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(2000) 1 ILR (Cal) 79

Calcutta High Court

Case No: Writ Petition No. 3084 of 1998

Bela Rani Kundu — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision: Nov. 13, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 144

Citation: (2000) 1 ILR (Cal) 79

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Samyabrata Mukherjee and Bidyut Baran Biswas, for the Appellant;Motiar Rehaman Mollah, for State and Krishnendu Sarkar, for Private Respondent, for the Respondent

Final Decision: Dismissed

Judgement

Amitava Lala, J.
This writ petition is made by the Petitioners to direct the appropriate police Authority to act in accordance with law which is an prima facie an abstruct approach so far this Court is concerned.

2. The State Respondents as well as the private Respondent No. 7 strongly opposed the contention of writ petitions by saying that the writ petition is not maintainable since alternative remedy under the civil suit is available in the circumstances as narrated below.

3. Mr. Mukherjee Learned Counsel appearing for the Petitioners specially stressed on a factual aspect that Petitioner No. 2 is rank outsider in the locality living with his wife and minor children and it is apparent from the conduct of the police that they are doing extra judicial action contrary to the interest of the writ Petitioners.

4. He also stated certain factual aspects that an order was passed on March 26, 1997 by the learned Munsif in favour of the Respondent No. 7 for the purpose of repairing work in the concerned premises which has been stayed at the instance of the writ Petitioners by an order of the appropriate appeal court on April 2, 1997. He contended that suppressing such material fact the Respondent No. 7 obtained an order in his favour to carry out the work of repairing from the Executive Magistrate April 11, 1997 which was also revoked at their instance on April 27, 1997 being Annexure "A" herein.

5. In support of his contentions as to whether the writ jurisdiction will be invoked or not he relied upon three judgments. First of which is the matter of Rayapati Audemma Vs. Pothineni Narasimham, . It appears from para.9 of the judgment that the Division Bench observed that if the police authorities are under a legal duty to enforce the law and the public or the citizens are entitled to seek directions under Article 226 of the Constitution for discharge of such duties under a similar circumstances civil court can also pass such orders u/s 151 CPC by applying inherent power of the court. Following such judgment in the year 1982 another Division Bench judgment was delivered by the Andhra Pradesh High Court in the matter of Satyanarayana Tiwari Vs. S.H.O.P.S. Santhoshanagar, Hyderabad and Others, . By citing this judgment he contended that by any interpretation of the provisions of CPC the power of the High Court under Article 226 of the Constitution, to enforce its own orders or the orders of the civil court cannot be curtailed.

6. In all, Mr. Mukherjee wanted to submit that the writ jurisdiction can be invoked in the circumstances even if there is a civil dispute in between the parties. He further relied upon Gulam Abbas and Others Vs. State of Uttar Pradesh and Others, (Head Note "C") justify his argument by saying that order u/s 144 of the Code of Criminal Procedure is administrative in nature and not judicial or quasi-judicial, therefore, amenable to writ, jurisdiction if it violates fundamental right. It is to be remembered in the instant case the order u/s 144 of the Code of Criminal Procedure was revoked at their instance.

7. Upon hearing the submissions made by Mr. Mukherjee Learned Counsel for the Petitioners I called upon Mr. Sarkar Learned Counsel appearing for the private Respondent to make his submissions when he stated that there are two civil suits which are pending before the appropriate civil court in between the parties in respect of dispute as to the right, title and interest of themselves in the immovable properties. Therefore, the writ jurisdiction cannot be invoked in the gard of police protection for entertaining a civil litigation in between the private parties, in support of his contentions he relied upon Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, where the Supreme Court held that it has repeatedly been held by this Court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226, of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged. And in such a case, the Court will issue appropriate direction to the authority concerned, if the real grievance of the concerned party is against the initiation of criminal proceedings and the orders passed and steps taken thereon, one

must avail of the remedy under the general law including the Code of Criminal Procedure. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the-general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extra-ordinary and should not be exercised casually or lightly.

8. In other part of such paragraph it appears-

According to the stand of the party, since the police were taking a partisan attitude against him/her, the filing of a writ petition became necessary. Supreme Court was unable to follow this argument. There is no doubt that the dispute is between two private persons with respect to an immovable property. Further, a suit covering either directly a portion of the house-property which is in dispute in the present case or in any event some other parts, of the same property is already pending in the civil court. The Respondent justifies the step of her moving the High Court with a writ petition of the ground of some complaint made by the Appellants and the action by the police taken thereon. We do not agree that on account of this development, the Respondent was entitled to maintain a writ petition before the High Court.

9. Mr. Mollah, Learned Counsel appearing for the State supported the contentions of the private Respondent.

10. Upon hearing the submissions made by the parties I feel that in the instant case factual and legal position as laid down in Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, become applicable because the police cannot be directed to act in accordance with law in an abstract situation but upon compelling circumstances and such compelling circumstances are obviously dispute between the private parties. As because one person is residing with his wife and minor children and allegedly come from outside and making a complaint before the Writ Court that police is taking extra judicial action, cannot be said to be a valid ground for invocation of writ jurisdiction specially when the civil suit and proceedings are pending. The Petitioners have ample opportunity to get relief under civil and criminal laws.

11. In view as above I am of the view that the writ petition is not maintainable and liable to be dismissed.

12. Writ petition is, thus dismissed, since no affidavits are filed by the Respondents no allegation is admitted by them.

13. No order is passed as to costs.