

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

WPO/949/2021

SOMA BANERJEE

-VERSUS-

THE KOLKATA MUNICIPAL CORPORATION AND ORS.

Present :

The Hon'ble Justice Shampa Dutt (Paul)

For the Petitioner : *Mr. Rajeev Kumar Jain, Adv.*
Mr. Aravinda Sen, Adv.
Mr. Madhu Jana, Adv.
Ms. Yamini Mahawar, Adv.

For the KMC : *Mr. Achintya Banerjee, Adv.*
Ms. Manisha Nath, Adv.

For the Respondent Nos.5-8 : *Mr. Debmalya Ghosal, Adv.*
Mr. D. Mukhopadhyay, Adv.
Mr. Niladri Khanra, Adv.

Hearing concluded on : 19.08.2025

Judgment on : 02.09.2025

SHAMPA DUTT (PAUL), J. :-

1. The writ application has been preferred praying for direction upon the respondent Nos.1, 2 and 3 (KMC) to restore the Certificate of Enlistment No.306332003052 (Permanent) concerning M/s. Super Guest House run from 30A, Mirza Ghalib Street, Kolkata- 700 016 in the name of the

Estate of Rajib Deb **as** was prevailing **at the time of closure** of such Certificate of Enlistment and to restore the Certificate of Enlistment No.004251036236 concerning M/s. Super Fried Chicken (The Bhoj) run from 30A, Mirza Ghalib Street, Kolkata- 700 016 in the name of the estate of Rajib Deb and Monotosh Saha as was prevailing prior to the passing of the order by the DLO(HQ) and for quashing of Certificate of Enlistment No.005801036234 concerning M/s. The Bhoj Company Restaurant run from 30A, Mirza Ghalib Street, Kolkata and also quashing of Certificate of Enlistment bearing No.306322003052 (Permanent) concerning M/s. Super Guest House run from 30A, Mirza Ghalib Street, Kolkata- 700 016 pursuant to the order dated 10th September, 2015 passed by the respondent no.3 and other related reliefs.

2. The petitioner's case is that she is the widow of late Rajib Deb, since deceased. The petitioner is also the executrix of the last Will and testament of late Rajib Deb executed on 14th August, 2014. Rajib Deb breathed his last on 26th June, 2015. Late Rajib Deb, during his life time had acquired interest in several properties and/or businesses, inter alia, two flats situated at Raghunathpur being flat nos.1A and 1C in Sagardip Apartment, Baguihati, Kolkata. Late Rajib Deb had also started a residential hotel business under the name and style of "M/s. Super Guest House" in the year 2003, from premises no.30A, Mirza Ghalib Street, Kolkata- 700 016. Late Rajib Deb, for the purpose of running the aforesaid hotel business had applied before the KMC for obtaining a certificate of enlistment in requisite form. Late Rajib Deb, during his life-

time, had, however, entered into a Deed of Partnership with one Shri Monotosh Saha with the object of running a restaurant business from premises no. 30A, Mirza Ghalib Street, Kolkata- 700 016. Since 2012, Sri Monotosh Saha started managing the business of M/s. Super Guest House in partnership with Rajib Deb. During the early part of 2015, Rajib Deb fell seriously ill and was hospitalized. Ultimately, he died on 26th June, 2015.

3. The petitioner has filed an application for grant of probate of the last Will and testament made and published by Rajib Deb and the same has been registered as PLA/68/2016. The respondent no.4 is contesting the said proceeding and the said proceeding is pending before this Hon'ble Court.
4. It is stated by the petitioner that subsequent to the demise of Late Rajib Deb the petitioner's husband, Sri Monotosh Saha, in connivance with the respondent no.4, in contravention of the deed of partnership, had already **reconstituted the partnership** and had been carrying on business therefrom without disclosing any information to the petitioner. The petitioner applied before this Hon'ble Court praying for appointment of administrator pendente lite along with other ancillary reliefs, and by order dated 24th July, 2018, this Hon'ble Court appointed a special officer with a direction on the special officer to inspect the accounts of the partnership business. By an order dated 5th November, 2020, this Hon'ble Court was pleased to direct the administrator pendente lite to protect the assets of the estate by not only appointing a Chartered Accountant to audit the accounts of the partnership business but also in

directing the administrator pendente lite to visit the partnership business in question once a month and to put his signature on the books of accounts maintained in the partnership business. **On 17th November, 2020, in a meeting convened at the business premises, the petitioner came to know that the business premises had already been partitioned.**

