

15.05.2023
Item No.05
Ct. No.7
RP

WPA 1214 of 2012
+
IA No.CAN 2 of 2023
Sri Sohan Lal Manpuria & Anr.
Vs.
State of West Bengal & Ors.

Mr. Debayan Bera
Mr. Sakti Prasad Chakrabarti

... for petitioners

Mr. Ayan Banerjee
Ms. Debashree Dhamali
Ms. Riya Ghosh

... for the respondent nos.6, 7 and 8

Mr. Niladri Bhattacharjee
Ms. Deblina Chattaraj
Ms. Angana Dutta

... for respondent no.2 and 3

In Re : CAN 2 of 2023

1. This is an application for recording the death of the twelfth respondent, namely, Gopal Krishna Das and for deleting his name from the array of respondents in the writ petition.
2. It has been specifically stated in the said application that in spite of notice the said respondent neither appeared to contest the writ petition nor filed any affidavit-in-opposition to the said writ petition. In view thereof, the petitioners pray for exempting them from the necessity of substituting the legal representatives of the said deceased respondent.

3. Since the said respondent neither appeared nor contested the writ petition, the petitioners are exempted from substituting the legal representatives of the twelfth respondent since deceased.
4. Accordingly, CAN 2 of 2023 stands allowed. The name of the 12th respondent stands deleted from the cause title of the writ petition.

In Re. WPA 1214 of 2012

1. The writ petitioners claim to be the owners of RS Plot Nos.124/167, 136 and 137 of Mouza-Barakhola, P.S. Purba Jadavpur, District-South 24 Parganas measuring about 155 cotthas. The grievance of the petitioners is that this property is being used as a bus terminus by the respondent authorities and the private respondents without following due process of law.
2. Mr. Bera, learned senior advocate representing the petitioners submits that the provisions laid down under Rule 182 of the West Bengal Motor Vehicles Rules 1989 (in short "1989 Rules") have not been followed in the instant case. He also submits that no consent in writing from the petitioners have been obtained for using the said property as bus stand. No notification as contemplated under Rule 182 has also been published in the official gazette.

3. Mr. Banerjee, learned advocate appearing for the South Bengal State Transport Corporation submits that the said Corporation has neither parked any of its vehicles in the private property of the petitioners nor has allowed anyone to park their vehicles in the property of the petitioners.
4. Learned advocate representing the respondent nos.2 and 3, namely, West Bengal Transport Infrastructure Development Corporation submits that the said respondents have no control over the transport operators who, according to the petitioner, are parking their vehicles in the property of the petitioners. She further submits that the franchisee agreement, which was entered into between the respondent nos.2 and 3 and the transport operators during the year 2010-2012, was for a period of eight years and the said agreement has expired in the meantime. She submits that the said respondents have no role to play with regard to parking of vehicles in the property of the petitioners.
5. Heard the learned advocates for the parties and perused the materials placed.
6. It appears from the materials on record that pursuant to an order passed in this writ petition on 21st March, 2017 the Commissioner of Police filed a report dated

3rd April, 2017. The relevant portion of the said report is quoted hereinbelow.

“On identification of the land in question by the petitioners, the inspection team found 16 nos. of buses of various routes viz. route nos.24A/1, SD-16, 1A, 1, 1B as also the bus plying on ‘Amta to Mukundapur’ route were parked on the land in question and were found operational, at the noted time. There were also three single-storied brick-built structures constructed alongside the road together with another wooden structure and those were found to be used as Bus, Rickshaw and Auto-Rickshaw Workers Union-cum-Starter office respectively.”

7. The District Magistrate, being the Chairman of the Regional Transport Authority, also filed a report dated 31st March, 2017 which reads as follows.

“Memo No.S710/MV Dated:31.03.

To: The Commissionr of Police, Kolkata
18, Lalbazar Street, Kolkata-700001

Sub: WP No.1214(W) of 2012

Sohan Lal Manpuria & Ors.

Vs.

State of West Bengal & Ors.

Ref : Your memo no.121/KPD/Law dated
28.03.2017

Sir,

In connection with the above reference and subject this is to inform you that as per

available Government record no notification have been issued in terms of Section 116, 117 of MV Act, 1988 and Rules 182 of WBMVR, 1989 by RTA, South 24 Parganas in respect to bus stand situated at RS Plot Nos.124/167, 136 and 137 of Mouza-Barakhola, JL No.21, P.S. Purba Jadavpur, Dist. South 24 Parganas.

District Magistrate & Chairman
Regional Transport Authority
South 24 Parganas”

8. From the report of the District Magistrate it is evident that no notification has been issued in terms of Sections 116 and 117 of the Motor Vehicles Act, 1988 and Rule 182 of the 1989 Rules in respect of bus stand at RS Plot Nos.124/167, 136 and 137 of Mouza-Barakhola, P.S. Purba Jadavpur, District-South 24 Parganas. In the report of the Commissioner of Police it has been mentioned that several busses of various routes, being route nos.24A/1, SD-16, 1A, 1 & 1B as also the buses plying from Amta to Mukundupur route were being parked in the land in question at the time of inspection.
9. After taking into consideration the aforesaid reports, a coordinate Bench, by an order dated 04.04.2017 disposed of the writ petition by making an order in terms of prayer (a) insofar as the same relates to

parking of buses on the said property except in accordance with law.

