

D/L- 2
19/12/2025
Ct. No.-446
Kaushik/Aritra

C.O. 1044 of 2025

**Santanu Malkhandi
Vs.
Asansol Municipal Corporation & Ors.**

Mr. Tanmoy Mukherjee
Mr. Soran Majumder
Ms. Sanchari Upadhyay

....for the petitioner.

Mr. Sounak Bhattacharya
Mr. Abhirup Halder

....for the AMC.

Mr. Partha Sarathi Chatterjee
Mr. Debayan Roy

....for the private respondent.

1. In essence, the question that falls for consideration in the present revisional application is whether a water connection can be directed to be granted to a co-owner of a joint property in whose favour a separate holding number has been allotted by the Asansol Municipal Corporation (hereinafter referred to as “the Corporation”).
2. The plaintiff/petitioner (hereinafter referred to as “the petitioner”) instituted the suit, initially against the Municipal Corporation seeking, inter alia, a decree of declaration that he is the owner of Holding No. 253/26 (hereinafter referred to as “the suit property”) and is entitled to have the said premises separately assessed for municipal tax in the Assessment Register of the Corporation, along with a further decree declaring his entitlement to a water connection in accordance with law and a mandatory injunction directing the Corporation to grant a water connection to the suit property, together with other consequential and ancillary reliefs.

3. The specific case sought to be made out in the plaint is that Holding No. 253/23, which is independent of Holding No. 253/24, comprises approximately 3.4 cottahs of land with a hall and an office room (recently renovated) and, at the rear, a substantially demolished structure along with a passage, comprised in Khatian Nos. 11520 to 11527 and Plot Nos. 6984, 6985 and 6986 (hereinafter referred to as “the suit property”), was recorded in the name of the petitioner’s father, namely, Dharani Dhar Malkhandi, since deceased.
4. It is further pleaded that, in or about the year 1964, with the express consent of the petitioner’s father, the petitioner’s mother, namely, Sudharani Malkhani, handed over Holding No. 253/26 to the petitioner for the purpose of operating a saw mill business. Upon the subsequent demise of his father, the petitioner continued in possession of the said holding and has been holding the same as its absolute owner. It is further stated that municipal tax in respect of Holding No. 253/26 has been realised from the petitioner’s share of rent collected from the tenants of Holding No. 253/24.
5. Being in dire need of regular and potable water at the premises standing on Holding No. 253/26, the petitioner approached the Corporation seeking grant of a water connection to the said premises. However, despite such approach, the Corporation failed to take any effective steps to provide the water connection. Such inaction on the part of the Corporation constrained the petitioner to institute the suit, being Title Suit No. 110 of 2023.

6. The record reveals that, along with the plaint, the plaintiff also preferred an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking an order of ad interim injunction directing the Corporation to grant a water connection to the said holding. However, by an order dated 22nd February, 2023, the petitioner's prayer for ad interim injunction was rejected.
7. Subsequently, the petitioner filed an application under Section 151 of the Code of Civil Procedure, 1908, which was disposed of ex parte with the following observations and order:

“Now to entertain the said petition, the present condition of the suit premises and the necessity of water connection had to be established. Moreover, as there is no order or no restraining order or status quo order, it is immaterial to provide any liberty or any direction upon the defendants. Water connection can be availed by anyone if the necessary formalities and permission is sought from the appropriate authority, there is no scope of intervention of court unless the same is halted by any order of injunction or is subject matter of suit itself. Moreover, the principal prayer of this suit is in regard with water connection, so passing of any interlocutory orders regarding the same, will somehow decide the fate of the suit without any trial.”

8. Aggrieved by and challenging the justifiability of the order dated 5th January, 2024, the present revisional application has been preferred.
9. As noted hereinbefore, the suit was initially instituted against the Municipal Corporation alone, and the other co-owners of the suit property were not impleaded as parties.

Subsequently, the said co-owners filed an application under Order I Rule 10(2) of the Code of Civil Procedure seeking their addition as parties to the suit. It has been jointly submitted by the parties that the said co-owners have since been added as defendants and have also filed their written statement and counter-claim.

