

(2015) 01 PAT CK 0085

In the Patna High Court

Case No : LPA No. 1536 of 2014 in CWJC No. 17146 of 2014

New Tirupati Travels

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 226

Citation : (2015) 1 PLJR 952

Hon'ble Judges : Chakradhari Sharan Singh, J.; I.A. Ansari, J.

Bench : Division Bench

Advocate : Alok Kumar Agrawal, for the Appellant; Sanjay Mandal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Whether police have the power, or a duty cast upon them by law, to break open a lock, which may have been put by a landlord on the commercial premises of his tenant, or shall the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, direct the police to break open the lock, in a situation as described hereinbefore, on the ground that the police have failed to discharge the duty cast upon them by the law of this land? This is the principal question, which the present appeal has raised, the appeal having been preferred against the order, dated 15.10.2014, passed in CWJC No. 17146 of 2014, whereby a learned Single Judge of this Court has dismissed the writ petition. We have heard Mr. S.D. Sanjay, learned Senior Counsel, appearing on behalf of the appellant, and Mr. Sanjay Mandal, learned Assistant Counsel to Standing Counsel No. 6, appearing for the State respondents. None has appeared on behalf of respondent Nos. 7 and 8.

2. Before we enter into the discussion of the correctness or legality of the order under appeal, the pleaded facts, in the writ petition, may, in brief, be set out as under:--

The writ petitioner has been a tenant in a shop, owned by respondent No. 7 herein, situated in the Shopping Arcade of Hotel Maurya Complex, since 1999. A dispute having arisen between the landlord and the tenant, the same gave rise to Arbitration Case No. 01 of 2011, wherein an award was passed, on 14.5.2012; requiring the writ petitioner to vacate the shop. For execution of the award, Execution Case No. 80 of 2012 was instituted by the landlord (i.e., respondent No. 7 herein) in the Court of learned Sub Judge, Patna, and the summon was accordingly issued to, and received by, the writ petitioner on 29.12.2012. This apart, the writ petitioner also made an application, under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to get the award, dated 14.5.2012, be set aside. The application, so made by the writ petitioner under Section 34 of the Arbitration and Conciliation Act, 1996, came to be registered as Misc. Case No. 2 of 2013 in the Court of learned Sub-Judge-I, Patna. While the execution proceedings as well as the proceedings challenging the award were pending, the writ petitioner claims to have found that the private respondents herein had put a lock on the appellant's shop on 15.9.2014 and though the writ petitioner reported to the police about the said occurrence, the police took no action. With the case so pleaded, the writ petitioner-appellant prayed for the following reliefs:--

"(i) For a direction upon the respondent authorities to break open the lock from the shop premises, in which the writ petitioner is tenant, in Hotel Maurya Shopping Arcade as the same has been wrongfully and forcibly locked by respondent No. 6 but has not been opened by respondent Nos. 2 to 5 in spite of the request made by the writ petitioner;

(ii) For a direction upon the respondent Nos. 2 to 5 to take appropriate legal action for the wrongful act on the part of the respondent Nos. 6 and 7."

3. Appearing on behalf of the writ petitioner-appellant, Mr. S.D. Sanjay, learned Senior Counsel, submits that the act of locking of the commercial premises, by the private respondents herein, is an infringement of the appellant's fundamental right to carry on trade and such an infringement cannot be allowed to prevail and, therefore, it was the duty of respondent Nos. 2 to 5 herein to break open the lock, which had been put on the shop of the appellant by the private respondents herein.

4. To a pointed query made by this Court, Mr. S.D. Sanjay, learned Senior Counsel, could not indicate any law, which permits, far less empower, the police, in a case of present nature, to break open lock. Deviating, therefore, from the reliefs, which the writ petitioner-appellant had sought for, in the writ petition, it is submitted, on behalf of the appellant, that the police could have provided protection to the appellant so that the appellant could have broken open the lock.

