

(1999) 08 CAL CK 0009
In the Calcutta High Court
Case No : M.A.T. No's. 1285 and 1288 of 1999

Anwar Ali Khan

APPELLANT

Vs

Hazi Sajjad Ali Mondal Khan

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 73
West Bengal (Panchayat Samiti Administrative) Rules, 1984 — Rule 11, 7, 8, 9
West Bengal Panchayat Act, 1973 — Section 116, 117, 133
West Bengal Zilla Parishad Rules, 1964 — Rule 137

Citation : 104 CWN 32 : (2000) 1 ILR (Cal) 456

Hon'ble Judges : V.K. Gupta, J; Prodyot Kumar Sen, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Mrinal Kanti Roy, K.C. Sahoo and S. Palodhi, for the Appellant; Amal Baran Chatterjee and P.K. Khanna, Usha Maity, for Respondent Nos. 10 and 11 and Sridhar Chandra Bagoria, for Respondent Nos. 12, 13 and 14, for the Respondent

Judgement

Prodyot Kumar Sen, J.—These four appeals arising out of 4 writ petitions and covered by a common judgment is directed against the decision of a single Judge of this Court and it relates with the running of a hat popularly known as "Fakoghat Hat" in Mouza Chingra under Gopiballavpur Panchayat Samiti, P.S. Baliaberh within district of Midnapore.

2. Respondent No. 1, Hazi Sazzad AM, who happens to be the writ Petitioner in all of the Writ petitions had alleged that on September 30, 1972, he applied to the then Administrator, Gopiballavpur II Anchalic Parishad for a licence for running the above-mentioned hat. On the basis of such application, the writ Petitioner was granted licence under Rule 137 of the West Bengal Zila Parishad Rules 1964. The said licence was renewable and the last renewal was effected by the Panchayat Samiti for the year 1991-92. His further case is that the licence was granted u/s 117 of the West Bengal Panchayat Act after the said Act came

into operation in 1974. As his licence was to expire on March 31, 1992, he applied to the Sabhapati of the said Panchayat Samiti on March 2, 1992 for further renewal, but it was not renewed on account of objection made in respect thereof by some private Respondents namely, Anwar Ali Khan and Ors. Without renewing the writ Petitioner's licence, the Panchayat Samiti included the names of those private Respondents in the licence. By a letter dated March 31, 1992, a Panchayat Samiti informed the writ Petitioner that in pursuance of the application of those persons, the names of those persons were also included in the licence for holding the hat in respect of the year 1992-93. This prompted the writ Petitioner to come before this Court with four writ petitions one after another.

3. The first writ petition was made alleging inaction on the part of the Panchayat Samiti in renewing writ Petitioners' licence for running the said "Pakoghat Hat" and direction was sought for upon the Panchayat to renew the Petitioners' said licence for the year 1992-93. The second writ petition was for cancellation of the names of other persons and for granting the licence in the name of writ Petitioner alone. The other two petitions were filed for orders to restrain the Panchayat Samiti from forcibly taking over the possession of the Management of the said hat from the writ Petitioners.

4. The learned Single Judge of this Court after having heard the parties and after having considered all aspects of the case, allowed the writ petitions directing the Panchayat Samiti to issue licence in favour of the writ Petitioner alone and consequently the licence in favour of other private Respondents stands cancelled.

5. On being aggrieved by the decision of the learned Single Judge, these four appeals have been preferred by the private Respondents. Be it noted there that all the writ petitions were heard at the same time and is covered by a Single judgment which is under appeal before the court of appeal.

6. The points for consideration in this appeal are which provision of the West Bengal Panchayat Act, 1973, will govern the grant of licence in this case and that is to say whether it should come u/s 116 or u/s 117 of the West Bengal Panchayat Act and who is entitled to get a licence for running a hat or a market.

