
(2015) 09 CAL CK 0064
In the Calcutta High Court
Case No : C.O. No. 1375 of 2014

Bansilal Leisure Parks Ltd.

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 98, Order 21 Rule 99, Order 39 Rule 1, Order 39 Rule 2, 151
Constitution of India, 1950 — Article 227
Easements Act, 1882 — Section 52, 60(b)
Specific Relief Act, 1963 — Section 6, 9

Citation : (2016) 1 CALLT 331

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Saktinath Mukherjee and Amiya Narayan Mukherjee, for the Appellant; Susovan Sengupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Shivakant Prasad, J—Challenge in this application is against the judgment and order dated 23rd April, 2014 passed by the Learned Additional District Judge, 15th Court, Alipore in Misc. Appeal No. 107 of 2013 arising out of the Judgment and order No. 8 dated 17th May, 2013 passed by the learned Civil Judge (Senior Division), 2nd Court at Barsat in Title Suit No. 80 of 2013.

2. The plaintiff/petitioner, M/s. Bansilal Leisure Parks Ltd. a private limited company, filed the above mentioned suit praying, inter alia, for a decree of declaration about its right and authority to run the business over the suit property and for permanent injunction.

3. The plaintiff/petitioner alleged that the State Fisheries Development Corporation Limited invited offer in the newspaper on 15th June, 1990 and asked sealed offer for setting up of public entertainment-cum-tourist project. The plaintiff submitted offer and the same was accepted by the defendant No. 1 and

accordingly an agreement was entered into by and between the plaintiff and the defendant No. 1 on 12th March, 1991.

4. In the said agreement, the petitioner was given the right to use and occupy the surface water area of the fishery known as "Nalbon Fisheries" and also to use appurtenant land of the project and to set up temporary structure in connection with the said project. It is contended that the petitioner proposed to initially start with 12 cottages of different types in the first year and also to put up more cottage in the subsequent year.

5. Thereafter a second agreement was entered into on 23rd September, 1998 and under Paragraph 2 of the said agreement, the petitioner was allowed to use the appurtenant land of the project "for general activities of their project and may set up temporary and permanent structure for use of its office, ticket counters, guard room, gates, boundary wall, fencing....."

6. There was a third agreement between the parties on 24th December, 2010 which was a really one for renewal or extension of the agreement already entered into for a period of 30 years with effect from 01.4.2010.

7. The plaintiff/petitioner filed a suit for declaration and injunction on 20th April, 2013 in the learned Court of the Civil Judge (Sr. Division), 2nd Court at Barasat, North 24-Parganas against the opposite parties with the leave of the court under Section 80(2) of the Code of Civil Procedure and also filed an application under Order 39, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure in view of a news item in a local daily newspaper in April, 2010 that the State of West Bengal being the second defendant has prepared a plan to establish a tourism project in the suit property and as the petitioner became apprehensive in respect of its right title and possession and a notice along with the said application and the plaint were served upon the opposite parties in compliance of the court's order dated 20th April, 2013.

8. According to the State, the suit property has been vested to it under the West Bengal Estate Acquisition Act, 1953 and that too free from all encumbrances. After such vesting, the State never parted with possession over the suit property in favour of the first defendant i.e. Fisheries Development Corporation and whatever agreement the plaintiff company may have entered into with such defendant does not bind the State. The State/respondent would also contend that the law is on its side when it wishes to use the suit property for public welfare non obstante the plaintiff's possession over the same which is described as illegal and unlawful.

9. The Fisheries Development Corporation being the first defendant contended before the learned Trial Court to this effect that although three agreements relied upon by the plaintiff company admitted to have been entered by and between the first defendant and the plaintiff but by the said agreements plaintiff is a mere licensee in the suit property whose license was liable to be revoked without any notice or reference if and when the State Government decided to resume

possession over such property.

10. Upon an application for injunction filed by the plaintiff/petitioner and contested by the Fisheries Development Corporation and the State, the learned Trial Judge has held that the plaintiff company was allowed to physically occupy the suit property and under the second agreement the plaintiff had been given the right to raise temporary and permanent structures and permission so granted to raise permanent structures "had the effect of improving status to that of an irrevocable license."

