

CASE NO.:
Appeal (civil) 2639 of 2006

PETITIONER:
HOWRAH MILLS CO. LTD. & ANR.

RESPONDENT:
MD. SHAMIN & ORS.

DATE OF JUDGMENT: 12/05/2006

BENCH:
S.B. SINHA & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(ARISING OUT OF S.L.P. (C) NO.21979 OF 2004)
[with I.A. No. 4/2006 and I.A. No. 5/2006]

P.K. BALASUBRAMANYAN, J.

Leave granted.

1. The appellants approached the High Court of Calcutta praying for the issue of a writ of mandamus directing the State and its police authorities to give the appellants the necessary protection in respect of the property of the first appellant, the Howrah Mills Co. Ltd. The appellants pointed out that the company was before the Board for Industrial and Financial Reconstruction (in short "the BIFR") for its reconstruction and a proposal to sell away a portion of its land as a means to revive the industry, has been approved by the BIFR, especially since the State of West Bengal had also agreed before it to such a course. The company owned a vast extent of land out of which a portion was to be sold and the process for sale is at an advanced stage. Meanwhile, attempts were being made to interfere with the possession of the appellants over the property and in spite of requests in that behalf, the police authorities were not rendering the necessary help to the appellants. The company employed about six thousand workers and a revival of the company, which was still working, would be for the benefit of such a work force also and it was all the more reason for the respondents to give the necessary protection to the appellants to protect the property from unauthorized trespassers. There was also a prayer for affording protection for the purpose of repairing the compound wall of the property and for putting up a separate boundary wall protecting the portion to be alienated. The appellants offered that they would meet the expenses for the affording of such protection.

2. While entertaining the writ petition, a learned Single Judge of the High Court of Calcutta granted an interim order of protection. The learned Judge found that there was prima facie failure on the part of the police to perform their duty and in the circumstances it was just and proper to issue a direction to the Superintendent of Police, Howrah to ensure that the officer in charge of the Shibpur Police Station strictly complied with the direction given to him to see to it personally that no one, in any manner, stepped into the property in question, without

specific permission being granted by the appellants. The writ petition was directed to be listed for final hearing.

3. An appeal was filed by three persons claiming to be assignees of a fraction of a share from a fraction shareholder challenging the direction issued by the learned Single Judge on a claim that they were co-owners of the property and hence were entitled to exercise rights as such and their right to give permission for use of the property cannot be interfered with, that too, by a direction in a writ petition seeking a mandamus for what can be called police protection. They contended that intricate questions of title and right over the land were involved and when it was so, the Single Judge or the High Court could not exercise jurisdiction under Article 226 of the Constitution of India to issue a direction like the one issued by the learned Single Judge purporting to protect the disputed rights of the writ petitioners. The Division Bench without paying proper attention to the circumstances obtaining in the case and the need to protect the property in the interests of one and all, set aside the order of the learned Single Judge on the view that disputed questions were involved and hence no such direction as the one given by the learned Single Judge could have been granted. The interim direction of the learned Single Judge was, thus, set aside and the prayer for interim relief was rejected.

4. The appellants challenged this order of the Division Bench in this Court and while directing the listing of the case, this Court stayed the order of the Division Bench. Subsequently on 1.11.2004 this Court issued notice, continued the interim order of stay of operation of the judgment of the Division Bench of the High Court and directed that the police protection sought for by the appellants would be given at the cost of the appellants. Thus, the protection which was granted pursuant to the direction of the learned Single Judge continued, pursuant to the order of this Court. The position now is that the protection is now being offered to the appellants on their liability to pay the costs for such protection.

5. Learned senior counsel for the appellants submitted that the protection being granted may be continued until the portion of the property directed to be sold by the BIFR is sold and the purchaser put in possession and the industry is in a position to move ahead in full steam with the purchase price that will be available to it for such resurrection. Counsel further submitted that a direction may be issued to the police to grant protection to the appellants to erect the compound wall separating the plot earmarked for sale so as to separate it from the rest of the property and protection may also be ordered for enabling the appellants to repair and renovate the boundary of the property of the company. Counsel also pointed out that the appellants have filed I.A. No.6 of 2005 praying that they may not be compelled to pay the astronomical sums claimed by the police department towards the charges for protection given thus far. Counsel submitted that it was in the interest of everyone, including the six thousand workers and the economy of the State, to have the working of the industry fully revived and in that context, the State had also a duty to ensure that the scheme before the BIFR was worked out under

the supervision of the BIFR. Counsel pointed out that if the appellants are compelled to pay huge sums as costs of protection as demanded by the State, substantial portion of the proceeds of sale of a portion of the property permitted to be sold with the consent of the State, would be dissipated in such costs and there would be no adequate funds available for revival of the industry fully. In answer, Mr. R.F. Nariman, learned Senior Counsel for Respondents 1 to 3, the appellants before the Division Bench, argued that as disputed questions of title and possession were involved, it was not appropriate for the Court to exercise its jurisdiction under Article 226 of the Constitution of India to protect the alleged rights of the appellants by issuing a writ of mandamus. Counsel further raised a contention that the appellants are, at best, Thika tenants and the appellants have no rights over the land, the same having vested in the Government and their rights were confined to the super structures. It appears that such a contention was not raised earlier. But even assuming that such a contention can be looked into by us, the position would be that so long as the Thika tenancy continues, respondents 1 to 3 as alleged assignees of fractional title in the property, would have no right to interfere with the possession of the property. If there is a vesting under Sections 5 and 6 of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, then it will be a complete vesting of all rights and the rights of the landlord would also stand vested in the State. We may notice that Mr. Tarun K. Roy, learned Senior Counsel appearing for the State of West Bengal submitted that the State had not made any claim of right under the Thika Tenancy Act, no such claim was put forward before BIFR also and that, as a matter of fact, the State had all along supported the cause of the appellants for the rehabilitation of the industrial undertaking before BIFR and the sale of a portion of the land proposed to be sold under the supervision of the BIFR. This argument, therefore, cannot carry respondents 1 to 3 herein, far. Even otherwise, if there is a Thika tenancy in favour of the appellants, it would not be open to respondents 1 to 3 herein to interfere with the possession or right of the appellants so long as the tenancy continues. In purported exercise of their fractional right in reversion, they cannot seek to interfere with the possession of the Thika tenant. This argument, therefore, deserves to be overruled.