7. Appearing for the Appellants, who are the private Respondents before the writ court. Mr. Saktinath Mukherjee argued that in this case the provisions of Section 117 of the West Bengal Panchayat Act (hereinafter referred to as the Act) will govern the applications for grant of any licence, as according to him legislature has made an earnest distinction between the provisions of Sections 116 and 117 of the Act. Section 117 deals with hats or markets and specifically empowers the Panchayat Samiti to grant licence for running a hat or market. The learned advocate appearing for the writ Petitioners/Respondents also submitted before us that it is Section 117 which will govern the procedure as to how licence will be granted in respect of a hat or a market.

8. The word "hat" which is very popular in this State means a market or a fair or in the instant case "Fakoghat Hat" is a cattle hat and it is submitted before us

that it is a very large hat within the State of West Bengal. Now as far as licence granted u/s 117 is concerned. Mr. Mukherjee submitted that the same was in the nature of annual licence and was required to be granted afresh each year. The question of a renewal of such a licence did not therefore arise.

9. Mr. Mukherjee has further submitted that Rule 11 of the West Bengal (Panchayat Samiti Administrative Rules), 1984 provides that licence to be granted by a Panchayat Samiti or a hat or a market is to be in Form IV. In the said form, there is a column which indicates the year for which licence is being granted and there is no provision for renewal. In support of such contention, Mr. Mukherjee has referred to a decision of the Supreme Court *Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another*, wherein the Supreme Court while considering some of the provisions of Transfer of Property Act, 1882 relating to lease had the occasion to consider the distinction between extension and renewal. The Supreme Court is of the view that distinction between extension and renewal is that in the case of renewal a new lease is required, while in the case of extension, the same lease continues to be in force. Mr. Mukherjee while drawing our attention to another decision of the Supreme Court *Delhi Development Authority Vs. Durga Chand Kaushish*, contended that even if there is renewal it amounts to grant of a new lease. Thus, Mr. Mukherjee contends that in the instant case it is a case of new licence and not renewal of old licence.

10. There is no dispute that the hat comprising in two plots originally belonged to the predecessor-in-interest of the private Respondents and subsequently such interest devolved upon the private Respondents. The writ Petitioner S. Hossain has no title in the land on which the hat is being held. It is true that his son is a co-sharer of that land along with the private Respondents. Now, Sri Mukherjee submits that while granting the licence the Panchayat Samiti had the right to examine the prima facie title. An analogy may be drawn with the provision of Municipal Laws where the Municipal Authority is required to see the prima facie title at the time of granting of a building plan. Sri Mukherjee contends that Authority may incidentally examine the title and therefore when admittedly the writ Petitioner has no title, the Panchayat Samiti should have refused to grant of licence to S. Houssain and in this case Mr. Mukherjee has assailed the order under appeal and submitted that writ court had wrongly directed the Panchayat Samiti to issue licence in favour of the writ Petitioner when admittedly he has no title to the land on which the hat is being held.

11. Mr. Mukherjee has further submitted that before a party can complain of an infringement of his fundamental right to hold property he must establish that he has title to that property and if his title itself is defective and is in dispute in any legal proceeding, he cannot put forward any claim based on such defective title.

12. He has pointed out that a civil suit is pending in between the writ Petitioner and private Respondents that is T.S. No. 27/93 in the court of Asstt. District Judge, Midnapore. So, Mr. Mukherjee contends that unless the title of writ

Petitioner is decided in that proceedings, he cannot apply for a licence and the writ court should not have directed the Panchayat Samiti to grant licence to the writ Petitioner when the pendency of the title suit between the parties is known to the Panchayat Samiti.

13. Sri Mukherjee has contended that though the jurisdiction of the writ court under Article 226 of the Constitution is wide enough, but it must be established that the party seeking relief must prove that he has a legal right and that right has been invaded or threatened.

14. Mr. Mukherjee then contended that since grant of licence for running the hat in question entailed issuance of a fresh licence, the writ Petitioner cannot have any grievance as writ Petitioner had no title to the disputed plot and therefore the question of prejudice cannot arise. No prejudice having been caused to the writ Petitioner the question of violation of natural justice was without any foundation.

