

D/L.8.  
April 4, 2024.  
MNS.

WPA No. 19395 of 2023  
+  
CAN 1 of 2023

Biswajit Dey and another  
Vs.  
The State of West Bengal and others

Mr. Raja Biswas,  
Mr. Abhijit Sarkar

... for the petitioners.

Mr. Somnath Ganguli,  
Mr. Balarko Sen

...for the State.

Mr. Debjit Mukherjee,  
Mrs. Susmita Chatterjee,  
Mr. Kaustav Bhattacharyya,  
Ms. P. Jana

...for the proposed added party.

1. The petitioners submit that despite the petitioners having made an application for permission to hold a 'mela' (fair) on a particular ground, the respondent authorities are sitting tight over the matter.
2. It is argued that last year a Public Interest Litigation had been filed, upon which an order was passed by the Division Bench, directing consideration of the petitioners' then application for holding such fair. Thereafter a representation was given (which is annexed at page 57 of the writ petition) on March 16, 2023, upon which a three-man committee was

constituted by the authorities on March 18, 2023. It is alleged that the said committee, however, took no steps to permit the petitioners to hold such 'mela' (fair).

3. This year, the petitioners have approached the authorities again for similar permission, but the same has not yet been acted upon by the authorities, prompting the present writ petition.
4. CAN 1 of 2023 has been filed in connection with the writ petition for addition of party of the alleged owner of the property where the fair is sought to be held.
5. Learned counsel for the applicant contends that no application has been made this year by the writ petitioners.
6. More importantly, it is submitted that, contrary to the submission of the writ petitioners that a decree has been passed by the civil court against the applicant observing that the applicant does not have title in the property, an appeal had been preferred against such a decree, which was disposed of; against the same, a second appeal has been preferred, which is still pending, in connection with which a *status quo* order regarding holding of the fair has been passed.

7. Thus, upon hearing the parties, it is evident that the applicant claims to be an owner of the property and, thus, has vital interest in the outcome of the writ petition.
8. Hence, CAN 1 of 2023 is allowed, thereby impleading the applicant as a party respondent to the writ petition.
9. The learned Advocate-on-record of the petitioners shall carry out the necessary amendments to the cause title of the writ petition by impleading the added respondent accordingly during the course of the day.
10. There will be no order as to costs.

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11. The writ petition is now taken up for hearing.
12. Learned counsel for the writ petitioners reiterates that the writ petitioners have properly applied for permission to hold a fair, but the respondent authorities are sitting tight over the matter.
13. However, it transpires that the added respondent challenges the veracity of the documents annexed to the writ petition on a comparison of the documents annexed to the writ petition regarding application for holding

the fair with those similar applications annexed to the addition of party application.

14. It is argued that the documents annexed to the writ petition are forged / manufactured. It is contended that the petitioner no. 1 had himself signed in the place designated for signature of the police authorities, as is evident from the printed format of the application itself. That apart, in the application format of a similar nature annexed to the addition of party application, it transpires that the applicant's father had made such application.

15. Learned counsel for the State also categorically submits that the writ petitioners have not filed any application for permission to hold a fair on the concerned ground this year.

16. A perusal of the writ petition strengthens the argument of the State insofar as it does not transpire that currently any application has been made for holding the fair.

17. That apart, the very ground on which the petitioners seek to hold the fair is disputed inasmuch as if there is a subsisting *status quo* order regarding the same. Thus, it is doubtful whether a fair can be held on the said property.

18. Moreover, since the added respondent claims that neither he nor his father gave any permission to hold the fair as owners, it can be inappropriate at this stage to pass directions on the concerned respondent authorities to consider such request of the writ petitioners.

19. More importantly, no cause of action has been disclosed in the writ petition as there is nothing to show that the petitioners, before filing the writ petition, even approached the respondent authorities with a proper application for permission to hold fair and have taken due permission from the owners of the property in that regard.

20. Lastly, it is to be pointed out that, as rightly argued by learned counsel for the added respondent, the writ petition had been affirmed and filed in the month of July, 2023, whereas until recently, just before the scheduled date of the fair, the petitioners did not endeavour to move the same.

21. Hence, there is no scope of granting the relief as prayed for in the writ petition on the ground of equity as well.

22. In view of the petitioners having not applied for holding a fair this year, no legal or Constitutional right of the petitioners has been

infringed to justify issuance of a Rule of Mandamus.

23. Accordingly, WPA No. 19395 of 2023 is dismissed on contest.

24. However, nothing in this order shall preclude the writ petitioners from making an appropriate application, with due permission from the owners of the property concerned, for holding any fair, subject to any order of the civil court.

25. If such an application is made, the same shall be considered by the respondent authorities upon due notice and opportunity of hearing to the owners of the property and any other person having interest therein.

26. There will be no order as to costs.

27. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)