11. It transpires that by a notice dated 23rd April, 2013, the Managing Director of the opposite party No. 3 issued a notice for cancellation of the license granted to the petitioner and thereby informed the petitioner that the license agreement stood ceased with immediate effect in terms of clause 3 of the agreement dated 23.09.1998 and directed the petitioner to remove all the belongings from the said area within seven days from the said date. Challenging the said notice dated 23rd April, 2013, the petitioner moved a writ petition in the High Court at Calcutta being W.P. No. 12681 (W) of 2013. The Hon'ble High Court was pleased to dismiss the said writ petition on the ground that the order dated 23.04.2013 is part of the process that the respondents have initiated to take over possession of the said area and cannot be viewed in isolation as providing a separate cause of action to entertain the writ petition and when the petitioners have already approached the civil court which is competent to grant complete relief.

12. Against the said order dated 30th April, 2013, the petitioner preferred an appeal before the Hon'ble Chief Justice and the Hon'ble Justice Jaymalya Bagchi being AST No. 92 of 2013 and their Lordship by an order dated 7th May, 2013 were pleased to direct, inter alia, the learned Trial Court to hear the injunction application and decide it by 17th May, 2013.

13. Pursuant to the said order of the Division Bench of the Hon'ble High Court at Calcutta, learned Civil Judge (Sr. Division), 2nd Court at Barasat heard the injunction application and was pleased to pass an order of injunction on 17th May, 2013 which was assailed by the opposite parties Nos. 1 and 2 by filing an appeal being Misc. Appeal No. 107 of 2013 before the learned District Judge at Barasat. The petitioner got the said misc appeal transferred from the Court of learned District Judge, North 24-Parganas on the allegation of the biasness on the part of the learned Dist. Judge Barasat to the learned District Judge at Alipore, South 24-Parganas. The said appeal in turn was transferred to the learned Additional District Judge, 15th Court, Alipore who allowed the said appeal by setting aside the order dated No. 8 dated 17th May, 2013 passed by the learned Civil Judge (Sr. Division) at Barasat in Title Suit No. 80 of 2013 by the order dated 23rd April, 2013 holding, inter alia, that in order to get an injunction order, the plaintiff must establish that there is actual or threatened violation of the right. Mere apprehension of injury is not sufficient and that only on the basis of news published in the newspaper "Bartaman", injunction cannot be granted if there is no prima facie case. The learned Judge further held that it is well settled

that a public project should not be stopped by an order of injunction without establishing a strong *prima facie* case.

14. Feeling aggrieved, the petitioner has preferred this application challenging the impugned order passed by Additional District Judge, 15th Court, Alipore, contending *inter alia* that the learned Judge in the Court of appeal below committed a grievous error of law in holding that the petitioner has failed to prove the *prima facie* case to get an order of injunction in spite of the fact that the petitioner is in settled possession pursuant to the lease/license granted by the opposite parties since 12th March, 1991 and the said license was renewed lastly by an Agreement dated 15th December, 2010 for a period of 30 years a monthly licensee fee of Rupees three lakh subject to increment by 5% over 5th year.

15. The learned Judge in the court of appeal below failed to appreciate that the *prima facie* case of the petitioner inasmuch as the petitioner by producing agreements of license proved that the petitioner is in possession of the suit property since 1991 and the license agreement is valid till 2040 and spent several cores of rupees for the purpose of development of the said property. From the materials and documentary records, it is evident that apart from the news item in the newspaper "Bartaman" dated 16th April, 2013 the Joint Secretary to the Government of West Bengal informed the Managing Director of the State Fisheries Department that the Assistant Director of the Fisheries (North) 24 Parganas will take over possession of the said land and water body on behalf of the Fisheries Department and accordingly prayed that impugned judgment order dated 23rd April, 2014 passed by the learned Judge in the court of appeal below is otherwise bad in law and is liable to be set aside.

16. Petitioner has not yet been able to get the certified copy of the impugned Judgment and order dated 23rd April, 2014. On limited inspection, the petitioner came to know that the learned Judge in the Court of appeal below set aside the order of injunction passed by the learned Civil Judge (Sr. Division), 2nd Court at Barasat.

17. On 24th April, 2014 at about 12:00 O'clock several officials from the opposite parties corporation came to the suit property with police force and they have threatened that they will take possession of the suit property.

18. The question for decision before this Court is as to whether in the facts and circumstances of the case this Court in exercise of supervisory under Article 227 of the Constitution of India can grant a mandatory injunction directing the respondent to remove the fencing put up by them at the suit premises.