5. On enquiry the petitioner got the information that:-

- i) The Certificate of Enlistment No.306332003052 issued in favour of Rajib Deb since the year 2003 for the residential hotel business in the name and style of **M/s. Super Guest House** having an area of 1500 square feet **had been fraudulently closed on 6th April 2015 by showing closure of business**, although Rajib Deb did not issue and/or give any closure notice.
- ii) Oyendrilla Deb, (daughter of late Rajib Deb) the respondent No.4, and Manisha Deb, the respondent No.6, had obtained a Certificate of Enlistment being No.006831036230 for running business under the name and style of M/s. New Super Guest House from Premises No.30A, Mirza Ghalib Street, Kolkata, on 21st August 2015. The area of business is shown as 600 sq. ft.
- iii) The Certificate of Enlistment issued in favour of Oyendrilla Deb and Manisha Deb shows that the said business of New Super Guest House has been closed on 30th September 2019.

- iv) Another Certificate of Enlistment being No.009201036232 has been issued by the KMC in respect of the business of M/s. New Super Guest House run from Premises No.30A, Mirza Ghalib Street, Kolkata in favour of Manisha Deb, the respondent No.9. Such business is shown to have commenced on 1st October 2019. In the process, the business of Rajib Deb run under the name and style of M/s. Super Guest House has been transferred to M/s. New Super Guest House, **its constitution and area changed.**
- v) The Certificate of Enlistment in favour of Rajib Deb and Monotosh Saha concerning M/s. Super Fried Chicken (The Bhoj) issued on 16th May 2012 was closed on 11th September 2015 with the remark “Closure due to change of Partnership” as per order of DLO (HQ) dated 10th September, 2015. The aforesaid Certificate of Enlistment records that the area of business premises was 400 sq. ft.
- vi) On 16th September 2015, a fresh Certificate of Enlistment being No.00681036236 appears to have been issued concerning M/s. Super Fried Chicken (The Bhoj) run from 30A, Mirza Ghalib Street, Kolkata. The names of certificate holders are Kaushik Saha and Oyendrilla Deb. **Interestingly, the area in the new Certificate of Enlistment appears to have been drastically reduced from 400 square feet to 100 sq. ft.**

vii) Another Certificate of Enlistment No.005801036234 has been issued in the name of “The Bhoj Company” Restaurant run from 30A, Mirza Ghalib Street, Kolkata. Certificate-holders are Kingshuk Saha and Alo Saha. The area shown is 975 sq. ft.

viii) Although, in reality, two businesses of M/s. Super Fried Chicken (The Bhoj) and M/s. Super Guest House are being run from 30A, Mirza Ghalib Street, Kolkata, yet, **to defraud the petitioner and the municipal authority and to overreach the orders passed by the Hon’ble High Court in P.L.A. 68 of 2016, multiple entities have been created and/or new entities have been introduced to take over the existing business of M/s. Super Fried Chicken (The Bhoj) and M/s. Super Guest House so as to shelve the same from the orders passed by the Hon’ble High Court.**

6. In the circumstances, the petitioner, by a letter dated 2nd December 2020, made a representation to the KMC to restore the certificate of enlistment in respect of the partnership business of M/s. Super Guest House in the name of Estate of Rajib Deb and/or to cancel the illegal issuance of certificate of enlistment. Despite receipt of the representation, the KMC did not take any step.

7. The petitioner then preferred a writ application being WPO/453/2020. The writ application was disposed of 29th January, 2021, directing the

KMC to hear the parties and arrive at a decision in respect of only 50% of the share of the deceased Rajib Deb.