10. The aforesaid order was challenged by the 28th respondent herein in MAT 1639 of 2017.
11. By a judgment and order passed on 11th October, 2018 in MAT 1639 of 2017 along with CAN 9971 of 2017 the Hon'ble Division Bench was pleased to set aside the judgment and order dated 4th April, 2017 passed by the learned Single Bench in WP 1214 (W) of 2012 and directed re-hearing of the writ petition with a direction to add the appellant therein i.e. Alimul Islam Khan as a party respondent in the writ petition. Pursuant to the said judgment and order dated 11th January, 2018 passed in MAT 1639 of 2017 the said Alimul Islam Khan was impleaded as 28th respondent in the writ petition. The Commissioner of Police was also added as a party respondent in that writ petition.
12. Since the respondents were not appearing, the petitioners published notices in widely circulated newspapers in compliance with the order passed by this Court. The writ petitioners also brought on record subsequent facts by way of amendment and after the amendment application was allowed the amended writ petition has also been filed.

13. Mr. Bera, learned senior counsel, in course of argument, drew attention of this Court that in the amended writ petition at prayers (a) and (e) certain typographical errors have crept in insofar as RS Plot No.124/167 is concerned.
14. On the prayer of Mr. Bera leave is granted to the learned Advocate-on-Record to correct the typographical errors at prayers (a) and (e) of the amended writ petition insofar as the Plot Numbers are concerned.
15. Rule 182 of the 1989 Rules reads as follows.

“Stands and halting places.-(1) The District Magistrate or the Commissioner of Police, [Kolkata], as the case may be, by notification in the Official Gazette or by the erection of traffic signs which are permitted for the purpose under sub-section (1) of Section 116 of the Act, or both, may, in respect of the taking up or setting down of passengers or both by public service vehicles or by any specified class of public service vehicles,-

- (i) conditionally or unconditionally prohibit the use of any specified place or any place of a specified nature or class, or
- (ii) require that within the limits of any municipality, notified area or cantonment or within such other limits as may be specified in the

notification certain specified stands or halting places only shall be so used:

Provided that no place which is privately owned shall be so notified except with the previous consent in writing of the owner thereof.

- 2) When a place has been notified or has been demarcated by traffic signs, or both as being a stand or halting place for the purpose of this rule, notwithstanding that the land is in possession of any person, the place shall subject to the provisions of these rules, be deemed to be a public place within the meaning of the Act and the District Magistrate or the Secretary to the Government of West Bengal or any other officer authorized by him or the Commissioner of Police, [Kolkata] may enter into an arrangement with, or grant a licence to any person for the maintenance of such place including the provision for maintenance of the building or works necessary thereto, subject to the termination of the agreement or licence forthwith upon the breach of any condition thereof and may otherwise give directions for the conduct of such place including directions-
 - (i) specifying the realization of fees referred to in rule 183 of these rules

from the owners of public service vehicles using the place;

- (ii) specifying the public service vehicles or the class of public service vehicles which shall use the place or which shall not use the place;
- (iii) appointing a person to be the manager of the place and specifying the powers and duties of the manager;
- (iv) requiring the owner of the land, or the local authority, as the case may be, to erect such shelter, lavatories and latrines and to execute such other works as may be specified in the rules or in the direction and to maintain the same in a serviceable, clean and sanitary condition;
- (v) prohibiting the use of such place by specified persons or by other than specified persons.

3) Nothing in sub-rule (2) shall require any person owning the land which has been specified as a stand or halting place, to undertake any work or incur any expenditure in connection therewith without his consent and, in the event of any such person declining to carry out such work or to incur such expenditure or failing to comply with any rule or direction made or given to him under this rule, the authority as mentioned in sub-rules (1) and

(2) above may prohibit the use of such a place for the purpose of this sub-rule.”

16. Records reveal that the private respondents did not appear on repeated occasions in spite of service of notice upon them. Affidavit-of-service to prove such fact has been filed by the petitioners. Today also when the matter is taken up for hearing, the private respondents are not represented.
17. None appears for the State respondents. Mr. Bera submits that the learned advocate-on-record has also served a notice informing the learned advocate representing the State that this matter will be taken up for hearing today as a continuing matter. However, in spite of service none appears for the State respondent. As prayed for by Mr. Bera, leave is granted to the learned advocate-on-record of the petitioner to file affidavit-of-service annexing the letter dated 12.05.2023 on or before 16th May, 2023.
18. For the purpose of using a place for bus stand and halting places, the provisions laid down under Rule 182 has to be complied with. From the report of the District Magistrate it is evident that the provisions laid down under Rules 182 of 1989 Rules have not been complied with insofar as the plots of the petitioners are in question. In view thereof this Court is of the considered view that the aforesaid plots of the

petitioners cannot be used for parking the buses. Furthermore, the allegations of the petitioners that the vehicles have been parked in the property of the petitioners also stands proved from the report of the Commissioner of Police dated March 21, 2017. In view thereof, this Court is inclined to dispose of this writ petition by passing the following directions.

- (i) No bus shall be allowed to be parked on the property of the petitioners, being RS Plot Nos.124/167, 136 and 137 of Mouza-Barakhola, P.S. Purba Jadavpur, District-South 24 Parganas and the same cannot be used as bus stand/terminus excepting in accordance with the provisions of law.
- (ii) There shall be a direction upon the District Magistrate and the Commissioner of Police, being the respondent nos.9 and 29 respectively, to ensure that no person/transport operator is allowed to park his bus on the aforesaid property of the petitioners. Such authorities shall also ensure that the buses once removed do not return to the property of the petitioners thereafter.

19. With the above directions and observations, the writ petition stands disposed of. There shall be, however, no order as to costs.

20. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)