5. We are afraid that the submissions, made on behalf of the writ petitioner-appellant, would have disastrous consequences, if acceded. Neither the police are empowered nor do they have the duty imposed on them by law to break

open a lock allegedly put by a landlord on the tenant's premises or tenant's shop; whereas this was the relief, which the appellant had specifically sought for in the writ petition. We shudder to think as to what consequences would follow if this Court, unwittingly, issues a writ in the nature of mandamus to the police to break open the lock, for, such a direction would be interpreted to have empowered the police, or had cast duty on the police, in the facts and attending circumstances of a case of present nature, to break open lock put by a landlord on the commercial premises of his tenant if the tenant makes a complaint to the police. Such incorrect and unbridled power cannot be held to be available to the police.

6. In order to appreciate the real issue involved in this case, what needs to be noted is that howsoever thin and subtle may be, there is, indeed, a real and definite line of demarcation not only between a public wrong and a private wrong, but also between a public law remedy and private law remedy. Article 226 of the Constitution of India is pre-eminently a public law remedy and is not, generally, available as a remedy against private wrongs. The resort to Article 226 of the Constitution of India can be had to enforce various rights of the public or to compel the public or statutory authorities to discharge their public duties and/or to act, in the realm of their public functions, within the bounds of law. The remedy under Article 226 of the Constitution of India can, no doubt, be availed of even against a private body or person; but the scope of the right of mandamus is limited to enforcement of public duty. In minimum possible words, but with extreme exactitude, clarified the Supreme Court, in *Binny Ltd. and Another Vs. V. Sadasivan and Others*, , the position of law, in this regard, in these words:--

"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to, enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action."

(Emphasis is added)

7. What, thus, in the face of succinctly laid down position of law in *Binny Limited* (supra) with regard to issuance of a writ of mandamus, under Article 226 of the

Constitution of India, against a private person or body, one has to bear in mind is that in a case of private wrong, in order to invoke Court's jurisdiction under Article 226 of the Constitution of India, for issuance of a writ in the nature of mandamus, two conditions must be satisfied, namely, (i) the identity of the person, against whom the writ is sought, as person or body, which is amenable to writ jurisdiction, and (ii) the nature of duty, which its sought to be enforced, is a public duty or has an element of public interest. In a given case, one may, perhaps, ignore the first prerequisite, namely, the identity of the person or body as a person or body amenable to writ jurisdiction; but the second prerequisite, as indicated hereinbefore, cannot be ignored, for, in the absence of public interest or in the absence of breach of public duty or in the absence of any public wrong having been committed, no recourse to Article 226 of the Constitution of India is possible.

8. To put it differently, the private person or body, against whom a writ of mandamus is sought, must be amenable to the writ jurisdiction and the duty, which is sought to be enforced, must be a public duty or the decision, which is sought to be corrected, must be a wrong in the discharge of public duty. The duty, cast on the private body, may be statutory or otherwise and though the source of such power is immaterial, there must be, nevertheless, public law element present in the action, which a petitioner impugns in his writ petition to seek issuance of a writ in the nature of mandamus against a private person or body.

9. In the context of the law relating to issuance of a writ of mandamus under Article 226 of the Constitution of India, it clearly follows that in the case at hand, as far as the landlord of the present appellant is concerned, he is neither a public body nor is a person discharging public duties; his alleged act of putting a lock, therefore, is not amenable to writ jurisdiction. The remedy of the appellant does not lie in the realm of public law remedy under Article 226 of the Constitution of India, but falls within the domain of a civil court of competent jurisdiction and as far as the police are concerned, they cannot be directed to take law in their hands and do what the law does not permit them to do.

10. The remedy of the appellant, in the factual background of the present case, thus, lies in approaching a civil court of competent jurisdiction for remedy of his grievances including a suit seeking injunction and he may also, if he is so advised, file necessary application seeking ad interim or interim injunction pending disposal of such suit provided that the learned Court below, where the suit may come to be instituted, considers granting of such an interim injunction factually permissible in the light of the law relevant thereto.

11. Because of what have been discussed and pointed out above, we do not find that the learned Single Judge has erred in law in holding that as the matter was pending before the learned Sub-Judge, the police cannot be directed to remove the lock and the remedy of the appellant lies elsewhere.

12. In the result and for the foregoing reasons, this appeal is not admitted and shall stand accordingly dismissed. No order as to costs.

Chakradhari Sharan Singh, J.

I agree.