19. In a decision reported in *The University of Bihar and Another Vs. Rajendra Singh*, AIR 1978 Patna 144, it has been held that if mandatory injunction is granted at all on an interlocutory application, it is granted only to restore the status quo and not granted to establish a new estate which existed of the date when the suit was instituted (See. *Nandan Pictures Ltd. Vs. Art Pictures Ltd.* and

Others, AIR 1956 Cal 428 .

20. It is a principle of law that it is not the practice of the Court to grant on an interlocutory application an injunction which will have the practical effect of granting the sole relation that is claimed the effect of giving an injunction prayed for, it is contended while we decided what is really the sole issue in the suit.

21. It is revealed from the judgment of the Hon"ble Apex Court passed in Civil Appeal No. 754 of 1996 that the State is admittedly the owner of the property as the Nalban Fishery being vested to it. The Civil Judge (Senior Division), 1st Court, Barasat in- Charge of 2nd Court, Barasat allowing the application under Order 39, Rule 1 and 2 of CPC on contest directed the defendant their men, agents not to disturb the plaintiff company's occupation and lawful action over the suit property till disposal of the suit. The learned Trial Judge has discussed the agreement of the year 1991 State Fishery Development Corporation Ltd. and the plaintiff/petitioner herein whereby the plaintiff company was given the right to use the surface water area for execution of the project subject to and such right was to vest upon the company purely as licenses and this will never create any other right or interest such as tenant or and lease licensee or any other right whatsoever of the Corporation. This agreement was subsequently renewed by an agreement dated 23rd September, 1998 as per the renewal clause of the said agreement dated 12.3.1991 and having regard to the fact that the Company had suffered huge loss and in view of the fact that the project is in incomplete stage, the Corporation by its Board decided to renew the agreement on the terms and condition as per the approval of the Fishery Development, Government of West Bengal vide its Memo No. 1847-Fish/C-III/5C/3/90 dated 21.9.1998 purely as licensee and this will never create any other right or interest such as tenant or lessee or any other right whatsoever of the Corporation with a specific clause that the right of the Company as license would stand ceased automatically without any reference, in case the right of the Corporation over the water area is withdrawn by the Government for any reason whatsoever and the Company shall not be entitled to prefer any claim for compensation for such termination of the agreement. This is what has been recited in Clause-3 of the said agreement. As per Clause-11 of the agreement of the year 1998 it has been agreed upon between the parties that the agreement may be terminated before expiry of any license term with six months prior notice in writing by either party on valid ground. This agreement was subsequently renewed for a period of 30 years with effect from 01.4.2010 subject to right of further renewal as per agreement and the agreement was renewed on the same term of the agreement dated 23.9.1998 subject to the only terms and condition that plaintiff/petitioner has to pay license fees of Rs. 3,00,000/- per month subject to an increment thereof by 5% ever 5th year. Therefore, it was a clear case of the plaintiff/petitioner being a licensee in respect of the suit property.

22. The learned Trial Court has arrived at a conclusion with the various

discussion to this effect that plaintiff company cannot be said to be a lessee in the suit property but inducted in the suit property as licensee which has had the effect of improving the status to that of an irrevocable licensee with observation that by virtue of the second agreement the plaintiff company has raised structures in the suit property by expending large sums of money. Adhering to Section 60(b) of the Indian Easements Act, 1882, if the licensee acting upon the license has executed a work of a permanent character and incurred expenses in the execution, the license cannot be revoked by the grantor. Trial Judge has further held that the defendants cannot complain at this stage on the ground that there is no proof that the plaintiff company has raised permanent structures in the suit property and once it is seen that the plaintiff company was given the right to raise permanent structures in the suit property way back in 1998 it becomes logical to presume that such right must have been exercised in order to make the business venture a profit story.

23. I am unable to agree with the said observation and findings of the learned Trial Court that the second agreement of license authorizing to execute works of a permanent character is sufficient to attract the notion irrevocable license as laid down in Section 60(b) of the Indian Easement Act, 1982 without going to the trial and without evidence being adduced by the parties to the suit.

