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**(2003) 10 CAL CK 0006**  
**In the Calcutta High Court**  
**Case No : C.R.A. No. 122 of 1983**

Husenera Begum

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision :** 31-10-2003

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 392  
Penal Code, 1860 (IPC) — Section 302

**Citation :** (2004) 2 CALLT 410 : (2004) 1 CHN 215 : 108 CWN 399

**Hon'ble Judges :** Gorachand De, J

**Bench :** Single Bench

**Advocate :** Dilip Dutta, Milon Mukherjee, J. Bagchi, Saibal Mondal, Ranabir Roy Chowdhury and Sharmila Talukdar, for the Appellant; Asimesh Goswami, Assistant Public Prosecutor and Minoti Gomes, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.K. Ganguly, J.—The writ petitioner No. 1 is a club known as Hindusthan Mitra Club (hereinafter referred to as "said club"). The said club is a society registered under Societies Registration Act and the writ petitioner Nos. 2 to 7 are members of the said club. The writ petitioners have challenged a show cause notice dated 22nd February 2000 issued by the Deputy Commissioner of Police, Head Quarters, Lalbazar, Calcutta-700 001, to the General Secretary of the said club. In the said show cause notice the General Secretary of the said club has been directed to show cause within 15 days from the date of receipt of the said notice why the allotment of the tent of the said club in the Calcutta Maidan shall not be cancelled and failing which a decision will be taken by the police authorities on the basis of available records.

2. On receipt of the said show cause notice, the petitioner prayed for time and thereafter, time was granted to the petitioner to give reply to the show cause notice. Ultimately, the petitioner gave a reply to the said show cause notice on 14th March 2000 and in the said reply the petitioners gave a brief history of the

said club and also gave a brief history of the games which are played by the members of the said club including history of the achievement of the said club in the field of sports,

3. After giving reply to the show cause notice, the said club moved a writ petition before the Hon"ble Court on 24th March 2000 and a learned Judge of this Court was pleased to issue an interim order for maintenance of status quo on 24th March 2000 and then the same interim order was, thereafter, extended till the disposal of the writ petition. After that an application for vacating the order of injunction was filed by the state-respondent, Deputy Commissioner of Police, Head Quarters, Lalbazar, Calcutta-700 001.

4. The matter was then taken up by this Court for final hearing. On the consent of the parties, the said application of vacating the injunction was treated as an affidavit-in-opposition of the State Government and the petitioners" reply to the said vacating the injunction was treated as affidavit-in-reply. In this matter, the Central Government also filed an affidavit-in-opposition to the writ petition and they have also filed an opposition to the vacating application.

5. The main challenge of the petitioners to the show cause proceeding is one of jurisdiction. The petitioners case is that for the last 50 years, the said club is in existence and was allotted a tent in which the said club is carrying on various sports activities. The petitioners" case is that the tent is situated within the Blue Zone of the Eastern Command of Army. The boundary wall of the tent and other furniture, electrical apparatus and appliances in the said tent are owned by the said club. The said club is paying an annual fee to the 4th respondent. The said fees were paid upto 1999 but insofar as the fees for the year 2000 are concerned the representative of the club on several occasions went to the office of the 4th respondent but on some pretexts, the 4th respondent refused to accept the fee.

6. The petitioners have ascertained that they have followed all guidelines and directions issued from time to time by the police authorities in respect of the tent facilities which the said club enjoyed. There is no allegation against the said club of any untoward incident happening in its tent or any illegal activities being carried on therein. The allegation of lack of sporting activities in the tent of the said club is wholly incorrect and the same has been disputed in the show cause notice. Some allegations of mala fide have also been levelled against the police authorities but the main point on which the matter was argued before this Court is that the entire area in Maidan vested in the Military Establishment and the Central Government not having raised any objection against the continuance of the tent of the said club in Maidan, the 4th respondent, the Deputy Commissioner of Police, Headquarters, Lalbazar, Calcutta, has no jurisdiction to issue the show cause notice asking the petitioner to show cause why the tent allotted to the said club, shall not be cancelled.

7. In this matter, an affidavit-in-opposition has been affirmed by Lieutenant Colonel Rai Bhadur Singh Kanwar on behalf of the respondent No. 5. In the said

affidavit the deponent has given some history of Calcutta Maidan and specifically stated in para 5 that vide Government of India letter No. 1600 dated 15th June 1921, there had been classification of areas of Calcutta Maidan under three zones, namely, Blue Zone, Red Zone and Yellow Zone. Against the said three zones, the following areas have been demarcated:

"Blue Zone: It will be regarded as boundary of Fort William and control over the area enclosed by it will be governed by Military considerations.

