

Item no. 05

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 7319 of 2020
with
CAN 1 of 2020

Md. Ali Mondal
vs.
State of West Bengal & ors.

Appearance:

For the petitioner : Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal

For the Private Respondent : Ms. Rima Das
Ms. Oindrila Ghosh

For the State : Mr. Suman Dey

Heard on : 23.11.2022 & 25.11.2022

Judgment on : 25.11.2022

Hiranmay Bhattacharyya, J.:

The dispute between the petitioner and the respondent no. 6 pertaining to an immovable property gave rise to a dispute as to the date of death of one Jabeda Bewa which is the subject matter of this writ

petition. The petitioner has prayed for cancellation of certificate of death of Jabeda Bewa issued by the Sub-Registrar, Khidirpur Gram Panchayat.

The petitioner claims to have acquired title in respect of an immovable property pursuant to a registered deed of sale dated 03.12.2018 executed by one Jabeda Bewa. The petitioner further claims that after execution of the said sale deed, Jabeda Bewa died on 22.12.2018.

The private respondent no. 6 herein is claiming right, title and interest in respect of the self same immovable property by virtue of inheritance from Jabeda Bewa. The private respondent claims that Jabeda Bewa died on 04.11.2018 that is long prior to the date of execution of the purported deed of sale in favour of the petitioner and further claims that the registered deed of sale by virtue of which the petitioner is claiming right, title and interest in the immovable property is nothing but a forged document.

The dispute as to the date of death of the said Jabeda Bewa has triggered this writ petition.

Mr. Roy, learned counsel appearing for the petitioner by drawing attention of the Court to the death certificate issued by the respondent authority submits that the death was registered more than a year after the date of death of Jabeda Bewa. By referring to provisions of the Registration of Births and Deaths Act, 1969 (for short, the 1969 Act), more particularly, sub-section 3 of Section 13, Mr. Roy submits

that in case the death has not been registered within one year of its occurrence, the same shall be registered only on an order made by a Magistrate of the First Class or a Presidency Magistrate after verifying the correctness of the death upon payment of prescribed fee. Mr. Roy submits that no order was passed by an authority competent to pass such order in terms of provisions of Section 13(3) of the said Act and, therefore, the registration of death of the said Jabeda Bewa is vitiated for non-compliance of the said statutory formalities and the certificate issued by the authority is a void document and this Court, in exercise of its powers under Article 226 of the Constitution of India, should cancel such death certificate. In support of his submission as to who is competent to pass an order under Section 13(3) of the said Act, Mr. Roy places reliance upon several provisions of the Criminal Procedure Code, 1973 as well as various provisions of West Bengal Separation of Judicial and Executive Functions Act, 1970 more particularly, Sections 6, 20 and 21 thereof in support of his contention. Mr. Roy also places reliance upon the decision of a Coordinate Bench of this Court in the case of *Bhatindranath Mukhopadhyay vs. Kolkata Municipal Corporation* reported at AIR 2007 CAL 116.

Mr. Dey, learned counsel representing the State submits that Rule 10(3) of the West Bengal Registration of Births and Deaths Rules, 2000 (for short, the 2000 Rules) provides that any birth or death which has not been registered within one year of its occurrence shall be registered only on the order of an Executive Magistrate and on payment

of the late fee of Rs. 10.00. He further submits that upon the documents being submitted by the son of the deceased who is the private respondent herein, the Executive Magistrate upon being satisfied directed the concerned authority to register the said death. He further submits that the State respondents have acted strictly in terms of the provisions laid down under the Rules and, therefore, their action cannot be said to be illegal and arbitrary. He further submits that the said Rules have also not been challenged by the writ petitioner herein and that the West Bengal Separation of Judicial and Executive Functions Act, 1970 on which the reliance was placed by Mr. Roy in course of his arguments do not clarify or amend the provision of Section 13(3) of the said Act.

Ms. Das, learned counsel appearing on behalf of the private respondent submits that upon the death of Jabeda Bewa, the private respondent being the son of the said deceased applied before the authority prescribed under the Rules for registration of the death and the said respondent having performed the obligations that are required to be performed on his part cannot be blamed at this stage. She further submits that the private respondent has made a criminal complaint before the competent authority with regard to the execution and registration of the deed in question and this writ petition is a counter-blast to such criminal complaint.

Heard learned counsel for the parties at length and perused the material placed.

Section 13(3) of the Act provides that if any birth or death which is not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the First Class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

By referring to various provisions of the code of Criminal Procedure, 1973 (for short “the 1973 Code”) and the West Bengal separation of Judicial and Executive Functions Act, 1970 (for short the “1970 Act”), Mr. Ray would contend that the term “Magistrate” used in Section 13(3) of the 1969 Act has to be construed as Judicial Magistrate as such Magistrate while exercising powers under the 1969 Act is to conduct a detailed inquiry, investigation and then arrive at a decision which is to be a reasoned one which the Executive Magistrate is not competent to perform.

By virtue of the 1970 Act, several provisions of the Criminal Procedure Code 1898 (for short the “1898 Code”) was amended insofar as the application of the said Code to the State of West Bengal is concerned.