24. There is a clear distinction between a lease and a license though at times the dividing line between the two becomes thin and even blurred. The level attached to document is not conclusive as to its character, i.e., whether a lease or a license. The substance of the terms agreed upon is the determining factor. A license is defined in Section 52 of the Easement Act. It is a permission to do some act which, within such permission, it would be unlawful to do. It has, therefore, to be held that a license does not create any estate or interest in property to which it relates while a lease does. Exclusive possession does not necessarily ruled out the possibility of a license. The test of exclusive possession was observed by Lord Denning in *Errington v. Errington* reported in 1952 All ER 149 in the following words:

"Although a person who is let into exclusive possession is prima facie to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create tenancy."

25. In a case of *Associated Hotels of India Ltd. Vs. R.N. Kapoor*, AIR 1959 SC 1262 : (1960) 1 SCR 368 , the following propositions have been established:

I. To ascertain whether a document creates a lease or a licence the substance of the document must be preferred to the form;

II. The real test is the intention of the parties whether they intended to create a lease or a licence;

III. If the document creates an interest in the property it is a lease; but if it only permits another to make use of the property of which the legal possession

continues with the owner it is a licence;

IV. If under the document a party gets exclusive possession of the property, prima facie he is considered to be a tenant but circumstances may be established which negative the intention to create a lease."

26. Adhering to the above settled principle of law no irrevocable license can be said to have been created in favour of the plaintiff/petitioner. The plaintiff co. was given possession of the suit premises for the purpose of setting up of an entertainment park. Therefore, in my considered opinion the learned Trial Judge was of the wishful thinking that irrevocable license was created in favour of the plaintiff/petitioner in respect of the suit property. This fact cannot be lost sight of that the plaintiff in his plaint has not made any prayer for declaration of his right having accrued in the suit property as a irrevocable licensee.

27. Be that as it may, I am fully in agreement with the findings and observation of the learned Trial Court that the plaintiff company was given the right to raise structure temporary as well as permanent structure in the suit property by virtue of agreement for licence dated 23.9.1998 and that the said agreement was entered upon by and between the first defendant and the plaintiff company so it was rightly pointed out plaintiff company was in possession of the suit property and the balance of convenience and in convenience was in favour of the petitioner.

28. The moot issue as to whether the plaintiff company was inducted as lessee or a licensee or has acquired the status of irrevocable licensee in respect of the suit property is the issue to be decided by the learned Trial Court in accordance with the evidence to be adduced by the party to the suit. Admittedly, the factum of possession over the suit property by the plaintiff/petitioner is well revealed from the material on record and the learned Trial Judge granted finding prima facie case in favour of the petitioner rightly directed the defendants, their men and agents not to disturb the plaintiff company's occupation and lawful action over the suit property as described in the schedule of the petitioner till disposal of the suit.

29. The learned Counsel for the respondent No. 3 has pointed out that status quo is the only remedy at this point of time when serious issues are raised in involved and reference to a decision reported in 2004 (Cal.) 149 at paragraph 14 has been made and a decision reported in Dalpat Kumar and Another Vs. Prahlad Singh and Others, AIR 1993 SC 276 : (1991) 6 JT 502 : (1991) 2 SCALE 1431 : (1992) 1 SCC 719 : (1991) 3 SCR 472 Supp has also been relied upon by the learned Counsel for the respondent No. 3. The law respect possession.

30. Mr. Saktinath Mukherjee, the learned Counsel for the petitioner has strongly supported the order of the Trial Court while assailing the order of the appellate court below by referring to the case of Ismail Ariff Vs. Motiomed Ghouse reported in Indian Appeals Vol. XX Page 99 which is a case relating to a suit for declaration that the plaintiff was absolute owner of the land in suit and for an

injunction, the defence was that the land was subject to a wakf created by the plaintiff's predecessor in title, and that the defendant was mutwali thereof. Both Courts found in favour of the plaintiff's possession, and that the defendant was not the mutwali nor possessed of any interest in the land, but differed as to the dedication. It was held that the plaintiff was entitled to a declaration as against the defendant that he was lawfully entitled to possession and the relief consequent thereon. It was unnecessary to decide as to the validity of the wakf for the purposes of the suit or in the absence of the parties interested. It was observed in the said decision that the possession of the plaintiff was sufficient evidence of title as owner against the defendant. By Section 9 of Specific Relief Act (Act 1 of 1877, if the plaintiff had been dispossessed otherwise than in due course of law, he could, by a suit instituted within six months from the date of the dispossession, have recovered possession, notwithstanding any other title that might be set up in such suit.