Red Zone: Containing Victoria Memorial Hall which is under Ministry of Home Affairs, Government of India.

Yellow Zone: Exclusively under the control of State of West Bengal."

8. It is not in dispute that the tent of the said club falls within the Blue Zone. It has been stated further that the entire area of Calcutta Maidan belongs to the defence and the usage of the land is governed by Military consideration and subject to the approval of the Military Authorities. In the said affidavit it has been further admitted that certain degree of control over the said Maidan has been delegated to Government of West Bengal and in turn to the Commissioner of Police. But such delegation is neither absolute nor independent of the control of the defence.

9. Various notifications and documents have been referred to in this connection to which the Court will refer subsequently. But in para 7 it has been stated that till the filing of the writ petition, Commissioner of Police, Calcutta, had been referring all cases of use of Calcutta Maidan to the General Officer Commanding, Bengal Area Custodian of the Calcutta Maidan on behalf of the Government of India. It has been stated that in the past, when the Commissioner of Police acted in contravention of the existing orders, the matter was brought to the notice of the Chief Secretary, Government of West Bengal and the General Secretary directed certain arrangements to continue.

10. In para 9 of the said affidavit, the deponent on behalf of the respondent 5 stated that in Calcutta Maidan there are about 69 club tents and most of them are in existence for the last 50 years to 100 years and in the month of February, 1993 a Board of Officers which comprised of the representatives of the Local Military Authority, Calcutta Police, Defence Estate Officer and Public Works Department reviewed all Sports Clubs and tent houses on the Maidan. After such review the said Board identified certain clubs, which are not carrying regular sport activities, but the petitioners' club is not one of those defaulting clubs. After such review local Military Authority asked the Commissioner of Police, Calcutta to take appropriate action against the defaulting clubs.

11. In para 11 of the said affidavit it has been clearly stated that the Commissioner of Police is purportedly claiming to be the Trustee of Maidan on behalf of the Government of India. But the said claim has been refuted the saying that there is no authority or order from the Government of India declaring

Calcutta Maidan as a trust property or constituting the State Government as trustee of the same. In para 12 of the said affidavit it has been further stated that the Commissioner of Police is not entitled to issue the said show cause notice without reference to and/or concurrence of the Local Military Authority.

12. In the further affidavit used on behalf of the respondent No. 5 while dealing with the application for vacating injunction filed on behalf of the Police, in para 8 it has been made very clear that the Blue Zone area will be regarded as the boundary of Fort William and control over the area enclosed by it will be governed by military considerations. As such it has been stated that the Commissioner of Police of Calcutta is thus required to refer all matters of unauthorized use of the Blue Zone area to the Local Military Authority.

13. In para 12 of the said affidavit it has been made very clear that the respondent No. 5 has not received any complaint in respect of the said club.

14. Therefore, the question, which arises in the instant case, is whether in the facts and circumstances of this case the 4th respondent had the power to issue the show cause notice.

15. The learned counsel for the state-respondent in support of the show cause notice issued by the 4th respondent submitted that even though the tent of the club is situated within the Blue Zone of the Calcutta Maidan by a letter dated 22.07.1989, the Major General S.R. Bahuguna, AVSM General Officer, Commanding Bengal Area wrote to the then Commissioner of Police, Calcutta to the effect that as per the existing rules, all the tents erected in the Blue Zone area of the Calcutta Maidan are to be dismantled once in a period of 6 years and the complaint in the said letter is that the same has not been rigidly followed in the past. In the said letter, it was made clear that the land on which stand the tents in which sports and recreation were allowed on temporary basis in the Calcutta Maidan had come up on defence land. Therefore, in the said letter what was insisted was the dismantling of tents temporarily for some part of the year. Certain remedial measures were suggested in the said letter in order to avoid encroachment of the Maidan area. In para 5 of the said letter, it was made clear that the Commissioner of Police, Calcutta may be the allotting authority but the Commissioner of Police enjoys the powers of management of the Calcutta Maidan, Blue Zone area as delegated to him by the Ministry of Defence, Government of India. Therefore, in the said letter, the Officer recommended dismantling of all tents temporarily during some parts of the year. However, it appears that about 10 years, thereafter, the Commissioner of Police, Calcutta issued a notice dated 14.09.1999 to all the clubs in the Calcutta Maidan area for keeping the tents closed between 01.10.1999 to 15.10.1999.

16. The learned counsel for the state respondent relied on an old notification dated 31st July 1893 issued by the Secretary to the Government of West Bengal to the Quarter Master General in India. In para 3 of the said notification, it has been stated that from the date of issuance of the said notification, the control

over the Maidan has been held by the Lieutenant Governor for free use and enjoyment of the public and the 1st Executive Engineer, Calcutta Division, has been placed in the immediate charge of the road repairs, water, lighting and conservancy. The learned counsel for the state-respondent relied on the following recitals in the order:

"The Commissioner of Police has been vested with the general supervision on of the Maidan and everything connected with it."

