

Court No. 6

(265719)

17.09.2025

(AD 4)

(S. Banerjee)

CO 3366 of 2025

Jyotindra Nath Ghosh & Ors.

Vs.

Jagacha Bayam Samity

Mr. Partha Pratim Roy
Mr. Tanmoy Mukherjee
Mr. Sarbananda Sanyal
Mr. Souvik Das
Mr. Rudranil Das

...for the petitioners

Mr. Anjan Ray
Mr. Subhajit Chowdhury
Ms. Soumita Shaw

...for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated August 28, 2025 passed by the learned Civil Judge (Junior Division), 6th Court at Howrah in Title Suit No. 62 of 2013.

By the order impugned, the application under Section 151 of the Civil Procedure Code filed by the petitioners herein, praying for permission to hold and celebrate Durga Puja and Lakshmi Puja within a portion of the suit property, stood rejected.

Mr. Roy, learned advocate appearing for the petitioners submits that since an ad interim order of

injunction is subsisting in respect of the suit property, the petitioners have to apply every year for permission to hold and celebrate Durga Puja and Lakshmi Puja on the suit property by constructing a temporary structure thereupon. He submits that till the year 2024, the learned trial judge permitted the petitioners to celebrate the Durga Puja and Lakshmi Puja upon construction of a temporary structure thereupon. He further submits that this year the petitioners also prayed for permission for construction of a temporary structure for holding and celebrating Durga Puja and Lakshmi Puja for the year 2025 which was rejected by the learned trial judge for extraneous reasons. He submits that the executive authorities can grant permission to hold Durga Puja to a club if such club is entitled to organize and celebrate Puja on a particular property. He submits that since the petitioners were all along performing the Durga Puja and Lakshmi Puja on the suit property by strictly complying with the conditions imposed by the learned trial judge, the petitioner club should be allowed to perform the Durga Puja by constructing a temporary structure thereupon for this year.

Learned advocate appearing for the opposite party submits that the opposite party is the owner of

an undivided share of the suit property. He further submits that the opposite party is in exclusive possession of the suit property along with the other co-sharers and the petitioners do not have any manner of right, title, interest or possession in respect of the suit property. He further submits that the learned trial judge passed an ad interim order of injunction restraining the petitioners from creating any obstruction in the peaceful possession of the opposite party in respect of the suit property and grant of any permission to hold the Durga Puja and Lakshmi Puja on the suit property by way of erection of a temporary structure, would amount to modification of the order of injunction. He further submits that a portion of the suit property has been acquired for the purpose of extension of the Kona Expressway and the National Highways Authority of India have constructed temporary structures on the suit property for such purpose and there is no vacant space left on the suit property for erection of any temporary structure for the purpose of holding and celebrating the Durga Puja and Lakshmi Puja for this year. He further submits that the petitioners have filed an independent suit claiming their right to get compensation in respect of the acquisition of a portion of the suit property. In connection with such

suit, the petitioners have also filed an application for injunction and the present application under Section 151 of the Civil Procedure Code is only for the purpose of establishing their possession in the suit property which would ultimately enure to their benefit at the time of hearing of the application for temporary injunction in the suit filed by the petitioners. He further submits that as rightly observed by the learned trial judge, the executive authorities, and not the Civil Judge is the appropriate authority to grant permission to a club to hold the Durga PUja and the learned trial judge was right in rejecting the prayer for permission to raise a temporary structure on the suit property for the purpose of holding the Durga Puja for the year 2025.

Heard the learned advocates for the respective parties and perused the materials placed.

The opposite party filed a suit for declaration that the opposite party is the absolute owner of the property mentioned in the schedule of the plaint and that the defendants/petitioners herein have no right or authority to take possession of the property by any manner and to change the nature and character of the same by raising any construction or structure thereupon or by any means. A decree of permanent injunction restraining the defendant from raising any

construction or structure thereupon was also prayed for. The schedule of the property as mentioned in the plaint of the said suit is of all that piece and parcel of Makorari Mourasi Bastu Land measuring more or less 9 kathas comprising within the RS Dag No. 335 now known as LR Dag No. 660 Khatian No. 141, within the Mouza Jagacha under the Police Station – Jagacha, District – Howrah.

It is evident from the record that the learned trial judge by an order dated April 5, 2013, passed an ad interim order directing both the parties to maintain status quo with regard to the possession and enjoyment of the suit property for a limited period and the defendants/petitioners herein were restrained from creating any obstruction or disturbance in any manner in the peaceful possession and enjoyment in respect of schedule noted suit property and also from raising any construction or structure upon the suit property in any means.

It is not in dispute that the said ad interim order of injunction was extended from time to time in the presence of the respective parties and the same is subsisting till date. It is also not in dispute that on and from the year 2013 till the year 2024, the petitioners applied under Section 151 of the Civil Procedure Code praying for permission to perform

Durga Puja and upon such application being filed, the learned trial judge permitted the petitioners to raise temporary bamboo structures for the purpose of holding Durga Puja with a direction to remove the same within the time limit as stipulated in the said order. Such permission was granted by the learned trial judge till the year 2024 and the last of such order granting permission for performing Durga Puja on the suit property was passed on August 19, 2024 for the year 2024. It further appears from the order dated September 8, 2023 and the order dated August 19, 2024, that the learned trial judge while permitting the petitioners to perform Durga Puja for the year 2023 and 2024, imposed certain conditions.