15. As against this, Mr. Chatterjee, appearing with Mr. Khanna, learned advocate appearing for the writ Petitioner has drawn our attention to Section 73 of the old Act and has contended that "Anchalik Parishad" may require the owner and the lessees of a hat or market or an owner of a lessees of land intending to hold the hat to obtain a licence in this behalf from the Anchal Parishad on such terms and conditions etc.

16. The learned advocate appearing for the writ Petitioner contends that in the corresponding Act, the word is "to establish" a hat and according to him while the writ Petitioner was holding the licence and running the hat so the question of establishing the hat does not arise in this case and according to learned advocate for the writ Petitioner, since the hat has been in existence, the question of establishing does not arise and therefore the private Respondents cannot have a licence u/s 117 of the new Act that is the West Bengal Panchayat Act inasmuch as here the licence is for establishing a hat while according to learned advocate the present hat is in existence.

17. The learned advocate further contends that the first licence was granted to the writ Petitioner on a mass petition made by the villagers. To honour the sentiments of villagers, such licence was granted to the writ Petitioner and there seems no occasion for a departure of the said practice and therefore the writ court was right in directing the Panchayat Samiti to grant the licence in favour of the writ Petitioner.

18. The learned advocate for the writ Petitioner/Respondents further contends that the Panchayat Samiti acted illegally by including the names of the private Respondents in the licence because according to him when ownership is in dispute and when so long the writ Petitioner was holding licence, there cannot be any deviation from the existing practice. The learned advocate further contended that the Panchayat Samiti assumed the jurisdiction of the Civil Court in granting a joint licence. The learned advocate further contends that the Panchayat Samiti

cannot adjudicate and when admittedly the title is in dispute the existing arrangement that is licence in the name of writ Petitioner alone should continue.

19. the learned advocate further contends that since 1972, writ Petitioner was enjoying licence and the present Appellants never raised any objection. They applied only in 1992. When in 1992, writ Petitioner applied for licence and he was legitimately expecting to have a licence, the Panchayat Samiti frustrated his legitimate expectation in granting the licence in the joint name of the writ Petitioner as also the private Respondents.

20. Some of the added Respondents represented by Mrs. U. Maiti claimed to be the co-sharer of the plots on which the hat is being run by the writ Petitioner had no objection to the licence being granted in favour of the writ Petitioner alone. Other Respondents also supported the case of writ petition.

21. On behalf of the Executive Officer, Gopiballavpur II Panchayat Samiti, it was contended that though initially the hat was being run by the writ Petitioner subsequently Respondents Anwar All Khan, Aslam A.M. Khan and Ansar A.N. Khan set up a claim that they are co-owners of the "Fakoghat Hat" and they are therefore entitled to have the licence for running the said hat. Although, there was an attempt to settle the dispute amicably such attempts having failed, the Panchayat Samiti in exercise of the powers u/s 117 of the said act, issued the licence in question for the year 1992-93 in favour of the writ Petitioner and other claimants pursuant to resolution of the Panchayat Samiti.

22. it was urged that Section 116 of the said Act is not applicable to the present case since "Fakoghat Hat" had not been declared to be a place for trading or business which is dangerous or offensive.

While replying to the arguments advanced by different Respondents before this Court of appeal, Mr. Mukherjee, learned advocate appearing for Appellants contended that names of Anwar Khan and Ors. had been mutated in respect of the aforesaid hat and the R.S. Khatian also stands in their favour. Mr. Mukherjee further contended that since it is not a case of renewable licence, the Panchayat Samiti should have granted the licence in the name of private Respondents alone, who are co-sharers of the plot and writ Petitioner is neither an owner nor a lessee in respect of the said plot.

23. Now, turning to the points which are required to be decided in this writ appeal, we must say that the scope of this appeal is very limited. There is no dispute that "Fakoghat Hat" was being run since 1972 and a writ Petitioner was so long running the hat till 1991-92. Such licence was either renewed or granted afresh each year till 1992 when on account of objection raised by some of the Defendants, the licence was not renewed and fresh licence was not granted by the Panchayat Samiti in the name of the writ Petitioner. Instead, a licence for running the said hat was issued in the name of the writ Petitioner and Anwar Ali Khan and others who claimed to be the joint owners of the land on which the hat was being run and also in the name of co-owners. The Panchayat Samiti appears

to have accepted the claim of the persons whose names were included in the licence for the year 1992 and 1993.

