police authorities of Tollygunge Police Station, apprehending theft or unlawful trespass into the premises where several valuables and articles were allegedly lying unattended, locked the premises and kept the keys in

police custody upon making General Diary Entry No. 2483 dated 28th August, 2012.

4. The petitioner claims himself to be the step-brother of the deceased and asserts that he performed the cremation and last rites of the deceased. Opposite party no. 2, on the other hand, claims himself to be the son of the deceased and asserts a superior right over the premises.

5. The records further disclose that on 10th September, 2012, the police authorities informed the Learned Chief Judicial Magistrate regarding the General Diary Entry and the action taken by them. Subsequently, the petitioner approached the Learned Chief Judicial Magistrate seeking custody of the keys. The matter remained pending for an unusually long period of time.

6. Thereafter, on 10th October, 2023, opposite party no. 2 entered appearance before the Learned Chief Judicial Magistrate claiming himself to be the son of the deceased and sought custody of the keys of the premises. Pursuant thereto, a police verification report was called for and submitted before the Learned Magistrate. The report indicated that upon verification from the Election Commission records, PAN records, UIDAI details and the birth certificate issued by the Kolkata Municipal Corporation, opposite party no. 2 prima facie appeared to be the son of the deceased.

7. Upon consideration of the said report, the Learned Chief Judicial Magistrate by order dated 18th January, 2024 directed handing over of

the keys of the premises to opposite party no. 2 “for his use” upon furnishing a bond and undertaking. Being aggrieved thereby, the petitioner preferred Criminal Appeal No. 92 of 2024 before the Learned Additional District and Sessions Judge which ultimately came to be dismissed on 23rd June, 2025.

8. Assailing the impugned orders, Mr. Ayan Bhattacharya, learned senior counsel appearing on behalf of the petitioner contended that the Learned Chief Judicial Magistrate acted wholly without jurisdiction in directing handing over of the keys and interim possessory control of an immovable property in exercise of powers purportedly traceable to Sections 25 and 26 of the Police Act, 1861.

9. It was argued that under the statutory scheme of the Police Act, the authority to deal with unclaimed property is vested only in the “Magistrate of the district”, which expression refers to the executive magistracy and not to a Judicial Magistrate. According to the petitioner, the Learned Chief Judicial Magistrate could not have assumed powers which the statute itself never conferred upon him.

10. It was further contended that the expression “property” occurring in Sections 25 and 26 of the Police Act refers only to movable property, money or valuable security and cannot include immovable property. Reliance was placed upon the decisions reported at **AIR 1968 Rajasthan 70 (*Chhutanlal Vs. State*)**, and **1987 SCC OnLine MP 379 (*K.V. Krishna Murthy Vs. State of Madhya Pradesh*)**, wherein the High Courts have held that the provisions of Sections 25 and 26 of the

Police Act are confined to movable property and cannot be invoked for adjudication of disputes concerning immovable property.

11. Learned counsel for the petitioner further submitted that the Learned Chief Judicial Magistrate effectively adjudicated interim possessory rights over an immovable property between rival claimants, which falls exclusively within the domain of a competent civil court. It was argued that the criminal court, under the guise of preserving property, cannot determine civil rights relating to title, succession or possession.

12. Reliance was also placed upon the celebrated judgment of the Hon'ble Supreme Court reported at **AIR 1954 SC 340 (*Kiran Singh Vs. Chaman Paswan*)** to contend that an order passed without jurisdiction is a nullity and its invalidity can be questioned whenever and wherever it is sought to be enforced.

13. It was lastly contended that since opposite party no. 2 has already obtained possession pursuant to the impugned order, this Court should restore status quo ante by directing restoration of custody of the keys to the police authorities until adjudication by a competent civil forum.

14. Per contra, learned advocate appearing on behalf of opposite party no. 2 supported the impugned orders and submitted that the police authorities acted lawfully and bona fide in securing the premises in order to prevent theft and unlawful intrusion. It was argued that the police merely exercised their statutory obligation to protect unclaimed property.

15. It was further argued that Sections 457, 458 and 459 of the Code of Criminal Procedure become applicable by virtue of Section 26 of the Police Act and therefore the Learned Chief Judicial Magistrate was fully competent to pass appropriate orders relating to custody and interim possession.

16. Learned counsel for opposite party no.2 further submitted that opposite party no. 2 established through official records that he is the son of the deceased whereas the petitioner failed to produce any cogent documentary evidence in support of his claim. It was contended that despite passage of nearly fourteen years, the petitioner never approached any competent civil court for declaration of title or possession and therefore cannot now invoke the revisional jurisdiction of this Court to unsettle possession already handed over. In support of his submission, the learned senior advocate, appearing for opposite party no.2, has placed reliance on the judgment reported at **(2019) 20 SCC 119 (Nevada Properties Private Limited Vs. State of Maharashtra)**.

