

February 26, 2026  
Sl. No.9  
Court No.1  
s.biswas

FMA 1489 of 2025  
With  
CAN 1 of 2025

*Mandira Pakhira and others*  
*vs.*  
*The State of West Bengal and others*

Mr. Amitava Mukherjee, Sr. Adv.  
Ms. Antara Das  
Ms. Ankita Ghosh

... for the appellants

Mr. Mazhar Hossain Chowdhury  
Mr. Md. Ibrahim  
Mr. Md. Zeeshanuddin

... for the private respondent

Per, Sujoy Paul, C.J.

1. Affidavit of service filed on behalf of the appellants is taken on record.
2. This intra-court appeal takes exception to the order dated 15.07.2025 passed by learned Single Judge in WPA 13892 of 2025, wherein the learned Single Judge declined interference by holding that the dispute appears to be relating to right, title, interest and possession of the property in question for which Civil Court is best suited to decide the disputed issue. The police authorities were directed to keep vigil, so that no untoward incident takes

place. However, it is further observed that police authorities will not be able to interfere in respect of the possession of the property unless Civil Court issues a particular direction.

3. Learned counsel for the appellants stated that no doubt under the BNSS, the petitioners have remedy to seek direction for lodging of FIR but that alternative remedy will not come in their way when they are seeking protection relating to life and property flowing from Article 21 of the Constitution of India. To buttress this submission, reliance is placed on the judgment of Supreme Court in the cases of ***Radha Krishan Industries vs. State of Himachal Pradesh and others*** reported in ***(2021) 6 SCC 771*** and ***M/s. Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer -cum- Assessing Authority and others*** in Civil Appeal No.5393 of 2010.
4. The other side supported the impugned order.

5. Before the Writ Court, the petitioners have prayed for following reliefs:

- a.** A writ of and/or in the nature Mandamus do issue commanding the respondent authorities particularly the respondent no. 2 and 3 to initiate appropriate criminal proceeding against the private respondents no. 4 to 6 for illegally trespassing into the residential premises of the petitioners as mentioned in the paragraph 2 and 3 of the instant petition and also threatening the petitioner with dire consequences of physical assault and even murder if they even tried to enter into their own premises;*
- b.** A writ of and/or in the nature Mandamus do issue commanding the authorities respondent particularly the respondent no. 2 and 3 to take steps against the respondent no. 4 to 6 for illegally trespassing into the premises of the petitioners and get the same vacated by initiating appropriate proceeding;*
- c.** A writ of and/or in the nature of Certiorari do issue commanding the respondent no. 2 and 3 to transmit the record of the case forming the basis of the complaint lodged by the petitioners and certify the same and being SO certify take appropriate steps against the private respondents so that conscionable justice may be done; on to*
- d.** Rule NISI in terms of prayer (a), (b), (c) as above;*
- e.** An interim order do issue directing the respondent no.2 and 3 to take appropriate steps by lodging a complaint against the private respondents for illegally trespassing into the premises of the petitioner and forthwith have the same vacated;*
- f.** Ad-interim order in terms of prayer (f).*

- g. To make the Rule absolute;*
- h. Costs and incidentals to the instant writ petition to be borne by the respondent authorities;*
- i. Pass such other or further order or orders and/or direction or directions as to Your Lordship may deem fit and proper.”*

6. A plain reading of the reliefs shows that the petitioners prayed for initiation of criminal proceedings against the private respondents. The parties are at loggerhead on the question of right, title and possession of the property which is a dispute civil in nature. These aspects need recording of evidence which can be done by the Civil Court. Thus, learned Single Judge rightly opined that the petitioners have remedy in the civil law.

7. So far as the judgments on which reliance is placed, the said judgments do not deal with the civil dispute and when pure questions of law were involved, despite availability of remedy, the interference could have been made was the principle laid down. In the instant case, as noticed above, the aforesaid aspects which

essentially will have disputed question of fact can be gone into by Civil Court only. In this backdrop, both the judgments are of no assistance to the appellants.

8. So far as initiation of lodging of criminal proceedings is concerned, this court by considering catena of judgments on these aspects in the case of **Sourav Mitra vs. Swati Chakraborty Bhattacharya and others** reported in **2025 SCC OnLine Cal 9425**, opined that appropriate remedy is not the writ court. No writ of mandamus can be issued for lodging FIR. The relevant paragraphs of the said order reads thus:

**20.** *The question as to whether the remedy under Article 226 of the Constitution of India can be availed of if there exists inaction and/or nonaction of police in registering the FIR in relation to a cognizable offence has been duly considered by the Hon'ble Apex Court in the reported decision of Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, (2016) 6 SCC 277: (2016) 2 SCC (Cri) 549 wherein the Hon'ble Apex Court had drawn the curtains on the said aspects in the following words:*

*"2. This Court has held in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409: (2008) 1 SCC (Cri) 440], that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High*

court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) Cr.P.C. If such an appointment under Section 156(3) Cr. P.C. is made and the Magistrate is, *prima facie*, satisfied, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the mater. We have said this in *Sakiri Vasu* case because what we have found in this country is that the High courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation"

(Emphasis Supplied)

**21.** Similar point of law was involved before a Division Bench of this Court in which one of us (Sujoy Paul, J.) was in the Bench in connection with WPA (P) No. 517 of 2022 (*Merjul Hoque Mondal v. The State of West Bengal.*)

**22.** In the case of *Merjul Hoque* (*Supra*) the said Division Bench while disposing the said writ petition by its order dated 04.08.2025 had occasioned to consider the reported decisions of *Lalita Kumari v. Government of U.P.*, (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524, *Aleque Padamsee v. Union of India*, (2007) 6 SCC 171: (2007) 3 SCC (Cri) 1 and *Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409: (2008) 1 SCC (Cri) 440, as well as a judgment of the Division Bench of MP High Court and in doing so, the said Division Bench expressed the following:

"10. In view of the authoritative pronouncement of the Hon'ble Supreme Court and the Division Bench of the Madhya Pradesh High Court on the above aspect, no writ of mandamus/direction can be issued for lodging of FIR. The petitioner has an efficacious remedy under the criminal

law. Hence the PIL cannot be entertained.”

*(Emphasis Supplied)*

9. In view of the foregoing discussion, we find no illegality in the order impugned and therefore declined interference. The appeal and the connected application stand **dismissed.**

10. Liberty as reserved by learned Single Judge will still be there to the appellants to avail the remedy.

**(Sujoy Paul, C.J.)**

**(Partha Sarathi Sen, J.)**