24. The word "hat" as per Bengali "Sadbakosh" (Larger Dictionary) is a market or a fair and it is held on a particular day or days in every week as in this case the "Fako Ghat" hat is held on each Tuesday. The question is whether the Panchayat Samiti could have in exercise of these powers u/s 117 of the said Act, issued a licence in the joint name of the writ Petitioner and some of the private Respondents when licence for running the said hat had so long been granted in favour of the writ Petitioner alone. In order to decide the said question, the question which comes up with regard to the applicability of Section 116 and Section 117 of the said Act. There is no dispute that Section 116 is not applicable to the present facts and circumstances of the case as it is not a hat where trading or business was declared by the government to be dangerous or offensive. All the parties submitted before us that provisions of Section 117 of the Act will apply in the present case. Section 117 of the West Bengal Panchayat Act, 1973 runs as follows:

A Panchayat Samiti may require the owner or the lessee of a hat or market or an owner or a lessee of land intending to establish a hat or market thereon, to obtain a licence in this behalf from the Panchayat Samiti on such terms and conditions may be prescribed and subject to the provisions of Section 133, on payment of a fee for such licence.

Section 133 deals with levy or rate of tax etc.

The above provisions are to be read alongwith Rules 7, 8 and 9 of the West Bengal Panchayat Rules, 1984 which provide the manner in which licence is to be applied for and granted for running of a hat or market and the terms and conditions of such licence.

25. Rule 11 provides that the licence is to be granted by a Panchayat Samiti for running of a hat or market in Form IV wherein it is clearly indicated that the licence is granted under provisions of the West Bengal Panchayat Act, 1973 and is only for a particular year. Thus, Section 117 of the Act empowers the Panchayat Samiti to grant licence for a hat or a market within its area. The owner of the land or a lessee of the said land is required to obtain a licence from the panchayat Samiti to establish a hat or market therein. The provision of Section 117 is obligatory and an applicant is required to obtain a licence for holding a hat or market. Now in Section 117 the expression has been used such as "owner and lessee of a hat". In the present case, writ Petitioner is neither a lessee nor an owner of the land upon which the "Fako Ghat" hat is being held. It is not a case of licence. The case of the writ Petitioner, is that he was so long holding the licence and running the hat. But that cannot entitle him to apply for a licence when the title in question is in dispute. It may be noted in this connection that a civil suit being T.S. 270/93. Is pending between the parties in which the title is to be decided, but the fact remains that writ Petitioner has no right title or

interest in the plot of the hat. Right to run a hat is a right attached to the plot because a hat cannot be organized in the air it is a right embedded with the land upon which a hat is being held.

26. Holding a hat, or bazar or mela is only a mode of user by the owner of his land. Just as tie can enjoy the land belonging to him in other ways, he can use it for the purpose of having a concourse of people--buyers and sellers and others for a hat or bazar or mela--subject as in the case of other user to the requirement that no nuisance is created and the legal rights of others are not infringed. Consequently, the right to hold a mela has always been considered to be an interest in the land. We are fortified in this regard by a decision of the State of Bihar Vs. Rameshwar Pratap Narain Singh and Others, wherein it was held that the right of the proprietor of an estate to held a mela on his own land is a right in the extate being appurtenant to his ownership of the land. In that judgment, the Supreme Court found that the right to hold a mela is a right attached to the land. It follows, therefore that the person who has no right in the land cannot claim to have a licence.