- 8.** The respondent No.3 heard the matter, considered the written versions of the parties, and by an order dated 16th August 2021, passed the following orders:-

“After meticulous examination and thorough scrutiny of the documents as submitted by both the parties and contentions as made herein as well as pros and cons of the entire scenario of the matters, the undersigned is of the view that

➤ *The respondent **Oyendrilla Deb** is the daughter of Rajib Deb (since deceased) is entitled to get the share of the deceased father in respect of premises in question i.e. 30A, Mirza Ghalib Street, Kolkata 700016 and **she has been occupying the premises since long with her respective share without any interference.***

➤ *The respondent Oyendrilla Deb has fulfilled all the conditions so as to get the Certificate of Enlistment from K.M.C. Authority, as per section 199 of the Kolkata Municipal Corporation Act, 1980.*

➤ ***The Kolkata Municipal Corporation is not the appropriate authority to determine the valid share of the petitioner and the respondent Oyendrilla Deb in respect of the questioned premises and also the relationship of the petitioner with the deceased Rajib Deb.***

So in difference to above, undersigned is of the opinion that there is hardly any scope to allow the prayer and/or representation of the applicant/petitioner for cancellation of Certificate of Enlistment so

issued in favour of the respondents. Thus, the hearing is disposed of in compliance with the solemn order of Hon'ble High Court at Calcutta dated 29.01.2021 in WPO No.453 of 2020."

9. The petitioner's claim is that as per the terms and conditions of the partnership business, the petitioner is entitled to get at least 25% share in case the legal representatives of the deceased partner are having equal share in a given situation where the probate is not granted by this Hon'ble Court. In case the probate is granted, the petitioner is entitled to 50% share of profit in the partnership business along with the other immovable properties left by Rajib Deb as per the his last Will and testament.
10. The petitioner states and submits that it is apparent on the face of record that taking advantage of the ill health and demise of Sri Rajib Deb, the private respondent nos.4 to 9 connived and **changed the nature of ownership of the business behind the back of the petitioner and thus depriving the petitioner.**
11. Admittedly, late Rajib Deb was suffering from ill health prior to his death on 26th June, 2015. It is to be noted that the Will in this case was executed on 14th August, 2014 less than a year prior to his death. The writ application by the petitioner, has been filed as the wife (second) of the deceased Rajib Deb.
12. The respondent no.4, Oyendrilla Deb is admittedly the daughter of late Rajib Deb from his first wife.

- 13.** Affidavits have been exchanged by the parties including the KMC.
- 14.** The respondent/Kolkata Municipal Corporation in its opposition has stated that the certificate of enlistment no.006281036236, after the death of Rajib Deb, amended in the name of Monotosh Saha and Oyendrilla Deb on 30th July, 2015 was carried on by the KMC authorities on the basis of the documents, being the death certificate of Rajib Deb, affidavits etc.
- 15.** The specific contention of the respondent no.7, Kingshuk Saha is that the said writ petition is not maintainable before the original jurisdiction of the Hon'ble Court inasmuch as the administrator pendente lite, being the respondent no.10, is resident outside the jurisdiction of the Hon'ble Court. This Hon'ble Court, by way of an order dated 9th August, 2018 passed in GA No.2418 of 2016 in connection with PLA No.68 of 2016 (In the goods of: Rajib Deb) has already appointed the respondent no.10 (Mr. Subhashis Sengupta, Advocate) over and in respect of the estate of late Rajib Deb. The administrator pendente lite has the rights and powers vested of a general administrator. Therefore, in such circumstances, the alleged cause of action even assumed but not admitted to be there can only be ventilated by the administrator pendente lite. Therefore, the petitioner does not have any locus standi to maintain this writ petition. The petitioner cannot inherit the certificate of enlistment issued under Section 199 of the Kolkata Municipal Corporation Act, 1980.

