

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 103 of 2022

With

IA No.: CAN 1 of 2021

Asok Kumar Chatterjee

Vs.

The Union of India & Ors.

For the appellant

: Mr. Milan Ch. Bhattacharjee,

Ld. Sr. Advocate

Mr. Gautam Banerjee, Advocate

Ms. Sulagna Bhattacharya, Advocate

For the respondent no.3

: Mr. Rajeev Sharma, Ld. Sr. Advocate

Mr. Anil Kumar Gupta, Advocate

Mr. Yogesh Kumar Sharma, Advocate

Heard & Judgment on

: September 2, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated January 19, 2021 passed in W.P.A. No.4553 of 2020.
2. Learned Senior Advocate appearing for the appellant submits that, the son of the appellant before his expiry preserved his sperm with the hospital being respondent no.3. The son of the appellant expired on April

24, 2018. Subsequent to his death, appellant wanted this sperm from the respondent no.3. He refers to the correspondence exchanged between the appellant and the respondent no.3 in this regard.

3. Relying upon **(2023) 9 Supreme Court Cases 433 (X vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Another)**, learned Senior Advocate appearing for the appellant submits that, appellant is entitled to right to reproductive autonomy which forms part of rights to personal liberty, privacy and bodily integrity encompassed under Article 21 of the Constitution of India. He submits that, action of the respondent no.3 in not giving sperm of the deceased son of the appellant infringes upon the right guaranteed under Article 21 of the Constitution of India.
4. In response to a query of the Court, learned Senior Advocate appearing for the appellant submits that, although, the daughter-in-law, that is the wife of the deceased son of the appellant, remarried subsequent to the death of the son of the appellant, nonetheless appellant will be in a position to propagate the family members through surrogacy. In such circumstances, he invites the Court to take a compassionate view on the subject.
5. Learned Advocate appearing for the respondent no.3 submits that, respondent no.3 is not an authority within the meaning of Article 12 of the Constitution of India. In any event, he refers to the prayers made in the writ petition. He submits that, there are private disputes between the

appellant and the widow of the deceased son of the appellant who subsequently remarried.

6. By the impugned order, learned Single Judge found the writ petition not to be maintainable on the ground that the respondent no.3 is not an authority within the meaning of Article 12 of the Constitution of India.
7. We perused the writ petition. There is no material pleaded in the writ petition establishing that the respondent no.3 is an authority within the meaning of Article 12 of the Constitution of India.
8. In such circumstances, we are unable to return a finding that the learned Single Judge erred in holding that the writ petition is not maintainable.
9. Right to reproductive autonomy forms the part of the right guaranteed under Article 21 of the Constitution of India was noted in ***X vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Another (supra)***. It was rendered in the context of right to terminate unwanted pregnancy without undue interference of the State. The same cannot be pressed into service against any private institution that is not amenable to the writ jurisdiction of the High Court and that too, in the present facts and circumstances.
10. In such facts and circumstances of the present case, since the appellant is unable to establish that the respondent no.3 is an authority under Article 12 of the Constitution of India, we do not find any error in the impugned order of the learned Single Judge.

11. That apart, there is an issue of existence of disputes between the private parties. In the writ petition, appellant seeks a direction on the widow of his son to give no objection to the user of the sperm.
12. In the appeal, the appellant wants the sperm of his deceased son to be returned for the purpose of a child being born through surrogacy. Apparently, there are disputes between the private parties which the Writ Court need not enter into.
13. In such circumstances, we do not find any merit in the present appeal.
14. **FMA 103 of 2022** along with **IA No.: CAN 1 of 2021** are dismissed without any order as to costs.

(Debangsu Basak, J.)

15. I Agree.

(Md. Shabbar Rashidi, J.)

(AD)