31. I have respectfully gone through the decision which is distinguishable from the facts and circumstances of the instant case, however, I find that the plaintiff could not file a separate suit under Section 6 of Specific Relief Act for recovery of possession within six months from the date of dispossession because the possession of the plaintiff company was contained by order of injunction passed by the learned Trial Court in a regularly instituted suit which was filed on the apprehension in mind of the plaintiff to be dispossessed from the suit property. The plaintiff/petitioner possession has been interfered with by the defendants/respondent authorities, their men and agents by fencing around the suit premises with an intention to take possession of the suit property only after the order of injunction of learned Trial Court was vacated on being set aside by the impugned judgment passed in Misc. Appeal by the lower Appellate Court.

32. Adverting to the case of Lallu Yeshwant Singh (dead) by his legal representative, Lallu Yeshwant Singh (Dead) by his Legal Representative Vs. Rao Jagdish Singh and others relying on a decision in Yar Muhammad and Another Vs. Lakshmi Das and Others, AIR 1959 All 1 : (1958) 28 AWR 703 the Full Bench of the Allahabad High Court it is strenuously argued on behalf of the petitioner that respondents have without the due process of law taken law into their hand to dispossess the petitioner company and further contended that law respects possession. It is observed in the cited decision thus--

"No question of title either of the plaintiff or of the defendant can be raised on time into in that case (under Section 9 of the Specific Relief Act). The plaintiff will be entitled to succeed without proving any title on which he can fall back upon and defendant cannot be succeed, even though he may be in a position to establish the best of all titles. The restoration of possession in such a suit is, however, always subject to a regular title suit and the person who is the real title or even they better title cannot therefore, be prejudiced in any way by a decree in such a suit. It will always be open to him to establish his title in a regular suit and to recover back possession....."

"Law respects possession even if, there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause."

33. The above cited decisions on the facts and circumstances of the case are not well-nigh within the facts of the instant case, notwithstanding legal proposition can be adhered, to say that the law respects possession even if there is no title to support it. But this Court under its supervisory jurisdiction can direct the learned Trial Court to restore possession of the petitioner in respect of the suit property by maintaining status quo ante bellum. In my considered view at this juncture it would not be just for this Court to direct restoration of the possession of the plaintiff company because the plaintiff company although has been obstructed in running in business of entertainment park as barricade has been raised by the respondent state when there was no injunction.

34. Learned Counsel for the respondent No. 3 has urged that the agreement was between the respondent No. 3 and the plaintiff and it was subject to a clause that the plaintiff company has to vacate the suit premises if the right of the respondent No. 3 is taken away by the State respondent. It is pointed out that the right of the respondent No. 3 has been taken up by the State Government for a larger project of West Bengal Tourism at the suit premises and as per the agreement the plaintiff has no legal right to continue with the business as was given to him by the respondent No. 3. All this factual aspects are the pertinent issues which can only be decided by the learned Trial Court on the strength of evidence to be adduced by the parties to the suit. This Court finds prima facie that the respondent's conduct of raising fencing around the premises after the order of injunction was vacated, was in hush-hush manner with an object to oust the plaintiff company without the due process of law. Undoubtedly, a notice of termination of the license agreement was issued to the plaintiff company but on the basis of that there is no proceeding for eviction of the plaintiff company under the law.

35. Relying in the case of *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, AIR 1990 SC 867 : (1990) 1 JT 199 : (1990) 1 SCALE 166 : (1990) 2 SCC 117 : (1990) 1 SCR 332 , learned Counsel for the petitioner has invited my attention to para 14 and 15 of the cited decision which reads as under--

"14. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or

irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- 1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- 2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- 3) The balance of convenience is in favour of the one seeking such relief.

15. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as pre-requisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

36. I have respectfully gone through the decision which is quite distinguishable from the instant case inasmuch as the sale was hurriedly executed in a hush-hush manner keeping the entire transaction secret from the appellant. The purchasers were also inducted in the premises in a manner which clearly suggested that the respondents were attempting to forestall the situation and to gain an undue advantage in a hurried and clandestine manner defeating the appellant's attempt to go to Court for appropriate relief.

37. In this set of fact the Hon"ble Apex Court was of the view that not only a refusal to grant an ad interim mandatory injunction will do irreparable injury to the appellant but also balance of conveyance is in favour of the appellant.