- 16.** The contention of the respondent no.4, Oyendrilla Deb is that she is the only daughter and legal heir of Rajib Deb, since deceased, a Hindu governed by the Dayabagha School of Hindu Law, died on 26th June, 2015. Rajib Deb had died intestate, leaving behind her, his daughter, as his only legal heir. Her mother Mitali Deb predeceased the late Rajib Deb on 15th July, 1996. The applicant, namely Soma Banerjee is wrongly claiming herself to be the legally married wife of late Rajib Deb which is not correct and false and frivolous and same has been made with forged and fabricated marriage certificate.
- 17.** It is further stated that the petitioner herein taking advantage of late Rajib Deb's vegetative state, got a Will executed to mis-appropriate all his properties. The probate case is being contested by the said respondent no.4, his daughter.
- 18.** It also appears from the documents annexed to the opposition that the petitioner has been married to some other person namely, Utsav Roy Mishra with whom she had a child named Aparajita Roy Mishra in the year 1977. In the year 2010, when the petitioner had filled up a declaration form for election, she mentioned herself as daughter of Tarit Krishna Banerjee but till date she has failed to produce any documents pertaining to her dissolution of marriage with the said Utsav Roy Mishra. It is thus submitted that marriage, if any, with Rajib Deb is not valid.
- 19.** In reply the petitioner has denied the contention of the respondent.
- 20.** Parties have filed their written notes.

- 21.** The respondent no.7 has relied upon the judgment of the Supreme Court in ***Mahamaya Dassi vs. Commissioner of Income Tax, West Bengal-III***, reported in 1978 SCC OnLine Cal 465; para 23, in support of their contentions that the writ is not maintainable being filed by the petitioner, as there is an administrator appointed in respect of the Estate of late Rajib Deb. Para 23 is as follows:-

“23. Therefore, in England it is apparent that apart from the residuary estate, an administrator is authorized to distribute the estate left by the deceased; he carries out the execution of the Will except distributing the residual estate. In India, under Section 247 of the Indian Succession Act, 1925, such an administrator pendente lite has no power to distribute any part of the estate in Pruck’s Indian Succession Act, 6th Edition, P.506, it has been noted that the word, “as such” used in Section 211 of the Indian Succession Act indicated that the executor or administrator was not be absolute owner of the property. In the sense of being the beneficial owner thereof. The property only vested for the purpose of representation and administration. But, under Section 247, such an administrator as we have noted by virtue of the Section, has no power to distribute or carry on the distribution. Indeed, in case of Kali Kumar Chatterji v. Rash Vehari Banerji, ILR 1947 (2) Cal 195, at page 202, S.R. Das, J., as his Lordship then was, observed that even with the consent of the parties interested in the estate, the Court could not make an order for distribution otherwise forbidden by the statute.”

- 22. The petitioner has countered the said argument by stating that as the nature and character of the property in dispute has been changed, they are not subject matter of the probate and as**

such, the administrator has no authority to file the writ application.

23. From the materials on record it appears that:-

- a. Admittedly, the respondent no.4 is the daughter of late Rajib Deb.
- b. The probate case in respect of the Will allegedly executed by the late Rajib Deb wherein the petitioner is named executrix is pending adjudication.
- c. It appears from the documents on record that the partnership business of the late Rajib Deb closed down before his death and one of them in which his daughter is a partner was functional during the lifetime of the said Rajib Deb.

24. As such the right of the petitioner in respect of the properties in the Will have to be decided in the probate case.

25. As to the petitioner's right/share by way of inheritance in respect of the properties in this case, the same is to be decided by way of an independent civil suit, because of the fact that the properties which are claimed to be in the name of late Rajib Deb are no more in existence.

26. As there are **new businesses** being run by the respondents herein, in the places which are claimed by the petitioner, the only way to decide such dispute is by way of a **civil suit**.

27. Regarding the certificate of Certificate of Enlistment, the KMC has issued them in respect of the businesses in this case, prima facie, on the basis of valid/relevant documents.

28. Considering the said facts, **the writ petition having no merit is dismissed.**

29. Connected applications, if any, also stands disposed of.

30. Interim order, if any, stands vacated.

31. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(SHAMPA DUTT (PAUL), J.)