Section 3 of the 1970 Act starts with the non obstante clause and provides that where under any law the functions exercisable by a Magistrate relate to inquiry into, or cognizance, investigation or trial of an offence, such functions shall be exercisable by a judicial Magistrate and where such functions relate to matters which are

administrative or executive in nature they shall be exercisable by an Executive Magistrate.

However, the 1898 Code stood repealed with the coming into force of 1973 Code. Section 6 of the 1973 Code provides for the classes of Criminal Courts which includes the Judicial Magistrates and Executive Magistrates.

Even from the scheme of the 1973 Code investigation, inquiry or trial of an offence as well as appreciation of evidence adduced at the trial in order to arrive at a decision falls within the exclusive domain of the Judicial Magistrate and the functions which are administrative or executive in nature shall be exercisable by an Executive Magistrate.

This Court is, therefore, of the considered view that there is no considerable change insofar as the basic functions of the Judicial Magistrate and the Executive Magistrate are concerned in the 1973 Code from that of the 1898 Code as amended by the 1970 Act.

Section 13(3) of the 1969 Act casts an obligation upon the Magistrate to pass an order after verifying the correctness of the birth or death. In Oxford English Dictionary the word “verify” when used as a verb shall mean to check that it is true or accurate. Therefore, the Magistrate after verifying /checking whether the fact is correct or not has to pass an order. Section 13(3) does not contemplate a detailed investigation, inquiry or trial as well as appreciation of evidence for arriving at a decision. The function that is to be exercised by a Magistrate under Section 13(3) is administrative or executive in nature

as verification by the Magistrate under Section 13(3) is to be performed on the basis of the documents supplied along with the death report/application. For the reasons as aforesaid, this Court is unable to accept the contention of Mr. Ray that the Executive Magistrate is not competent to perform the functions under Section 13(3) and such function is to be performed only by the Judicial Magistrate.

Moreover, the 2000 Rules empower the Executive Magistrate to pass an order permitting registration beyond one year of the occurrence of death. The writ petitioner has also not challenged the 2000 Rules. Therefore, this Court holds that the Sub-Divisional Executive Magistrate was competent to permit registration of the death of Jabeda Bewa.

It is not the contention of the petitioner that any document was available before the competent authority disputing the date of death of the said Jabeda Bewa. In such factual scenario, the authority was expected to verify only the correctness of the death on the basis of documents supplied along with the death report/application.

Though the writ petitioner has stated in paragraph 10 of the writ petition that the said Jabeda Bewa died on 22.12.2018, yet the source of knowledge of such fact has also not been disclosed by the writ petitioner in this writ petition. No documentary evidence has also been submitted by the writ petitioner in support of his claim that Jabeda Bewa died on 22.12.2018.

The only contention of the petitioner is that only the Judicial Magistrate of First Class is authorized to pass an order in terms of

Section 13(3) of the said Act. It is not in dispute that Rule 10(3) empowers the Executive Magistrate to pass an order in case the registration of death is sought for after one year of its occurrence. The private respondent has approached the authorities specified under the Rules for registration of death. Record reveals that the Sub-Divisional Executive Magistrate forwarded the death report in Form no. 4 thereby permitting the concerned Registrar to issue the death registration certificate as per the Rule. Though it does not appear from the said document which is annexed at Page 16 of the writ petition that the detailed reasons have been assigned therein, but the private respondent should not suffer merely for such failure on the part of the respondent authority as the private respondent has approached the competent authority as per the Rules for permission to register the death of Jabeda Bewa and submitted the documents on connection thereto. The fact that the Executive Magistrate has forwarded the death report permitting the concerned Registrar to issue death certificate as per the Rule coupled with the fact that no document disputing the correctness of death was available with such authority, it necessarily implies that such authority granted permission for issuance of the death certificate upon verifying the correctness of the death from the documents produced by the applicant.

Mr. Roy, in course of his argument, contended that the provisions of Rule 10(3) of the said Rules is inconsistent with the provisions of Section 13(3) of the said Act. However, this Court cannot

decide such issue in absence of any specific challenge to the said Rules in this regard.

Hence, this Court is of the considered view that the death certificate was issued by the competent authority and, therefore, the same cannot be held to be a void document as argued by Mr. Roy. This Court also cannot decide the factual dispute as to the date of death of a person. The 1969 Act as well as the 2000 Rules provides for cancellation of entry in the register of births and deaths and the petitioner is left free to work out his remedies under the provisions of the said Act and the Rules framed thereunder.

The decision of the Coordinate Bench in the case of *Bhatindranath Mukhopadhyay* (supra) was on the issue as to whether the Kolkata Municipal Corporation could deny registration of death after an order was passed under Section 13(3) of the said Act and, therefore, the same is of no assistance for deciding the issues raised in this writ petition.

For all the reasons as aforesaid, this Court holds that the writ petition is devoid of any merit and the same is liable to be dismissed and is accordingly, **dismissed** without, however, any order as to costs. Since it has been submitted by Mr. Roy that a civil suit between the petitioner and the private respondent is pending and the death certificate has been produced before such authority, the petitioner is left free to work out his remedies before the civil court as well as before the authorities in

terms of the said 1969 Act and the 2000 Rules framed thereunder. Consequently, the connected application also stands disposed of.

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

(Hiranmay Bhattacharyya, J.)

Amitava (AR. CT.)