

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6869-6871 OF 2009
[arising out of SLP(C) Nos. 21381-21383 of 2008]

M/S SUNSAM PROPERTIES PVT. LTD.

.....

APPELLANT

VERSUS

SAURAV AGARWAL & ORS.

.....

RESPONDENTS

O R D E R

Leave granted.

Two orders have been impugned in this appeal, one dated 8th July, 2008 and the other 29th July, 2008, both emanating from miscellaneous applications filed by the respondent who was the petitioner in Writ Petition (C) No. 9247 of 2008 which is still pending in the High Court. When this matter came up before the Division Bench of the High Court on 8th July, 2008 notice was issued to the respondent Nos. 1 and 3 and was accepted by the Additional Standing Counsel and it was further directed that the requisite for the issue of notice to respondent Nos. 2 and 4 be filed on the following day. Despite the fact that respondent No. 4 who is the appellant before us had not been served, the Division Bench proceeded to make some startling observation in its order dated 8th July, 2008, and issued certain

directions which to our mind were even beyond the scope of the prayer in the writ petition:-

"House grabbing is serious offence and it amounts to criminal offence and we take serious note of the same. Therefore, the Deputy Commissioner of Police, Bhubaneswar, is directed to take appropriate action under the law and enquire the delivery of possession of the above office/rooms to the petitioners and submit a report before this Court by the next date.

The petitioner is directed to approach the Deputy Police Commissioner, Bhubaneswar along with an application and on receipt of the said application, the Deputy Commissioner of Police shall get it registered as a criminal case at the proper Police Station."

On 29th July, 2008, the Court went yet further and modified the order dated 08th July, 2008:-

"The interim order passed earlier is modified to the above extent. Except taking over possession and the necessary applicability of the law in that respect, no other coercive action shall be taken against opposite party No. 4 till a prima facie case is made out against them on the basis of credible evidence.

The personal appearance of the Deputy Commissioner of Police, Bhubaneswar is dispensed with until further orders."

It is the case of the appellant that pursuant to the orders aforesaid the possession was taken from the subsequent vendee of the flat and is now with the police. The learned counsel for the appellant has first and foremost argued that the interim order dated 8th July, 2008 was without notice to the appellant

before us and after making some general observations with regard to house grabbing being a serious offence etc. some observations had been made against the appellant and by the subsequent order dated 29th July, 2008, an even more harsher order with respect to the taking of possession had been passed.

After hearing the learned counsel for the parties, we are of the opinion that both the orders cannot be sustained inasmuch as they have been issued to a private party in a writ petition and had been made without notice to respondent No. 4 who is appellant before us. We are also of the opinion that such orders in a writ petition are perhaps uncalled for and should be a matter of decision by a Criminal Court or Civil Court. We, accordingly, allow the appeal, set aside the aforesaid orders with no orders as to costs.

The High Court will proceed on its own on merits uninfluenced by the observations made hereinabove.

.....J
[HARJIT SINGH BEDI]

.....J
[R.M. LODHA]

NEW DELHI
OCTOBER 06, 2009.