

PRASANNA KUMAR ROY KARMAKAR

v.

STATE OF WEST BENGAL AND ORS.

MARCH 26, 1996

[N.P. SINGH AND SUHAS C. SEN, JJ.]

*Constitution of India, 1950: Article 226.*

*High Court—Writ Jurisdiction—Private dispute between landlord and tenant—Landlord initiating proceedings under section 144 of the Criminal Procedure Code—Invoking writ jurisdiction thereafter—Disposal of writ on the basis of police report—No proper hearing given to tenant—Copy of police report also not given to tenant—Direction by High Court—Dislodging of tenant from disputed premises—Held writ jurisdiction was not properly exercised by High Court.*

*Appellate Court—Orders passed by—Enforcement of.*

*Maxim "Actus Curiae Neminem Gravabit"—Meaning and applicability of.*

In a private dispute between a landlord and tenant the former initiated proceedings in the Court of Executive Magistrate under Section 144 of the Code of Criminal Procedure, 1973. Thereafter the landlord moved the High Court under Article 226 which passed an interim order, without notice to the appellant-tenant, directing the police to file its report. The landlord's petition was finally disposed on 30th August, 1993 on the basis of the police report. On the basis of this order, the landlord with the help of police authorities evicted the tenant from his flat and got back possession of tenanted premises without having recourse to the usual landlord tenant proceedings before appropriate forum in accordance with law.

The Appellate Court allowed the tenant's appeal and by its order dated October 14, 1993 set aside the order of writ Court. However, even on the basis of appellate Court's order the appellant-tenant was not able to get back the possession. By its order dated 14th January, 1994 the Appellate Court rejected the application filed by tenant for relief on the ground

that after disposal of appeal it became *functus officio*. The tenant preferred appeals before this Court.

Disposing the appeals, this Court

**HELD : 1.** The writ Court had exceeded its jurisdiction in intervening in a private dispute. The scope of writ jurisdiction was lost sight of by it and an extraordinary situation was brought about by passing an improper and unjust order. It was most unfortunate that the Court intervened in a proceeding under Section 144 of the Criminal Procedure Code which was actually being heard and a drastic order of this nature was passed by the Court in such a manner without issuing a Rule *Nisi* and without any proper hearing. A procedure unknown to law was adopted for disposing of a landlord-tenant dispute. [916-E; 914-H; 915-B-C]

*Mohan Pandey & Anr. v. Usha Rani Rajgaria & Ors.*, AIR (1993) SC 1225, cited.

**2.** As a result of the order passed by Writ Court the appellant had been dispossessed by the police. Since by an erroneous order the appellant had been evicted from the possession of the disputed premises, it was the duty of the appeal court, after reversing the order of the Trial Court, to restore the appellant back into possession. Otherwise, even after succeeding in the appeal, the appellant will remain without remedy and out of possession as a result of the order passed by the Court. *Actus curiae neminem Gravabit* - An act of the Court shall prejudice no man. Therefore, the order passed by the appeal court on 14th January, 1994 is set aside and the case is remanded back to appeal court which shall conduct an enquiry as to whether the appellant was actually evicted from possession and if so, restore him back into the possession of the disputed premises.

[915-H; 916-E-H; 917-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5099-5100 of 1996.

From the Judgment and Order dated 14.10.93 of the Calcutta High Court in Appeal No. Nil of 1993.

Ashok Sen and Bijan Kumar Ghosh for the Appellant.

A.K. Ganguli, Somnathmukherjee, Avijit Bhattacharaya, Ms. Sarla Chandra, (NP) for the Respondent Nos. 1-3.

The Judgment of the Court was delivered by

SEN, J. Special leave granted.

This is an extra-ordinary case. A private dispute between a landlord and a tenant was taken up in writ jurisdiction and mandatory orders were passed directing the State and the police authorities to allow the writ petitioner (the landlord) to have ingress and egress to and from the disputed premises. On the basis of this order, the landlord with the help of police authorities evicted the tenant from his flat. In other words, the landlord was able to get back possession of tenanted premises without having to go through the usual landlord and tenant proceedings before appropriate forum in accordance with law.

It appears that after instituting proceeding under Section 144 of the Criminal Procedure Code in the Court of the Executive Magistrate, the landlord moved the High Court under its constitutional writ jurisdiction. Shyamal Kumar Sen J. on 13th August, 1993 passed an order directing the Officer-in-Charge, Muchipara Police Station, to make an enquiry into the complaint dated 26th July 1993 and submit a report on 19th August, 1993. This was an *ex parte* order without any notice to the tenant. On 30th August, 1993 the writ petition was finally disposed of on the basis of the police report. It was alleged that Rabin Roy and his brother Gobinda Roy had taken forcible possession of the first floor and other portion of the premises which had not been let out to Rabin Roy. The police authorities were directed to ensure that the free egress and ingress of the landlord to and from the disputed flat was not interfered with by the tenant. If necessary, the police authorities were directed to remove the obstruction to such free egress and ingress. All parties including the Officer-in-Charge, Muchipara Police Station, were directed to act on a signed copy of the minutes of the order. It is not known how the proceedings under Section 144 of the Criminal Procedure Code ended. But, as a result of the order passed by the writ court, the police evicted the tenant from the disputed premises and the landlord was able to resume possession immediately with police help.