17. The rival submissions advanced on behalf of the parties have been carefully considered.

18. The controversy in the present case fundamentally revolves around the scope and ambit of Sections 25, 26 and 27 of the Police Act, 1861 and whether a Judicial Magistrate can assume jurisdiction thereunder for adjudicating interim possessory rights over an immovable property. Sections 25, 26 and 27 of the Police Act, 1861, are quoted below:

“25. Police-officers to take charge of unclaimed property and be subject to Magistrate's orders as to disposal. – It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof, to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders, as they shall receive from the Magistrate of the district.

26. Magistrate may detain property and issue proclamation. - (1) The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto, to appear and establish his right to the same, within six months from the date of such proclamation.

(2) The provisions of section 525 of the Code of Criminal Procedure, 1882 (10 of 1882) shall be applicable to property referred to in this section].

27. Confiscation of property if no claimant appears. – (1) If no person shall, within the period allowed, claim such property, or the proceeds thereof, if sold, it may, if not already sold under sub-section (2) of the last preceding section, be sold under the orders of the Magistrate of the district.

(2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26 to which no claim has been established shall be [at the disposal of the State Government].”

19. The interpretation clause of the Police Act, 1861, describes “Magistrate of the district” and “Magistrate” as follows:-

“1. Interpretation clause.—The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject of context repugnant to such construction, that is to say—

the words “Magistrate of the district” shall mean the chief officer charged with the executive administration of a

district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled;

the word “Magistrate” shall include all persons within the general police district, exercising all or any of the powers of a Magistrate;

20. It is also relevant to take note of Section 3(4) of the Code of Criminal Procedure, 1973, which reads:-

“3. Construction of references.—

.....

(4) Where, under any law, other than this Code, the function exercisable by a Magistrate relate to matters—

(a) which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.”

21. Against this background, the expression “Magistrate of the district” cannot be construed to include a Judicial Magistrate. The very definition identifies that authority as “the chief officer charged with the executive administration of a district.” That description corresponds to the executive magistracy alone. A Judicial Magistrate neither performs executive administration nor heads the district administration. Therefore every “Magistrate of the district” is a Magistrate in the generic sense; but

not every Magistrate qualifies as “the Magistrate of the district”; and a Judicial Magistrate, being part of the judicial magistracy contemplated under clause (a), cannot be equated with the executive authority contemplated by the expression “Magistrate of the district.” To construe a Judicial Magistrate as “the Magistrate of the district” would obliterate the deliberate statutory separation between judicial and executive magistracy recognised in subsection (4).

22. Section 25 of the Police Act casts a duty upon every police officer to take charge of all unclaimed property and to furnish an inventory thereof to the Magistrate of the district. Section 26 contemplates issuance of proclamation and disposal of such property under the orders of the Magistrate of the district.

23. The entire statutory scheme appears to contemplate executive supervision over temporary preservation and disposal of unclaimed property. The object of the provision is essentially preventive and administrative in nature and not adjudicatory.

24. This Court also finds substantial force in the contention advanced on behalf of the petitioner that the provisions of Sections 25 and 26 of the Police Act do not empower the Magistrate of the district to deal with an immovable property.

25. The word “property” has been described in the interpretation clause of the Police Act as follows:-

“the word “property” shall include any movable property, money or valuable security;”

26. The decision rendered in ***Chhutanlal Vs. State*** categorically held that the word “property” under the Police Act is confined to movable property and does not include immovable property. Similar views were reiterated in ***K.V. Krishna Murthy Vs. State of Madhya Pradesh*** wherein the Court observed that the provisions of the Police Act cannot be invoked to divest a person from possession of immovable property or to assist another person in obtaining possession thereof.

27. This Court respectfully agrees with the aforesaid exposition of law.

28. While it is clear that “Magistrate of the district” is not empowered to deal with an immovable property in exercise of power conferred under Section 26 of the Police Act, 1861, the question remains as to how an unclaimed immovable property is to be dealt with.

29. The answer lies in the West Bengal Escheats and Forfeitures Act, 2012, which is founded upon Article 296 of the Constitution of India, and which reads as follows:—

“296. Property accruing by escheat or lapse or as bona vacantia. –Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union:

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or a State, vest in the Union or in that State.

Explanation.—In this article, the expressions “Ruler” and “Indian State” have the same meanings as in article 363.”

30. The West Bengal Escheats and Forfeitures Act, 2012, is a special statute which deals with taking over the charge, management, administration, supervision, custody and disposal of the property vested in the State of West Bengal by escheat or lapse or as a bona vacantia and unclaimed property. By virtue of definition clause 2(l) of the said Act, an unclaimed property means “any movable or immovable property or any article or treasure trove of any description or any interest, legal or equitable, in it which is forfeited or having become forfeited or shall forfeit to the State Government under the provisions of this Act.”