38. In a case of Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others, (1996) 4 AD 553 : AIR 1996 SC 2102 : (1996) 5 JT 74 : (1996) 4 SCALE 266 : (1996) 4 SCC 144 : (1996) 1 SCR 397 Supp : (1996) 2 UJ 321 , dispossession of tenant was without due process of law. In this case no independent suit for eviction of tenant was proceeded nor tenant impleaded as party to the suit. The tenant filed suit under Order 21, Rule 98, 99 CPC regarding his right to remain in possession. It was held that the meanwhile dispossession of tenant by transferee owner without due process of law was illegal.

39. In a case of Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, AIR 1989 SC 2097 : (1989) 3 JT 489 : (1989) 2 SCALE 424 : (1989) 4 SCC 131 : (1990) 1 UJ 71 , it has been observed that it is well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse of law. In that case the plaintiff had filed a suit for recovery of possession of premises upon which she had entered as a licensee to conduct the business of restaurant; she was subsequently dispossessed by the licensor unlawfully and behind her back.

Immediately thereafter she filed suit for recovery of possession. It was held that she was entitled to decree for recovery of possession. Since she was unlawfully dispossessed it could not be said that the license having expired long back and the plaintiff not being entitled to renewal of license could only ask for damages for unlawful possession. This decision is pat on the point and I am also of the view that the petitioner has right to get the recovery of possession of the suit property even if his license stood cancelled.

40. Having given an anxious consideration to the facts and circumstances of the case, this Court finds that the petitioner company was in possession of the suit premises as a licensee to conduct the business of entertainment park by virtue of agreement entered by and between the petitioner and the respondent No. 3. I have considered the submission of the learned Counsel for the respondent No. 3 to this effect that the respondent No. 3 has no right over the suit property as its right has been taken over by the State respondent in respect of the suit property, ergo, by virtue of the agreement entered by the respondent No. 3, the petitioner company cannot now claim any right of possession. This fact cannot be lost sight of that respondent No. 3 is undoubtedly a State instrumentality and the submission so advanced can only be gone into during trial by the learned Trial Court. I am not on the merit of the case but the fact remains that the plaintiff petitioner company was in possession of the suit property and he had filed suit before the learned Trial Court and the Trial Court protected his possession by an order of temporary injunction upon hearing both the parties directing the respondents not to disturb in the peaceful possession and in carrying on business of the plaintiff company but as soon as the said order of learned Trial Court was set aside, the State respondent took action with the help of men and agents and police to get the premises barricaded so that the plaintiff cannot carry on its business.

41. This Court is of the considered view that issue of recovery of possession can be taken up in the facts of the case by the plaintiff/petitioner on an application, if submitted before the learned Trial Court under the provision of Section 151 of CPC as in the instant case the plaintiff cannot file a separate suit under Section 6 of the Specific Relief Act.

42. This Court by an order dated 25.4.2014 has prima facie observed that the State authorities tried to take possession by encircling the property with police personnel and preventing the petitioner from entering into the premises though the keys of the premises are still lying with his client and learned Government Pleader for the State/opposite parties submitted that the possession of the property in dispute has been taken by his client in presence of the petitioner and considering the rival contention of the parties that they are in respective possession, this Court passed an order against the State respondents restraining from taking any further steps in respect of the subject property till 30th April, 2014. This Court thus find that a serious issue has been involved in the suit, it would be desired that an order of status quo in respect of the suit premises be

enforced in terms of this Court's order. However, without any prejudice to the rights and contentions of the parties to the suit in consideration of a Dalpat Kumar and Another Vs. Prahlad Singh and Others, AIR 1993 SC 276 : (1991) 6 JT 502 : (1991) 2 SCALE 1431 : (1992) 1 SCC 719 : (1991) 3 SCR 472 Supp .

43. In the context of the above, judgment and order dated 23rd April, 2014 passed by the Learned Additional District Judge, 15th Court, Alipore in Misc. Appeal No. 107 of 2013 is hereby set aside and the Judgment and order No. 8 dated 17th May, 2013 passed by the learned Civil Judge (Senior Division), 2nd Court at Barsat in Title Suit No. 80 of 2013 is affirmed.

44. Accordingly, C.O. No. 1375 of 2014 is allowed, however, without any order as to costs.

45. A copy of this judgment be sent down to the learned Trial Court with direction to disposed of the suit in accordance with law within six months from the date of receipt of this order without being influenced by any observation made in the body of this judgment.

46. The Office to supply Photostat certified copy of this judgment and order to applicant, if applied for, on urgent basis.