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Ct. 24
20.04.2023

W.P.A. 5126 of 2021
IA No : CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022

Jayanta Chowdhury
Vs.
The State of West Bengal & Ors.

Mr. Devajyoti Barman ... For the writ petitioner.

Mr. Suman Basu,
Ms. Debanwita Pramanik ... For the applicant.

Mr. Ayan Banerjee,
Mr. Subhajit Das ... For the respondent nos. 2 & 3.

Affidavit-of-service filed on behalf of the applicant be kept with the record.

Applications have been filed for addition of party, for condoning the delay in making the application and for recalling the order dated 20th April, 2021.

It appears from the order dated 20th April, 2021 that relying upon a report filed by the Bon Hoogly – II Gram Panchayet, the Court recorded the date of death of one Rakhiya Bibi @ Rakia Mondal @ Saima Mondal as 17th June, 2009. On the basis of the said order, the Gram Panchayet issued a fresh certificate of death.

The applicant submits that Rakhiya Bibi died on a different date and not on 17th June, 2009 as reported by the Gram Panchayet.

From the documents annexed to the application for recalling, it appears that a death certificate was issued in favour of the said Rakia Mondal by the Kolkata

Municipal Corporation relying on the discharge certificate issued by S.S.K.M. Hospital in the year 2015.

On a complaint lodged by the husband of Rakia, an investigation was conducted. The entry from the register and the database of KMC in respect of the date of death of Rakia has been cancelled.

Learned advocate representing the writ petitioner opposes the prayer of the applicant. It has been denied that any complaint was lodged by the husband of the deceased as alleged. It has also been submitted that till date no order has been passed by the panchayat revoking the certificate of death. The panchayat has not filed any affidavit disowning the averments in the report filed before the Court on 20th April, 2021.

It appears that there are Title Suits and litigations pending in between the applicant and the writ petitioner regarding certain property. The date of death and the certificate of death is a vital document which is necessary for taking evidence and other steps in the said suit. The Gram Panchayet does not maintain a proper register where the date of death of a citizen is recorded.

Since issue has been raised with regard to the authenticity of the date of death of Rakia, accordingly, the Court thinks it fit to allow the applications filed by the applicant seeking addition of party in the writ petition and for recalling the order dated 20th April, 2021.

The fact of declaring the date of death by this Court on the basis of the report filed by the Panchayet may cause serious prejudice to others.

In view of the above, application for addition of party and the application seeking condonation of delay in filing the said application stand allowed.

The order dated 20th April, 2021 stands recalled.

Consequently, the prayer of the writ petitioner to furnish proper date of death of Rakia cannot be allowed. There are several disputed question of facts which are required to be answered prior to passing such order.

This Court sitting in writ jurisdiction will not be the proper forum to adduce evidence for declaring the date of death.

In view of above, the writ petition fails and is hereby dismissed.

The death certificate issued by the Gram Panchayet in compliance of the direction passed by this Court on 20th April, 2021 is accordingly cancelled. Any steps taken relying on the said death certificate are also set aside.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Amrita Sinha, J.)