The scope of writ jurisdiction of the Court was lost sight of by the learned Judge and an extraordinary situation was brought about by an improper and unjust order passed without any affidavit in less than three weeks' time. Between 13th August, 1993 and 30th August, 1993 a writ

petition was moved, taken up for hearing and finally disposed of. A tenant was dislodged from the disputed premises with police help. No proper hearing was given to the respondents. A copy of the police report was not given to the respondents. No direction was given for filing of affidavits even to the State. There is no explanation why the proceedings were not allowed to be continued in the Court of the Executive Magistrate in accordance with law. It was most unfortunate that the Court intervened in a proceeding under section 144 of the Criminal Procedure Code, which was actually being heard and a drastic order of this nature was passed by the court in such a manner without issuing a Rule Nisi and without any proper hearing. A procedure unknown to law was adopted for disposing of a landlord-tenant dispute.

What happened thereafter was also very unfortunate for the appellant. The appeal court on October 14, 1993 passed the following order :

"The Hon'ble A.M. Bhattacharjee, the Chief Justice

and

The Hon'ble Justice N.K. Batabyal.

October 14, 1993.

Prasanna Kr. Roy Karmakar

v.

State of West Bengal & Ors.

THE COURT heard learned counsel for the parties. It is purely a private dispute between the private parties. We are fully satisfied particularly in view of the decision of the Supreme Court reported in *Mohan Pandey & Anr. v. Usha Rani Rajgaria & Ors.*, AIR (1993) SC 1225, that the writ petition which has given rise to this appeal ought not to have been entertained. That being so, we allow this appeal and set aside the order under appeal.

All parties to act on a signed copy of the minutes of this order on the usual undertaking."

This order, however, did not enable the appellant to get back possession. The appeal court lost sight of the fact that the writ Court had intervened in a purely private dispute and as a result of its order the

appellant had been dispossessed by the police.

A further application, therefore, was made to the appeal court for necessary relief. On 14th January, 1994 the appeal court passed the following order :

"The appeal has already been disposed of and we have accordingly become *functus officio*. This application can therefore no longer be entertained and is rejected."

The two orders passed by the appeal court on October 14, 1993 and January 14, 1994 did not give any relief to the appellant, even though his appeal was allowed and the order under appeal was set aside. The appeal court lost sight of the fact that the appellant, who had been dispossessed by the order passed by the writ court, had to be put back in possession after setting aside the writ Court's order.

A Special Leave Petition was made against the aforesaid two orders passed by the appeal court on 14th October, 1993 and 14th January, 1994. It may be mentioned here that the Special Leave Petition was dismissed for default, but later on restored on an application made by the appellant. Mr. Ganguli appearing on behalf of the respondents has not tried to justify the extraordinary and unfair ex-parte orders passed. In fact, he fairly admitted that the writ court had exceeded its jurisdiction in intervening in a private dispute. He also did not seriously object to the proposition that since by an erroneous order the appellant had been evicted from the possession of the disputed premises, it was the duty of the appeal court, after reversing the order of the Trial Court, to restore the appellant back into possession. If the appellant was ejected from the disputed premises with police help pursuant to the order which was set aside, the possession should have been restored to him with police help, if necessary. Otherwise, even after succeeding in the appeal, the appellant will remain without remedy and out of possession as a result of the order passed by the Trial Court. *Actus curiae neminem gravabit* - An act of the Court shall prejudice no man. It was the duty of the Appeal Court to restore status quo ante by passing of the order on 30th August, 1993.

Mr. Ganguli has, however, contended that the appeal is being conducted in the name of the appellant, who is not an interested party any more. Mr. Sen appearing on behalf of the appellant has seriously disputed

this proposition. We are not inclined to go into this controversy at this stage. If the appellant has been dispossessed by court order which has been reversed by the court of appeal, as is the position in this case, his possession must be restored.

In view of the aforesaid, the order passed by the appeal court dated 14th January, 1994 is set aside and we remand the case back to the appeal court. The appeal court will direct an enquiry as to whether Prasanna Kumar Roy Karmakar was the person who was actually evicted from possession on the strength of the order passed on 30.8.1993 and, if so, restore Prasanna Kumar Roy Karmakar back into the possession of the disputed premises. Before passing any order the Court must satisfy itself as to the true identity and the wish of the appellant, Prasanna Kumar Roy Karmakar. If necessary, the Court will direct Prasanna Kumar Roy Karmakar to be personally present in the Court.

The appeal court will be at liberty to pass such order in the interest of justice as it thinks fit after ascertaining the facts and in accordance with law. The respondents, who were the writ petitioners in this case, will pay costs assessed at Rs. 1,000 to the appellant.

Appeal disposed of.