10. Mr. Mukherjee, learned advocate appearing for the petitioner, submits that although the learned court below observed that, in the absence of any restraining or status quo order, no liberty was required to be granted to apply for a water connection, it simultaneously noted that a water connection could be availed of by anyone upon compliance with the requisite formalities and upon obtaining permission from the appropriate authority, and that there would be no scope for court intervention unless the same was interdicted by an order of injunction or formed the subject matter of the suit itself. He contends that the use of the expression “subject matter of the suit itself” in the impugned order prompted the petitioner to approach this Court, as such observation, according to him, has effectively operated as a bar to the grant of a water connection.
11. He refers to the provisions of Section 198 of the West Bengal Municipal Corporation Act, 2006 (hereinafter referred to as “the 2006 Act”), and submits that, in terms thereof, a water connection may be granted even to a co-owner of a joint property. He cites a decision in *Ajit Kumar Ghosh v. The State of West Bengal & Others*, reported in (2014) 1 CHN 320, to contend that a water connection can also be granted to

an “occupier” of any premises. He further asserted that the petitioner, being a co-owner of the suit property and having been allotted a separate holding, is entitled to such water connection.

12. Mr. Roy, learned advocate appearing for the added defendants/opposite parties, vehemently opposes the submissions advanced on behalf of the petitioner. He contends that, by seeking a separate water connection, the petitioner is, in effect, attempting to project himself as the exclusive owner of Holding No. 253/26. He further submits that a water connection has already been provided by the Corporation to the premises and, therefore, the grant of a separate connection in respect of Holding No. 253/26 would serve no useful purpose. He also points out that the petitioner has sought a decree of declaration regarding his entitlement to a water connection under the provisions of the Asansol Municipal Corporation Act, 1990, and that any interim direction upon the Corporation to grant a water connection at this stage would amount to granting the principal relief at the interlocutory stage, which is impermissible in law. He submits that, bearing in mind this settled principle, the learned court below was justified in refusing to grant the relief prayed for by the petitioner.

13. Mr. Bhattacharya, learned advocate appearing for the Municipal Corporation, submits that if the other co-owners do not object to, or stand in the way of, the grant of such connection, the Corporation has no objection to granting a

water connection to the premises standing on Holding No. 253/26.

14. Heard the learned advocates appearing for the respective parties and perused the materials on record.
15. Indisputably, in view of Section 403 of the West Bengal Municipal Corporation Act, 2006, the Asansol Corporation Act, 1990 has been repealed.
16. In the plaint, two separate holding numbers, namely, 253/26 and 253/24, have been referred to, whereas in the counter-claim filed by the opposite parties before the learned court below, another holding number, namely, 253/25, has been mentioned. It thus appears that more than one holding number has been allotted by the Municipal Corporation in respect of the joint property.
17. To shed light on the issue, it would be apposite to refer to the definition of the term “holding” as contained in Section 2(45) of the West Bengal Municipal Corporation Act, 2006, which reads as follows:—

“(45) “holding” means land held under one title or agreement and surrounded by one set of boundaries ;

Provided that where two or more adjoining holdings from part and parcel of the site or premises of a dwelling-house, manufactory, warehouse or place of trade or business, such holding shall be deemed to be one holding for the purpose of this Act.

Explanation.- Holdings separated by a street or other means of communication shall be deemed to be adjoining holding within the meaning of this clause;”

18. Therefore, a bare perusal of the definition of the word “holding” reveals that even two or more adjoining holdings

forming part and parcel of a site or premises of a dwelling-house can be treated as a one holding for the purpose of 2006 Act.

19. However, the allotment of a separate holding number signifies, inter alia, (i) recognition of separate occupation and enjoyment of the premises, (ii) independent assessment for municipal taxes and charges, and (iii) entitlement to essential civic amenities independent of other co-owners. Consequently, once a separate holding number is allotted, the municipal authority is under a statutory obligation to provide all civic amenities, including the supply of water.