6. Learned counsel further submitted that in any event respondents 1 to 3 herein were disputing the title and possession claimed by the appellants and were setting up rights in themselves including a claim of possession over portions of the property and in such a situation, a direction for police protection should not or could not be granted. Learned counsel reiterated the submissions made before the Division Bench of the High Court and accepted by that Court.

7. On behalf of the State of West Bengal, learned counsel submitted that the appellants have not paid even the agreed charges for grant of protection which they had agreed to pay. Learned counsel pointed out that earlier and before this Court also the appellants had agreed to pay at the rate of Rs.16,413/- per day and the amount is due from 24.12.2004 till date. Counsel submitted that the State would be willing to give necessary protection

provided the charges are paid and they are continued to be paid as demanded by the State.

8. We do not see much force in the submission for counsel for respondents 1 to 3 that since they are raising some claim over a fraction of the property, no relief can be granted to the appellants herein. At best, respondents 1 to 3 herein are assignees of undivided shares from a co-owner, and prima facie, their right, if any, is to sue for partition. Prima facie, they are not entitled to enter the property or to interfere with the possession of the appellants. If the property is protected from trespassers meanwhile, it will only be to their advantage. Then, they can work out their rights without obstruction.

9. It appears to us that this is a case where the State should be equally interested in seeing to it that the property was fully protected, until the scheme proposed by the BIFR is implemented and the revival of the industry is ensured. It is said that six thousand workers are involved and their welfare, along with the welfare of the creditors and of the management, depends upon the scheme being put through. One would have expected the State of West Bengal to readily respond to a request for protecting the property from trespassers so as to ensure that the revival of a sinking industry is achieved and its workers are protected. Even otherwise, in a situation like the present, it is the duty of the police of the State to give necessary protection to the struggling industry to tide over the crises and protect its property from interference by lawless elements and unauthorized persons. Going by the Police Regulations, Bengal 1943, Regulations 666 and 669, it may even be possible to say that the protection in such circumstances should be afforded even without insisting on payment by the private party seeking protection. But in this case, the appellants have approached the Court praying for protection expressing their readiness to meet the charges for such protection on the basis that they are liable to pay such charges. In fact, the order for protection was extended to the appellants from the filing of the writ petition till this date only on that basis. Therefore, we are of the view that it would not be appropriate to hold, on the facts of this case that the appellants have no obligation at all to meet the costs of the protection given to them by the police.

10. At the same time, we think that only a reasonable amount should be fixed so that the endeavour made to revamp the industry is not frustrated by too heavy a slice of the price of the land to be sold under the supervision of the BIFR for the resurrection of the industry being spent on this score. It is no doubt true that the appellants had agreed to pay a sum of Rs.16,413/- per day for the protection. It is seen from I.A. No.4 of 2006 filed by respondents 4 to 7 in the appeal that they have now computed the amount payable at Rs.9,195/- per day from 1.10.2005 till this date and for the earlier period between 31.1.2005 to 30.9.2005 they had proposed to claim a sum of Rs.15,678/- per day though for an earlier period between 24.12.2004 and 30.01.2005 they have proposed to claim @ Rs.41,520/- per day. Since the protection for the property from trespassers is also to enure to the benefit of the industry as a whole including its workforce of about six thousand, we think that a sum of Rs.10,000/- per day for the entire

period for which the appellants have not paid would be adequate compensation to the State. We, therefore, direct the appellants to pay the entire arrears calculated at the rate of Rs.10,000/- per day for the entire period set out in I.A. No. 4 of 2006 within a period of two months from this date. The appellants would also be liable to pay at the rate of Rs.10,000/- per day from the last date referred to in I.A. No. 4 of 2006 till this date within that period and will continue to pay the said sum per day from today till the plot to be sold is separately demarcated and bounded and boundary of the balance property repaired or rebuilt. The current payments have to be made by the appellants at the rate of Rs.10,000/- per day, once in 15 days, starting from today.

11. Respondents 4 to 7 are directed to continue to give the requisite protection to the appellants in respect of the property of the first appellant - company and also to give necessary protection to enable the company to repair or renovate its boundary walls as also for construction of separate boundary walls for the plot of land proposed to be sold under the supervision of the BIFR.

12. Mr. Roy, learned Counsel for the State has categorically submitted before us that the State would perform its duties in the matter of maintenance of law and order and it shall provide protection to the property of the first appellant \026 Company in discharge of the statutory duties of the State and the Police. In this context, the Authorities may consider whether it is necessary to engage a large force of policemen at this stage and consider posting only such number of personnel as may be found necessary for the protection of the property. That would enable a reduction in the cost of protection to be paid by the appellants and the State would be free to reduce the charges payable by the appellants for protection of the properties. In the light of the directions as above and the observations, I.A. Nos. 4 and 5 of 2006 will stand disposed of.

13. The appeal is allowed in the above manner and the Interlocutory Applications are disposed of in the light of the directions contained above. There will be no order as to costs.