

Constitutional Writ

Present:

The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on: May 3, 2010.

W.P. No. 6347 (W) of 2008

Sanat Tarafdar

v.

The State of West Bengal & Ors.

Points:

**Scope of writ:** Whether a writ is maintainable against a private body-  
Constitution of India Art 226

Facts:

The petitioner is seeking a mandamus commanding the respondents to restore his possession of the vehicle. His own case is that purchase of the vehicle was financed by the finance company according to the terms and conditions of the loan agreement, and that he was in default on the loan. on July 29, 2007 some unknown persons, in the capacity of agents of the finance company, forcibly repossessed the vehicle under an inventory.

Held:

No public law element was involved in the process of repossession of the vehicle by the finance company – a private body and hence not amenable to writ jurisdiction under art.226. The petitioner, not entitled to the public law remedy under art.226, had private law remedy, if any, before the civil court or the forum mentioned in the agreement. Para-4

None for the petitioner. Mr Amitava Mitra and Ms Dolon Dasgupta, advocates,  
for the third and fourth respondents.

The Court: - The petitioner in this art.226 petition dated April 4, 2008 is seeking the following principal relief:

“a) A writ in the nature of Mandamus commanding the Respondents No.1,2,3 & 4 to rescind, recall and/or withdraw the impugned actions and further commanding the Respondents to return Vehicle-in-question to the registered owner i.e. your petitioner;”

2) It has not been specified anywhere in the petition what action of the respondents has been impugned by the petitioner.

Counsel for the third and fourth respondents (M/s. Ashok Ley Land Finance Ltd. – a finance company and The Area Manager, Ashok Ley Land Finance Ltd. respectively) submits that the finance company's legal notices dated

January 15, 2008 and February 3, 2008, Annexures P7 and P8 at pp.26 and 27

respectively, have nothing to do with the vehicle that was repossessed by the finance company in exercise of a contractual right available under the loan agreement.

3) It appears from prayer (a), quoted hereinbefore, that the petitioner is seeking a mandamus commanding the respondents to restore his possession of

the vehicle. His own case is that purchase of the vehicle was financed by the finance company according to the terms and conditions of the loan agreement,

and that he was in default on the loan. He stated in para.6 that on July 29, 2007 some unknown persons, in the capacity of agents of the finance company,

forcibly repossessed the vehicle under an inventory.

4) On these facts, I am unable to see how the high court can exercise power under art.226 to issue a mandamus commanding the respondents to restore the

petitioner's possession of the vehicle. No public law element was involved in the

process of repossession of the vehicle by the finance company – a private body

and hence not amenable to writ jurisdiction under art.226. The petitioner, not entitled to the public law remedy under art.226, had private law remedy, if any,

before the civil court or the forum mentioned in the agreement.

For these reasons, the petition is dismissed. No costs. Certified xerox.  
(Jayanta Kumar Biswas, J.)