20. In terms of Section 198 of the West Bengal Municipal Corporation Act, 2006, a Municipal Corporation is under a statutory obligation to grant a water connection to a person in whose favour a holding number has been allotted. In *Ajit Kumar Ghosh* (supra), it has been held that even an occupier is entitled to a water connection from the Municipality or Municipal Corporation. A fortiori, a co-owner, having a legally recognised interest in the property, cannot be denied such facility. Therefore, an analogy can be drawn that an occupier's right to water connection should not depend on demonstrating "perfect title" to the premises, as water is a basic human necessity.

21. It needs hardly any emphasis that potable water is an essential civic amenity and access to potable water is integrant to the right to live as enshrined in Article 21 of the Constitution of India. Municipal Corporation is statutorily obligated to make such amenity available to the citizens living

under its jurisdiction for better and effective municipal governance.

22. Needless to state, the general rule is that a court should not grant final relief at the interim stage. It is, however, well settled that in exceptional cases, a court may grant a mandatory injunction at the interlocutory stage to restore the status quo or to prevent irreparable injury. Since access to potable and usable water is a basic human necessity and an integral facet of the right to life guaranteed under Article 21 of the Constitution of India, the absence of such provision has the potential to constitute an exception to the aforesaid general rule. Considering these aspects, I am of the view that the learned court below ought to have granted a mandatory injunction at the interlocutory stage.
23. However, the Court is not oblivious to the concerns raised by the other co-owners, opposite party number 2 to 5 herein, who seek to preserve the joint character of the property. Their apprehension is that the grant of a separate water connection to a person in whose favour a separate holding number has been allotted in respect of a joint property may, in effect, disrupt such jointness. However, the issue relates to municipal administration, and in the facts of the present case, the grant of a water connection cannot be equated with adjudication of title or division of the property. As noted earlier, the allotment of a separate holding number is made for limited municipal purposes, including independent assessment for municipal tax and other allied purposes.

24. In paragraph 3 of page 15 of this revisional application, the petitioner himself has stated as follows:-

“Assuming but not admitting that the persons above-named are entitled to claim share in Holding No.253/26 the said persons are entitled to go for partition suit on the entire property of land and building comprised in the joint Holding No.253/24, and any claim made by the said persons on Holding No.253/26 is bound to fail for the two reasons as follows – the suit for water connection will be converted into a suit for partition which legally and technically is not possible and secondly the claim of the persons seeking addition is hopelessly time barred.”

25. Therefore, the stand taken by the petitioner before this Court itself indicates that he acknowledges the joint character of the entire property, including Holding No. 253/26. The petitioner has also not completely denied the entitlement of the co-owners to seek partition of the entire land and building comprising the premises standing on the said holding.

26. Thus, having regard to the facts and circumstances of the case, the settled position of law on the issue, and the discussion made in the preceding paragraphs, I find substance in the contention advanced on behalf of the petitioner. I am of the view that, without due consideration of these aspects, the learned court below misdirected itself in rejecting the petitioner’s application under Section 151 of the Code of Civil Procedure by the order dated 5th January, 2024.

27. Accordingly, the said order dated 5th January, 2024 is set aside. By a mandatory order of injunction, the Corporation is directed to grant a water connection to Holding

No. 253/26 in favour of the petitioner upon compliance with all requisite formalities.

28. It is, however, clarified that the grant of such water connection shall not be construed as having the effect of disturbing the joint character of the property. The water connection is directed to be granted solely for the purpose of effective municipal governance and shall not, by itself, amount to a partition of the joint property. The status of the petitioner in respect of the entire property including holding no. 253/26 shall remain the same as it existed prior to the grant of such water connection.

29. It is further clarified that the observations made in this order are confined solely to the disposal of the present revisional application and are tentative in nature. The learned court below shall proceed to try and decide the suit independently, without being influenced by any of the observations made herein.

30. With these observations and order this revisional application is, thus, disposed of.

31. There will be no order as to costs.

32. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Partha Sarathi Chatterjee, J.)