

05.08.2022  
Item 20, 21  
Court No.6.  
AB

**M.A.T. 1204 of 2022  
With  
I A CAN 1 of 2022**

**Sri Debasish Bhattacharjee & Others  
Vs  
Baby Mridha & Others**

**And**

**M.A.T. 1208 of 2022  
With  
I A CAN 1 of 2022**

**Sri Debasish Bhattacharjee & Others  
Vs  
Baby Mridha & Others**

Mr. Debojyoti Basu,  
Mr. Tanmoy Sett,  
Mr. Pran Gopal Das      ...for the Appellants.

Mr. Biswajit Mukherjee,  
Mr. Debangshu Mondal   ...for the K.M.C.

Mr. Tapan Coomaar Dey,  
Mr. Subrata Bhattacharjee,  
Ms. Shreya Chatterjee  
.....for the Respondent No.1.

MAT No.1204 of 2022 is an appeal directed against an interim order dated June 14, 2022, passed in WPA 4711 of 2017. MAT No.1208 of 2022 is an appeal directed against the final order of the learned Single Judge disposing of the writ petition.

Since the two appeals arise from successive orders passed on the same writ petition and in the same factual background, both the appeals have been

taken up together for hearing and disposal, by consent of the parties.

The dispute is simple. There appears to be a 10 ft. wide passage abutting the properties of the appellants and the writ petitioner, which the appellants say, belongs to them. They have apparently filed a suit before the Alipore Court claiming declaration of ownership in respect of such passage.

There is a holy basil altar “tulshi mancha” on that passage. We are told that the altar is used for worship of Goddess Kali. The writ petitioner is the resident of a property, which, according to her also, abuts the said passage. She says that she uses the passage for ingress and egress and the altar is obstructing her entry and exit. She, accordingly, approached the learned Single Judge with the present writ petition for a direction on the Corporation Authorities to demolish the altar.

By the first order dated June 14, 2022, the learned Single Judge recorded that he was not satisfied with the report of the Executive Engineer dated March 14, 2017, to the effect that the land whereupon the altar has been constructed is the property of adjoining plot-holder and is not thoroughfare or Kolkata Municipal Corporation road. As such, demolition proceedings may not be undertaken. The learned Judge directed the Executive

Engineer to file a fresh report indicating the ownership of the land on which the altar had been constructed.

A fresh report was filed. The said report was to the following effect:

*“Pursuant to the order of Hon’ble H.C. vide No.5 of 14/06/2022 related to aforesaid matter this Department issued Notice to the petitioner and private respondents including Executive Engineer (C) Borough XIV, Engineering Department K.M.C. regarding ownership of the Land/plot on which the altar in question has been constructed. Accordingly Engineer Department, KMC has submitted report from where it reveals that said passage is recorded as common passage of the abutting premises and not a through fair road and no such record of handing over to KMC is available against the stated passages.*

*However on Joint inspection held on 25/06/2022 it appears that same KMC services in connection to road and street light are existing on that passages. On consultation with available office records it is found that Building sanction for Premises no.70 Ram Road in ward 127 Br-XIV was accorded vide B. P. No.2018140357 dated 22/02/2019 where from ground floor plan it is seen that the altar in question is situated besides the closed boundary of the mentioned premises on the dead end of said passage. The petitioner does not use this common passage for ingress and egress.”*

When the matter came up before the learned Single Judge finally on June 29, 2022, the learned Judge disposed of the writ petition by directing as follows:

*“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 and XIV dated 27<sup>th</sup> 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.”*

Being aggrieved, the private respondents have come up by way of the present appeals assailing the two orders of the learned Single Judge indicated above.

We have heard learned Counsel for the parties. The writ petitioner had approached the learned Single Judge with the grievance that the Corporation was not taking steps on the basis of her complaints by demolishing the altar in question. By two successive reports, the Corporation recorded its stand that it had nothing to do with the passage in question. It was not a thoroughfare. Such passage was never handed over to the Corporation. The Corporation is not the owner of such passage. In the second report, which was

prepared after hearing the writ petitioner and the private respondent as indicated in the report (page 98 of the stay petition in MAT 1208 of 2022), it is further recorded that the writ petitioner does not use the common passage in question for ingress and egress. If that be so, we fail to understand as to how the writ petitioner can be aggrieved by the construction of the altar on such common passage. She would have no locus standi to complain about such altar.

Learned Advocate for the writ petitioner says that such recording in the report is not correct. We are afraid that we cannot accept such submission from the Bar. No exception was taken by the writ petitioner to the aforesaid report filed on behalf of the Corporation.

On an overall consideration of the facts and circumstances of the case, we are of the considered view that the dispute between the present appellants and the writ petitioner is purely of civil nature. The learned Single Judge ought not to have directed the Corporation officers to go on a fact finding mission concerning title to the passage. The claim of the appellants as owners of the private passage in question is pending adjudication before a Civil Court. We are told that the husband of the writ petitioner is a party to such suit. If the writ petitioner is aggrieved by existence of the altar on the private passage, she, through her husband, who is a party to the civil suit,

or on her own by praying for impleadment as party to the suit, may approach the Civil Court praying for appropriate relief. If any such application is made before the learned Civil Judge, the same shall be decided by the learned Judge without being influenced by any observation in this order.

The orders under appeal are set aside.

Since we have not called for affidavits, the allegations in the stay applications are deemed not to be admitted by the respondents.

MAT No.1204 of 2022 and MAT No.1208 of 2022 stand disposed of along with applications being IA CAN 1 of 2022 and IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

**(Rai Chattopadhyay, J.)**

**(Arijit Banerjee, J.)**