

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 21235 of 2023

Siddhi Vinayake Puja Committee & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Soumik Ganguli,

Mr. Sanat Kumar Das,

Mr. Sujan Chatterjee,

Mr. S. Sinha

...for the petitioner

Mr. Tanoy Chakraborty,

Ms. Mrinalini Majumder

...for the State

Mr. Sharanya Chatterjee

...for the respondent nos. 4 and 5

1. Learned counsel appearing for the petitioners contends that the respondent-authorities, being the Asansol Durgapur Development Authority (ADDA), refused permission to the petitioners to observe the occasion of Ganesh Puja on a particular plot, which is a public plot belonging to the ADDA.

2. It is argued that the ground on which the permission was refused was de hors the law and the fundamental rights of parties. By placing reliance on the same, it is argued that the ADDA held that in a meeting dated December 09, 2022, it had took a decision that henceforth the permission for using the said open space shall be restricted only for conducting government programmes and for Durga Puja with requisite permissions from appropriate authorities.

3. Learned counsel submits that there is no reasonable distinction between the Ganesh Puja and Durga Puja or other government programmes insofar as public properties are concerned.

4. Learned counsel appearing for the ADDA cites *Dr. M. Ismail Faruqui & Ors. Vs. Union of India & Ors.*, reported at (1994) 6 SCC 360. It is argued that as per the said judgment, there is no right to property under Article 25 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution, it was held, does not necessarily include the right to acquire or own or possess property. Similarly, this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution.

5. It was also held therein, as pointed out by learned counsel for the ADDA, that while offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.

6. Learned counsel also hands over a copy of the decision taken by the ADDA, which has been cited in the refusal dated

August 14, 2023 and June 27, 2023. As per the said resolution, the Board decided that henceforth the permission for using the open space-in-question shall be restricted only for conducting government programmes and for Durga Puja with requisite permissions from appropriate authorities.

7. Learned counsel also places reliance on an unreported judgment of this Court in W.P.A. No. 17704 of 2023 (*Manab Jati Kalyan Foundation and another vs. The State of West Bengal and others*), where it was held that in the context of Durga Puja, which was also similarly sought to be organized, the Court observed that Durga Puja festival has a semi-secular nature, for which the reliance on Article 25 of the Constitution was misplaced.

8. As distinguished from the said case, it is argued that Ganesh Puja, at least in West Bengal, does not have a significance of the magnitude of the Durga Puja festival, the latter being much more inclusive and widespread.

9. Learned counsel for the State hands over a written instruction and submits that the State is agreeable to consider the application by the petitioners, if so made for the purpose which is the subject-matter of the present writ petition.

10. A perusal of the justification of the refusal by the ADDA in the present case indicates that the sole ground for refusal was a resolution by its Board that permission for using the open space belonging to the ADDA, which is a public authority, would be restricted only for conducting “Government programmes” and for “Durga Puja” with requisite permissions from appropriate authorities.

11. The question, which arises in the present case, is more fundamental than a restrictive approach towards Article 25 of the Constitution itself.

12. Learned counsel appearing for the ADDA may or may not be justified in arguing that Ganesh Puja festival is not so widespread and does not have a secular and multi-cultural nature as Durga Puja festival in the State of West Bengal. However, even apart from such secular aspect of the matter, there are other considerations which are germane in the present case. As per the ratio in the cited judgment of this Court, although Ganesh Puja may not be a “semi-secular” festival insofar as West Bengal is concerned, at least till date, the issue herein is not of violation of Article 25 of the Constitution but of Article 14 of the Constitution of India.

13. A perusal of the relevant paragraphs of the judgment of *Ismail Faruqui* (Supra) clearly shows that the entire consideration therein was in the context of Article 25 of the Constitution. In paragraph 77 of the same, the Supreme Court went on to observe that the right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. More importantly, the Supreme Court held that the right does not extend to the “right of worship” at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution.

14. The Supreme Court went on to observe that while offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof.

15. In the present case, undoubtedly, the petitioners have not made out any case that the property where the petitioners propose to hold Ganesh Puja has a particular religious significance for the performance of the worship in question, that is, Ganesh Puja.

16. It cannot, by any stretch of imagination, be said that the place in question has an essential significance or the worship of Lord Ganesh in the said spot is an integral part of the Hindu religion.

17. The present consideration is not on Article 25 of the Constitution at all. Hence, the ratio laid down in *Ismail Faruqui* (supra) is not germane in the present context.

18. The right claimed by the petitioners is one under Article 14 of the Constitution read with Article 21 of the Constitution of India. The right to life, which is vested in every citizen of India, includes the right to live with dignity and in proper manner, which includes, broadly, the rights of a person to practise his festivities and ceremonies as well, irrespective of the component of religion therein.

19. In the present context, it cannot be said that the petitioners are otherwise precluded from observing Ganesh Puja even

publicly, subject, of course, to the petitioners not violating any other law or creating public nuisance.

20. The refusal of ADDA is on the specific premise that the ground, which is admittedly a public one, has been restricted for conducting Durga Puja and government programmes. If Durga Puja is allowed on the ground, which is also a festivity of Hindus, there is no reason why festivities of other religions or the same religion, be it of other idols, should not be allowed thereon. The differentia sought to be projected by the ADDA is not sufficiently intelligible to come within the purview of reasonable classification within the exceptions to Article 14 of the Constitution.

21. More absurd is the equation of government programmes with Durga Pula festivities. There is nothing in government programmes *per se* which can be put on an equal footing with the occasion of the Durga Puja ceremony, more so in the present context. If Durga Puja can be said to be on equal footing with other government programmes, there is no plausible reason why Ganesh Puja or some other performance of public religious or celebratory activity should not come within the purview of the same. The petitioners seek to hold and organize Ganesh Puja publicly and not an exclusive private family affair. As such, the petitioners are justified in citing Article 14 of the Constitution of India on the ground of equality before law, for the present purpose.

22. In view of the above discussions, the decision of the ADDA to refuse permission to the petitioners on the grounds as enumerated in its communications dated August 14, 2023

and June 27, 2023 are palpably absurd and de hors Article 14 of the Constitution of India

23. In such view of the matter, W.P.A. No. 21235 of 2023 is allowed, thereby directing the respondent nos. 4 and 5 to grant necessary permissions to the petitioners to perform Ganesh Puja on the plot in question, subject to the petitioners complying with other due formalities in law and obtaining requisite permissions.

24. It is, however, made clear that nothing in this order shall give a charter to the petitioners to violate any law or create a nuisance in the name of Ganesh Puja on the said plot. As per submission of the learned counsel for the petitioners, it is further made clear that the festivities in question shall be observed by the petitioners between September 18, 2023 and September 21, 2023 and by September 22, 2023 the petitioners shall make all endeavour to hand over vacant possession back to the respondent authorities.

25. There will be no order as to costs.

26. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

Sabyasachi Bhattacharyya, J.