It is not the case of the opposite party herein that the condition imposed for grant of permission by the learned trial judge, has been violated by the petitioners. Though the opposite party claims that a Misc. Case under Order 39 Rule 2(A) of the Civil Procedure Code alleging violation of the order of injunction is pending, however, upon going through a copy of such application which was produced in course of hearing of this application it appears that the same was filed alleging that on May 25, 2016, the petitioners and their men and agents, without the consent of the opposite party or from the learned

court, raised a camp and made a bamboo structure for the purpose of performing Kali Puja. Thus the cause of action for the Misc. case under Order 39 Rule 2(A) of the Civil Procedure Code was violation of the order of ad interim order of injunction and not for violation of the conditions for grant of permission by the learned trial judge from year to year for holding Durga Puja and Lakshmi Puja.

At this stage it would be relevant to take note of the submission of the learned advocate appearing for the opposite party that a portion of the suit property was acquired for the purpose of extension of Kona Expressway. If that be so, the petitioners cannot have any objection if the portion where the petitioners are seeking to perform Durga Puja and Lakshmi Puja is within the portion acquired for the purpose of extension of Kona Expressway. If it is the case of the opposite party that excluding the acquired portion, there is no other vacant portion in the suit property for erecting a pandal for the purpose of performing Durga Puja or Kali Puja, it is for the executive authorities to consider such issue at the appropriate stage.

Though it is not in dispute that the District Administration is the competent authority to grant permission for holding puja by erecting structure on a

property, considering the fact that civil suit is pending between the parties and an order of injunction passed by a competent court of law is subsisting, it goes without saying that unless the competent court of law passes a favourable order on the prayer for permission to perform puja on a property which is the subject-matter of the suit, District Administration cannot grant any permission in respect of a property which is the subject-matter of a civil suit.

Learned trial judge, by the order impugned, held that the civil court has no power to grant permission by invoking section 151 of the Civil Procedure Code and the same falls within the domain of Executive Authority. The question of grant of permission by the District Administration would arise only if a competent court of law grants permission in favour of a party to hold puja by erecting structure thereupon. When a civil suit between private parties is pending and an injunction order is subsisting, this Court is of the considered view that it is only the civil court and not the District Administration who is empowered to decide as to whether a party should be permitted to hold puja upon erection of a temporary structure. Only upon grant of such permission by the Court, the party intending to perform puja can apply for

permission before the District Administration for the purpose of holding puja on the suit property.

The other ground for rejection of the prayer for permission to hold Durga Puja is that an ad interim order of injunction is in subsistence. Even if an ad interim order of injunction is in subsistence, the Court can exercise its inherent powers for the ends of justice to grant permission to erect temporary structure for a limited period. It is not in dispute that on and from the year 2013 till 2024 permission was granted by the learned trial judge in spite of subsistence of an ad interim order of injunction and grant of such permission was neither challenged by the opposite party before any superior forum nor the same was set aside by any competent court of law. That apart, it is not in dispute that the petitioners performed the Durga Puja pursuant to the permission granted by the learned trial judge till the year 2024.

Thus, this Court is of the considered view that subsistence of an ad interim order of injunction cannot be a ground to refuse permission to a party to perform Durga Puja by erecting a temporary structure thereupon.

The learned trial judge placed reliance upon a judgment and order dated August 1, 2008 passed by

a coordinate bench in C.O.191 of 2008 in the case of *Krishna Chandra Dutta & Ors. vs. Pacher Polly Durga Puja Committee*. The said decision is distinguishable on facts as by the order, which was under challenge in the civil revision application in the case of *Krishna Chandra Dutta (supra)* a blanket liberty was given to a party to perform the Durga Puja till the disposal of the suit. In the case on hand the petitioners apply for permission every year.

For the all the reasons as aforesaid, this Court is inclined to interfere with the order impugned. The order impugned is set aside and the application under Section 151 of the Civil Procedure Code filed by the defendant/petitioner herein praying for permission to hold and celebrate Durga Puja and Lakshmi Puja for the year 2025 by erecting temporary structure on the suit property stands allowed subject to the following conditions:-

1. The defendants/petitioners are directed not to change the nature and character of the suit property in any manner so as to violate the order of ad interim temporary injunction passed by the learned trial court.

2. The defendants/petitioners are prohibited from raising any structure of permanent in nature over the suit property.
3. It is directed that the materials of temporary structures should be of disposable nature so that these do not cause any damage to the suit property.
4. The petitioners shall be obliged to apply for and obtain permission to erect temporary structure and for holding and organizing Durga Puja and Lakshmi Puja for the year 2025 on the property in question from the District Administration and other competent authorities in accordance with law.
5. The defendants are directed to start removing the structure and all the materials from the suit property from 8 a.m. on October 8, 2025 and the entire process of removal shall have to be completed before 10:30 p.m. on October 10, 2025.
6. The petitioners shall file an affidavit before the learned trial judge stating whether they have complied with the conditions imposed by this court and such affidavit shall be filed

on or before October 29, 2025 before the learned Trial Judge.

It is, however, made clear that pursuant to this order it will be open to the petitioners to approach the District Administration and other authorities praying for permission to hold and organize Durga Puja and Lakshmi Puja for the year 2025 and the District Administration shall be free to consider and dispose of such prayer in accordance with law even by imposition of any additional condition that the District Administration may deem fit and proper in accordance with the circulars and guidelines that are already in place.

It is, however, made clear that this order shall not create any equity in favour of the petitioners either with regard to any claim for payment of compensation or with regard to any other claim in the title suit which they have filed against the opposite party herein.

It is also made clear that, while applying for permission for holding Durga Puja and Lakshmi Puja before the District Administration, the petitioner shall give sketch map of the proposed site where they intend to raise a temporary structure for the purpose of performing Durga Puja and Lakshmi Puja for the year 2025 and it will be open to the District Administration to consider whether such site is

feasible for holding and celebrating Durga Puja and Lakshmi Puja for the year 2025 before granting permission.

(Hiranmay Bhattacharyya, J.)