

26.09.2022
Item No.2
Ct. No.7
CHC

C.O.3032 of 2022

Mrs. Vaishali Das & ors.
Vs.
Sri Nimai Kumar Das & ors.

Mr. Sagar Bandhopadhyay,
Mr. Kaushik Kanti Maiti,
Mr. Tapan Bhanja,
Mr. Saurov Mallick

...for the petitioners

Ms. Shahina Haque,
Ms. Priyanka Das,
Ms. Poulami Chakraborty

...for the opposite parties

The revisional application is against the order dated 9th September, 2022, passed by learned Additional District Judge, 4th Court, Barasat, North 24 Parganas, in Misc. Appeal No.86 of 2022, granting ad interim order of injunction thereby restraining petitioners/respondents from further covering of the bamboo structure of the suit passage till disposal of the injunction petition.

Trial court refused to grant ad interim injunction in Title Suit No.873 of 2022, pending before the learned Civil Judge (Senior Division). 2nd Court, Barasat, North 24 Parganas. An appeal was then carried against rejection of prayer for ad interim injunction. By the order impugned, the first lower

appellate court granted ad interim injunction *ex parte* upon reversing the order of the trial court.

The dispute between the parties is with regard to the celebration of Durga Puja for the year 2022 at a venue, which is alleged to have encroached a pathway leading to Club House. There has been pandal erected causing obstruction to the alleged pathway.

Learned advocate appearing for the petitioners submits that Durga Puja is being celebrated since 2019 by the ladies members of a housing complex, ordinarily called as “Siddha Town” Housing Complex.

It is submitted by the learned advocate for the petitioners that the Durga Puja will be celebrated this year erecting pandal on the same venue, where Durga Puja was previously held commencing from 2019. To erect such pandal in the meantime up to a considerable extent, it is submitted that there has been expenditure incurred already to the extent of rupees one lakh, for the purpose. The required formalities from the administration in the meantime for the performance of Durga Puja have already been obtained.

Upon advertng to the sketch map, annexed to the instant revisional application, at page 82, learned advocate for the petitioners submits that there is an alternative road situated at a distance of about 10 to

20 ft. away from the alleged pathway connecting the Club House Building.

As per submission disclosed by the petitioners there is another Puja being celebrated inside the Central Park by the members of such housing complex forming a society therefor.

The contention thus raised by the petitioners is that the court below, while granting ad interim *ex parte* injunction, has not decided the case in context with the principles of granting injunction. When there is an alternative pathway available, intervened by a distance of 10 to 20 ft. away (Approx), there will be no inconvenience either to any of the house owners residing within the housing complex, or to the outsiders visiting the Puja pandal during Durga Puja days.

Per contra, Ms. Shahina Haque, learned advocate appearing for the opposite parties disputes with the submission advanced by learned advocate for the petitioners, replying to the effect that there will be inconvenience to the house owners residing inside the housing complex by such puja performance, apart from the encroachment of a thoroughfare already caused due to the erection of pandal on the road leading to Club House Building of Housing Complex.

Incidentally, it is submitted that petitioners stated creating disturbance since July 2022, upon gathering

bamboos for the erection of pandal with an aim to cause encroachment.

Regarding the existence of alternative pathway, learned advocate for the opposite parties submits that even existence of an alternative pathway, would not automatically allow the petitioners to raise pandal causing encroachment of road.

Supporting the order of the court below, learned advocate for the opposite parties submits that there lies nothing to be interfered with the *ex parte* ad interim injunction, granted by the first lower appellate court.

Having considered the submission of both sides, it appears that celebration of Puja on a spot, for the alleged encroachment of a pathway, is under dispute between the parties. There are two Pujas being organized, one inside the Central Park, and another in the close vicinity of Club House Building. The alleged disturbance for creation of pandals became noticeable, clear and transparent in the month of July, 2022, when for the first time, the petitioners attempted to raise Puja Pandal inside Central Park, but, due to the intervention of the police, the same did not take place.

Be that as it may, to reveal the extent of the pandals already erected could not be furnished before the court below in appeal taking aid of learned Inspection Commissioner's report, under Order 39

Rule 7 C.P.C. The first lower appellate court simply granted ad interim injunction for the alleged encroachment of a pathway.

The settled proposition of law is very clear that there may not be any puja performance held, causing encroachment of any road by any manner whatsoever.

Learned advocate for the petitioners at this juncture assures this Court that their assurance may be put on record that there will be no encroachment on the pathway in any manner whatsoever to anybody else.

The rough sketch map, however, reveals that there is an alternative road, situated at a distance of about 10 to 20ft. away (approx.) from the alleged pathway, connecting the Club House Building.

Petitioners have already spent some considerable amount of money in raising structure thereby allowing pandals to reach to a certain height,, and when the petitioners assure this Court that they will not make any contribution in any manner whatsoever causing encroachment of road to anybody else, there lies the necessity to pass the following order.

Performance of Durga Puja may be held on the site upon restructuring and/or erecting pandals in such a way, that there will be no alleged encroachment of road in any manner whatsoever, either for the house owners residing within the housing complex, or to any

outsiders visiting the housing complex during the Puja days, subject to adhering to formalities under the law, before indulging in celebration of Puja at any place, operative over the field.

When it is the fundamental contention of the petitioners that while granting *ex parte* ad interim injunction, the principles of granting injunction has not been complied with, the revisional application is disposed of directing the court below to dispose of the Misc. Appeal within the shortest possible period of time immediately after reopening of Puja Vacation of the court below.

The interim order thus granted by the first lower appellate court stands vacated, for the discussion made hereinabove, and modified to the extent mentioned hereinabove.

All other points relatable to the grant of injunction may be raised at the time of hearing of the Misc. Appeal.

Both the parties are given liberty to take up such points, and if such points are taken up, that shall be addressed to by the court below in accordance with the law.

Parties are directed to make communication of this order to the learned court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)