

Court No. 2

19.8.2024

(Item No. 10)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 20191 of 2024

Zaid Alam

VS

The Kolkata Municipal Corporation & Ors.

Mr. Rishabh Ahmad Khan

.... For the petitioner

Mr. Arindam Chattopadhyay

Ms. Lipika Chatterjee

.... For the State

Mr. Biswajit Mukherjee

Ms. Sima Chakraborty

.... For K.M.C.

Upon urgency being pleaded on behalf of the petitioner and in view of the determination being assigned before this Court, this writ petition has been taken up for consideration by publishing the same in today's cause list.

An individual shop keeper at Hogg Market presently known as New Market at Kolkata is the writ petitioner. The prayers from the writ petition are quoted below:

“a) A Writ and/or Writs in the nature of Mandamus do issue upon the respondent authorities thereby directing them to forthwith take steps into the complaint of the petitioner, being “Annexure – P-1” hereof, so that justice may be rendered;

b) An Writ and/or Writs in the nature of Mandamus do issue upon the respondent authorities thereby directing them to forthwith take steps to ensure that the elections of the private respondents no. 8 is conducted in a free and fair manner by deploying police protection by respondent no. 5;

c) A Writ in the nature of Mandamus directing the police authorities to ensure appropriate action to be taken against the private respondents;

d) An ex-parte ad-interim orders in terms of prayers (a) to (d) herein;

e) Costs and incidentals;

f) Such further or other order or orders as Your Lordships may seem fit and proper for the ends of justice;”

Mr. Rishabh Ahmad Khan, learned advocate appearing for the petitioner referring to the pleadings made in the writ petition and the annexures thereto specifically annexures P-1 and P-2 to the writ petition submits that, there is a society in existence formed by the shopkeepers under the provisions of the West Bengal Societies Registration Act. The petitioner has been alleging several irregularities and mismanagement in holding election of the society on the part of the existing management of the society which, *inter alia*, includes the private respondents. Learned counsel further submits that the private respondents are regularly threatening the shopkeepers including the petitioner with dire consequences. The petitioner submits that, there is no approved voter list prepared required to be approved in accordance with law for holding the election. He submits that, it is the statutory obligation of the Kolkata Municipal Corporation since Kolkata Municipal Corporation is the owner of the market complex to oversee the election process so that

a free and fair election can take place and referring to **annexure P-1** he submits that, the Police authorities are also silent despite there being a complaint submitted by the petitioner similarly referring to **annexure P-2** he submits that, the Corporation authorities also silent despite there being a complaint lodged by the petitioner. Hence, this writ petition for issuance of mandamus upon the corporation and the Police authority in terms of the prayers made in the writ petition.

Mr. Arindam Chattopadhyay, learned State counsel appearing for respondent Nos. 3 and 4 submits a Police report dated **August 15, 2024** issued under the seal and signature of the Officer-in-charge, New Market Police Station, the same is taken on record. The report further suggests that, the disputes raised by the petitioner in its complaint are disputes inter se members of the association of the shopkeepers, the same being a private dispute, the Police authority cannot exercise their jurisdiction thereupon.

Mr. Biswajit Mukherjee, learned counsel appearing for respondent Nos. 1 and 2 submits that, this is an inter se private dispute between the members of the association of the shopkeepers and the Corporation being the owner of the market complex has nothing to do with it. The Corporation as the owner of the market complex has let out the

respective shop rooms in favour of the shopkeepers who in turn have formed the association under the provisions of the West Bengal Societies Registration Act. Corporation in such circumstances has nothing to do in law.

After considering the rival contentions of the parties and upon perusal of the materials on record and on a meaningful reading of the averments made in the writ petition, this Court is of the firm view that, the disputes are relating to the election of the association and the disputes inter se amongst the members of such association who claimed to be shopkeepers at the market complex. The Corporation authority being the owner of the market complex can only deal with if there is any dispute touches between the Corporation and its shop rooms or with regard to the maintenance of the market complex required to be maintained by its owner and not beyond that.

The Police authority through its report has taken the just and right stand as is evident from the report filed today in Court. The Police authority has no scope to intervene on the issue raised by the petitioner through this writ petition.

In view of the above, this Court is of the firm view that, this writ petition is totally misconceived, frivolous, without any merit and clearly an abuse of the process of law.

The writ petition does not also speak of as to the date of any election and is totally a vague writ petition without any cause of action against either the Police authority or the Corporation authority. This Court is assigned with the determination of the regular bench only to take the urgent matter which cannot wait till the regular bench resumes its functioning. This is not a matter which ought to have been mentioned before this Court as an urgent matter which cannot wait. This is clearly abuse of the process of Court.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

In view of the above, this writ petition **W.P.A. 20191 of 2024** stands dismissed with a cost assessed at **Rs.5,000/-** to be paid by the petitioner positively within a period of **seven days from date** in favour of the **benevolent fund, Bar Association, High Court, Calcutta.**

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)