27. Mr. A.B. Chatterjee, learned senior advocate appearing for the writ Petitioner contended that the above decision cannot have any application to the present facts and circumstances of the case as according to him in that case the land had vested and, therefore, the question of running a hat on that vested plot cannot arise. If that be so, then can the writ Petitioner run the hat on the aforesaid plots if the actual owner of the plots transfers the plot to some others for valuable consideration or otherwise ? Therefore, right of the property of estate to hold a mela on his own land is a right in the extate being appurtenant to his ownership of the land. Such right cannot be exercised where the person has no right in the land itself. So, under the provisions of Section 117 of the said Act, the ownership or the person having a lease is a criteria for making an application for licence. The writ, court was wrong in directing the Panchayat Samiti to issue a licence in favour of the writ Petitioner, who is neither an owner or a lessee.

28. The learned advocate appearing for the writ Petitioner contended that the Panchayat Samiti is not entitled to get into the question, of title. But it is not a question of going into the title by the Panchayat Samiti. The law requires that before granting of a licence, the licenced granting authority shall get themselves satisfied about the prima facie title of the persons applying for licence. It is true that the licence granting authority is not entitled to question the title in detail, but incidentally it can examine the question of title because where the title is defective it will disentitle a person to get relief in appropriate proceeding. When admittedly, the writ Petitioner has no title nor any interest in the land upon which hat is being held he cannot have any right to apply for the licence.

29. It is cantended from the side of the writ Petitioner that there was no difficulty with regard to running of the hat by the writ Petitioner. But, it is not disputed that the writ Petitioner and contesting Respondents are closely related and as the writ Petitioner is the eldest member of the family, he was, so long running the

hat after obtaining necessary licence from the Samiti. But, trouble started when in 1992 Anwar A.M. Hossain that is the persent Appellant and others, raised objection to the licence granted to the writ Petitioner alone. In this case, the advocate appearing for the writ Petitioner contends that the doctrine of standing-by would have to be applied to the facts of the case as the right, if any of Anwar Ali Khan and others had lapsed on account of waiver since 1970. But, we have already found that such arrangement was so long going on in view of the fact that the writ Petitioner being the eldest member was allowed to run the hat on behalf of the co-owners. This fact cannot confer any title or interest upon the writ Petitioner.

30. Mr. Wajem Ali Mondal, learned advocate appearing for some of the Respondents and who are supporting the case of the writ poetitioner contended before us that the writ Petitioner was so long holding the licence of the hat since over its inception there should not be any reason for deviation. It is true that writ Petitioner was running the hat since 1972. But after an interval of twenty years a claim has been raised by Anwar Ali Khan and few others that is the present Appellants who claim to be the co-owners of the land and they also raised a claim that as co-owners they were entitled to have their names included in the licence or running the hat. Thus, the learned advocate contends that writ Petitioner could be allowed to run the hat and he further submitted that in view of his continuous holding of the hat for more than 12 years and 30 years he acquired a good title to run the hat. But acquisition of title by such a way cannot be decided by a writ court. The claim with regard to ownership and other rights requires determination by a proper forum, but when the Panchayat Samiti was prima facie satisfied about the ownership of the Appellants there was no wrong in granting the licence in the name of these Appellants. Thus, find that writ court was wrong in directing the Panchayat Samiti to issue licence in the name of the writ Petitioner alone and therefore we cannot agree with the decision of the learned Single Judge.

31. It is pointed out that a civil suit is pending between the parties wherein all questions regarding right, title, interest and possession will be decided. Therefore, we do not make any comment with regard to those matters, on the other hand, all those matters are left open for decision by the forum duly empowered to decide the same. The decision of this appeal shall have no bearing with the title suit pending between the parties, as referred to above.

32. In view of above, the decision of learned Single Judge is set aside. All the appeals are allowed and consequently four writ petitions filed by Hazi Sajjad Ali Khan are dismissed. All interim directions passed from time to time, or as modified from time to time shall stand vacated immediately and forthwith.

33. We make no order for costs.

LATER.

After the judgment was pronounced in the Court, learned Advocate appearing for

the Respondents-writ Petitioners made an oral prayer for staying its operation.
The prayer on consideration is rejected.

V.K. Gupta, J.

34. I agree.