31. The “competent authority” designated under the said Act is the appropriate authority empowered to pass an order under Section 4 thereof for the transfer and vesting of any unclaimed property in the State in terms of Section 3 of the said Act, upon receipt of information and after conducting an enquiry.

32. Upon the competent authority passing an order under Section 4 of the said Act, the Collector of the District shall take charge of the unclaimed property in terms of Section 5 thereof. Thereafter, the property shall be dealt with by the Collector in accordance with Sections 6, 7, and 8 of the said Act.

33. The property involved in this case is, however, can no more be said to be an unclaimed property. The right, title, interest over the property in question is now being seriously contested by the petitioner and opposite party no.2.

34. Questions relating to title, inheritance, succession and possessory rights over immovable property are matters eminently triable by civil courts upon appreciation of evidence and cannot be decided summarily in criminal proceedings.

35. The Learned Chief Judicial Magistrate, by directing handing over of the keys “for use” of opposite party no. 2, effectively recognized and conferred interim possessory rights over the disputed premises. Such an exercise clearly transgressed the jurisdictional boundaries of the criminal court.

36. The contention of opposite party no. 2 that the powers under Sections 457 to 459 of the Code of Criminal Procedure validate the exercise undertaken by the Learned Magistrate is equally misconceived.

37. The present case does not arise out of seizure in connection with commission of any offence. The premises in question is an immovable property. Chapter XXXIV of the Code cannot be interpreted in a manner so as to permit criminal courts to adjudicate disputes of civil possession between rival claimants over immovable property.

38. The judgment of the Hon’ble Supreme Court in ***Nevada Properties Private Limited Vs. State of Maharashtra*** clearly recognizes the contextual limitation upon criminal seizure powers insofar as immovable property is concerned.

39. This Court is also unable to accept the submission that participation of the petitioner before the Learned Magistrate would validate the proceedings. Jurisdiction cannot be conferred by consent,

acquiescence or waiver. A defect relating to subject matter jurisdiction strikes at the root of the authority of the court itself. The law laid down in ***Kiran Singh Vs. Chaman Paswan*** leaves no room for doubt that an order passed without jurisdiction is a nullity in the eye of law.

40. The Learned Appellate Court, in affirming the order passed by the Learned Chief Judicial Magistrate, failed to appreciate the fundamental jurisdictional infirmity which went to the very root of the matter.

41. This Court is conscious of the fact that opposite party no. 2 claims to be the son of the deceased and may ultimately establish lawful entitlement before an appropriate forum. Equally, the petitioner asserts rival rights. However, such rival claims can only be adjudicated before a competent civil court in properly constituted proceedings and not by a criminal court acting under summary jurisdiction.

42. The police authorities were certainly justified in temporarily securing the premises immediately following the death of the deceased in order to prevent theft, trespass, or disturbance of public peace. However, the duty to preserve law and order cannot be extended to the adjudication of civil or possessory rights. Since the property in question remained unclaimed, the police authorities ought to have resorted to the provisions of the West Bengal Escheats and Forfeitures Act, 2012 by furnishing information to the competent authority in terms of Section 4 thereof.

43. In view of the discussions made hereinabove, this Court is constrained to hold that the Learned Chief Judicial Magistrate acted

wholly without jurisdiction in directing handing over of the keys and interim possessory control of premises no. 159, S.P. Mukherjee Road, Kolkata – 700026 in favour of opposite party no. 2. Consequently, the judgment and order passed by the Learned Appellate Court affirming the same cannot also be sustained.

44. The judgment and order dated 23rd June, 2025 passed by the Learned Additional District and Sessions Judge, Fast Track Court, 8th Court at Alipore in Criminal Appeal No. 92 of 2024 and the order dated 18th January, 2024 passed by the Learned Chief Judicial Magistrate, Alipore in connection with Tollygunge Police Station General Diary Entry No. 2483 dated 28th August, 2012 are hereby set aside and quashed.

45. Opposite party no. 2 is directed to restore the keys and possession of the premises to the Officer-in-Charge, Tollygunge Police Station within a period of seven days from date.

46. The Officer-in-Charge of Tollygunge Police Station shall prepare an inventory and a detailed list of the properties/articles lying at the premises in question in the presence of the petitioner and opposite party no.2. The Officer-in-Charge shall retain custody of the keys solely as a neutral custodian for the purpose of maintaining peace and protecting the property, without recognizing or conferring any possessory or proprietary right in favour of either party.

47. It is made clear that this Court has not adjudicated upon title, succession or lawful possession of the property and all such questions

are left open to be decided before a competent civil court in accordance with law.

48. The parties shall be at liberty to seek appropriate reliefs before the competent civil forum including declaration, injunction, partition, probate or letters of administration, as may be advised.

49. Accordingly, **C.R.R. No.3752 of 2025** succeeds.

50. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)