

02.01.2024
Item No.04
Court No.6.
S. De

M.A.T. 2171 of 2023
With
I.A. No. CAN/1/2023

Jharna Mondal.
Vs
The State of West Bengal & Ors.

Mr. Dhananjay Banerjee,
Ms. Tanuja Banerjee,
...for the appellant.
Mr. Soumyajit Bhatta,
Mr. Prasenjit De,
...for the respondents/writ
petitioner nos. 6, 7 & 8.
Mr. Sasthi Charan Dhara,
...for the State respondents.

A judgment and order dated October 11, 2023, whereby the writ petition of the private respondents herein (respondent nos. 6 to 8), being WPA 23933 of 2023, was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal.

The writ petitioners approached the learned Single Judge with the grievance that the respondent no.6 in the writ petition, being a local club represented by its Secretary, was preparing to hold Durga Puja on a plot of land which belongs to the writ petitioners, without their consent and in a manner which would obstruct free ingress to and egress from the property of the writ petitioners.

The learned single Judge noticed that a partition suit being T.S. No. 374 of 2017, between the writ petitioners and the concerned Panchayat, is pending and a preliminary decree dated March 25, 2019 has been passed in such partition suit. The suit was necessitated, we are told, by the factum of the writ petitioners/their predecessors in interest gifting a portion of their property to the Panchayat for the purpose of constructing a public road. Such road has been constructed. No final decree has yet been passed in the partition suit.

Before the learned Judge, the writ petitioners relied upon an order dated September 5, 2019 passed by a learned Single Judge in W.P. 16746(W) of 2019 in support of their contention that the Police should not permit holding of Durga Puja on the land of a citizen without the consent of such citizen.

The learned Judge disposed of the writ petition with the following observations and directions.

“In the present case, the petitioners are not inclined to give consent in favour of the Puja committee for holding the Durga Puja in such a manner that their free ingress and egress to the plot is being obstructed.

Learned advocate representing the State respondents has obtained instruction from the Bhadreswar Police Station wherefrom it appears that the Puja in question is held for the last 13 years in the said place and

Panchayat has granted approval to the Puja committee for holding the Puja.

Admittedly, the Puja in question is not being performed by the Panchayat, but the Panchayat is permitting the local Puja committee to perform the Puja.

The Panchayat ought to have obtained prior written consent from the petitioners before permitting the Puja committee to perform the Puja. Consent has not been obtained from the petitioners.

As it has been submitted that the Puja is being performed for quite some time and the final decree is awaiting, accordingly, the Court is of the opinion that the Puja may be performed provided a formal consent is obtained from the petitioners.

The police shall ensure that free ingress and egress to the petitioners' plot is not obstructed by the Puja committee.

Performance of the Puja will not create any right or equity in favour of the Puja committee to perform Puja each and every year without obtaining any consent from the owners of the subject plot."

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

At the very outset, we notice that the appellant was not represented before the learned Single Judge. Learned advocate for the writ petitioners points out that copy of the writ petition was received by the appellant on October 6, 2023. The matter was

mentioned before the learned Single Judge upon notice to the respondents in the writ petition on October 9, 2023. The matter was heard and disposed of on October 11, 2023. Learned advocate for the writ petitioners submits that had the present appellant been interested in contesting the writ petition, she should have taken appropriate steps. Not having participated in the proceedings before the learned Single Judge, the appellant should not be shown any indulgence by the appeal Court.

Learned advocate for the appellant says that for the last thirteen years the appellant has been holding Durga Puja on the concerned plot of land. The writ petitioners never objected. This is for the first time that the writ petitioners have taken exception to Durga Puja being held on the concerned land. The Panchayat granted permission to the appellant to hold such Puja. The Panchayat is admittedly a co-owner of the land in question, since no final decree has been passed in the partition suit pending between the writ petitioners and the Panchayat. The learned Judge ought not to have directed the appellant to obtain permission from the writ petitioners for holding Durga Puja on the plot of land in question.

Having heard learned counsel for the parties, having considered the material on record and the order sought to be assailed before us, we are of the

considered view that the learned Judge was perfectly justified in passing the order which is under appeal. Since no final decree has yet been passed in the partition suit referred to above, the Panchayat and the writ petitioners jointly own each and every square milimetre of the land in question. Consent of the Panchayat alone would not suffice. The permission of the writ petitioners will have to be taken for holding Durga Puja on the concerned plot of land. However, as the learned Judge has directed, even if the writ petitioners grant permission, the Puja will have to be organized in a manner so as not to obstruct the free ingress to and egress from the property of the writ petitioners.

We find no infirmity in the order of the learned Single Judge.

Accordingly, MAT 2171 of 2023 is dismissed along with the application being I.A. No. CAN 1 of 2023.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Prasenjit Biswas, J.)

(Arijit Banerjee, J.)