

WPA 4711 of 2017
IA No. CAN 4/2022

Baby Mridha
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Subrata Bhattacharya
Mr. Hirak Kr. Basu
...for the petitioner

Mr. Biswajit Mukherjee
Mr. Debangshu Mondal
..for the KMC

Mr. Tanmoy Sett
Ms. Kaniz Kulsum
..for the private respondent
Nos. 12,13,15 & 16

Mr. Debajyoti Basu
Mr. Pran Gopal Das
..for the private respondent
Nos. 8,10 & 11

The present writ petition is preferred by the owner of a premises and the land comprised under Dag No. 19, Khatian No. 974, Holding No. 10 under Kolkata Municipal Corporation ward no. 127, premises no. 70, Ram Road, Kolkata-700061.

The grievance of the petitioner is on the eastern side of the premises of the petitioner 10 ft. wide common passage which connects the premises of the petitioner to nearby Ram Road has been blocked by construction of an altar (Bedi), allegedly constructed by the private respondents for organising Kali Puja. However, it has

been stated in the writ petition that the respondents are the owners of the adjoining plots situated on southern and northern side of 10 ft. wide common passage leading to the premises of the petitioner which situates at the dead end of such common passage. Petitioner has prayed for demolition of such altar since the same has been constructed without any sanction plan and such altar is obstructing ingress and egress of the petitioner.

Mr. Debojyoti Basu, learned advocate appears on behalf of the respondent nos. 8, 10 & 11 has taken a preliminary point of maintainability of the writ petition in view of fact that at the time of instituting the writ petition, respondent no. 7 was not alive and against the dead person writ petition is not maintainable in consideration of the relevant provisions of the Writ Rules and in addition thereto, it has also been submitted that respondent nos. 9 & 14 have died during pendency of the writ petition and the petitioner has failed to take steps for recording the death of those respondents who have died in the meantime and no substitution application has been taken out.

It has also been submitted that the writ petition is not maintainable in view of pendency of a civil suit being Title Suit No. 2950 of 2010 where the issue of ownership of the said 10 ft. wide common passage has been raised and a declaration has been sought for by some of the

private respondents who are the plaintiffs in the said pending civil suit to extent of usage of said passage.

It has also been submitted that an order of status-quo is substituting in connection with such pending civil proceeding. Therefore, at this stage, the prayer made in the writ petition may not be entertained which will ultimately make pending civil proceeding infructuous.

Mr. Tanmoy Sett, learned advocate appears on behalf of private respondent nos. 12,13,15 & 16 who has adopted the submission of Mr. Debajyoti Basu, learned advocate representing some other private respondents.

In addition thereto, it has been submitted that the petitioner is owner of land which comes under Dag no. 19. Private respondents are owners of adjoining land comprised in Dag no. 17 and the disputed altar has been constructed at the dead end of 10 ft. wide common passage jointly owned by the private respondents. Therefore, the right of the petitioner relating to ingress and egress should not be a relevant consideration.

Mr. Biswajit Mukherjee, learned advocate appears on behalf of the Kolkata Municipal Corporation and has placed report in the form of affidavit pursuant to the previous order passed by this Court on 14th June, 2022. The said affidavit affirmed on 28th June, 2022 is taken on record. Placing reliance on this report it has been submitted on behalf of Kolkata Municipal Corporation

that the altar is constructed on the passage which is recorded as common passage of abutting premises and not on the thoroughfare of the Kolkata Municipal Corporation. It has also been stated in the said report that the altar in question is situated beside the closed boundary of the premises of the petitioner at the dead end of the said 10 ft. wide common passage.

This Court has made a query to the learned advocate representing the Kolkata Municipal Corporation whether there is any approval by the Kolkata Municipal Corporation for constructing such altar on said 10 ft. wide common passage, but this Court does not get any response indicating existence of such approval by the Kolkata Municipal Corporation.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record and also perused the report submitted by the Executive Engineer (C)/B, Br. XIII & XIV of the Kolkata Municipal Corporation dated 27th June, 2022 which has been placed by way of an affidavit before this Court today.

On considering the submission made on behalf of the respondents, it appears that the private respondents are apprehensive of the fate of the pending civil suit, in the event the present writ petition is allowed to the extent

directing the Kolkata Municipal Corporation to initiate proceeding for demolition of the said altar.

Considering such submission made on behalf of the private respondents, this Court has considered the prayer made in the plaint wherefrom it appears that there is prayer to the extent of declaration that said 10 ft. wide common passage is made only for the owners of plots of Dag No.17. However, on query today at the time of disposing of this writ petition, no status quo order has been placed before this Court. But, it has been orally submitted that there is existence of status quo order in connection with civil proceeding.

Considering the nature of the prayer couched in the plaint, it does not appear that construction of altar for performing Puja on said 10 ft. wide common passage is one of the issues in the suit. A mere declaration has been asked for relating to ownership qua right to user of the private respondents of said 10 ft. wide common passage in Dag No.17. Therefore, in appreciation of the facts of the present case and the grievance made in the present writ petition as well as prayer couched in the suit instituted by the private respondents, it does not appear that if due to want of necessary sanction plan, Kolkata Municipal Corporation is directed to initiate the proceeding in accordance with law for demolition of such

altar, that will create any hindrance in adjudicating the issue involved in the suit.

Since it is indisputable that there is no permission obtained from the concerned authority of the Kolkata Municipal Corporation to construct such altar at the dead end of the said 10 ft. wide common passage which connects the premises of the petitioner to the nearby Ram Road being the thoroughfare of the Kolkata Municipal Corporation, this Court finds it proper upon placing reliance on the report of the Executive Engineer (C) Borough Nos. XIII & XIV dated 27th June, 2022 to direct the concerned authority of the Kolkata Municipal Corporation to initiate the proceeding for demolition of such altar unauthorisedly constructed on said 10 ft. wide common passage expeditiously and will bring such demolition proceeding to a logical conclusion within three months from this date.

For initiating the aforesaid demolition proceeding necessary steps relating to service of notice in accordance with law to be issued to the private respondents and if necessary, to some other interested parties.

With the aforesaid direction, the writ petition stands disposed of.

The application being CAN 4/2022 is also considered today while disposing of the writ petition. The

prayer has been made in this application for deleting the names of the respondent nos. 6, 7, 9 & 14 in view of the fact that respondent no.6 has already sold his land situated in Dag No.17 and respondent nos. 7, 9 & 14 have died though it has been submitted by Mr. Basu that respondent no.7 died prior to instituting the writ petition and said respondent ought not to have been added as a party respondent.

Since the writ petition is disposed of today, this Court finds it apt to allow this application by granting leave to the advocate-on-record of the petitioner to delete the names of the respondent nos. 6, 7, 9 & 14 from the array of the respondents delineated in the cause title of the writ petition by making necessary amendment in course of this day.

The application being CAN 4 of 2022 also stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)