17. The learned counsel for the state-respondent further relied on the following portion of the said notification:

"In regard to temporary buildings, rules copy annexed for the erection of tents and temporary buildings for entertainments, & c. are already in existence, and such matters are now dealt by the Commissioner of Police under the orders of this Government, the fees paid as ground rent for the tents and temporary buildings being credited by the Commissioner of Police to Government and spent towards the up-keep of the roads, conservancy and lighting of the Maidan. The sites for pavilions, & c., on such occasions can be selected by no other Officer than the Commissioner of Police, and it is desirable that the existing procedure should not be disturbed. In respect of quasi-permanent buildings of such a nature as the Calcutta Golf Club Pavilion, it is advisable that the orders of the Military Works Department Circular No. XXVII of 20 the December, 1881, should be strictly adhered to."

18. The learned counsel for the state-respondent relied on the subsequent notification dated 06.06.1902 issued from the Solicitor to the Government of India to the Commissioner of Police. In the said notification, it has been made clear that the general supervision of the Maidan and everything connected therewith is vested in the Commissioner of Police to the extent and in the manner appearing in the order dated 12th May 1864.

19. The learned counsel for the state-respondent also relied on the subsequent document dated 29.01.1903 issued by the Secretary to the Government of India, Home Department, to the Chief Secretary to the Government of West Bengal. In the said communication, it has been made clear that the Government of India made certain arrangements for the control of the Calcutta Maidan. It has also been made clear that subject to the approval of the Military Authority in regard to certain matters, the control of the Maidan is vested in the Government of West Bengal and the same is exercised ordinarily by the Commissioner of Police, Calcutta. In the said communication, it has been made clear that no changes should be sanctioned or concession granted or issued materially affecting the appearance of the Maidan without the cognisance and sanction of the Supreme Government. The learned counsel for the state-respondent submitted that if the tent facility of the said club is cancelled and, as a result of the said show cause proceedings, the appearance of the Maidan will no be changed in any way. The learned counsel for the state-respondent submitted that only in three categories

of cases the cognisance and sanction of the Supreme Government is necessary. They are as follows:

"(1) Concessions of a temporary character;

(2) Permanent or quasi-permanent structural changes; and

(3) Other changes, such as naming or altering roads, cutting down or planting trees, placing or moving statues, setting up to taking down fences, and introducing tramways or similar means of locomotion in such away as materially to affect the external face of the Maidan."

20. The learned counsel for the state-respondent further submits that the method of control between the Central Government and the State Government has subsequently been revised in the subsequent notification dated 22.06.1921. Under the said notification dated 22.06.1921, it has been made clear that the Maidan is divided in two Zones, viz. Blue and Red and the Blue Line was recorded as the boundary of the Fort William and the control over the area encircled by it will be governed by the military consideration. In para 2 of the said notification, it has been made clear that the control over the area encroached by the Blue Line will be delegated by the local Government subject to the condition that the General Officer, Commanding presidency and Assam Districts must be consulted regarding all proposals for erection of building and if he disregards, the reference must be made to the Government of India in the Army Department before the proposal is sanctioned. The learned counsel for the state-respondent admitted that the degree of control of the Central Government is greater in the area encircled by the Blue Line.

21. There is also a subsequent notification 04.07.1934 issued by the Officiating Joint Secretary to the Government of India, Home Department, to the Chief Secretary, Government of West Bengal. In the said notification, it has been made clear that the same was meant for the area within the Blue Line and known as Blue Zone. It has been made clear in the said notification that this Blue Zone will form and part of the fort area and its use will be subject to certain conditions.

22. It was made clear in the said notification that the military authority will be able to utilise the track for the recreation purpose in similar fashion in which the same is enjoyed by any club in the Maidan area. In the said notification, it has been made clear that the Government of India agrees to the proposal of the Government of West Bengal to delegate to the Commissioner of Police, the above area in question with a view to secure the fulfillment of the conditions and to safe-guard the rights and amenities enjoyed by the public. It has also been made clear that if there is any difference of opinion between the local military authorities and the Commissioner of Police, Calcutta, the same should be referred to the Government of Bengal as the Arbitrator on behalf of the Government of India.

23. One thing is clear from the aforesaid notification that whatever authority the

State Government and the Commissioner of Police or the 4th respondent may have, it is nothing more than that the authority of a delegate. Now the Court has to find out what is the area and the extent of delegated authority of the state respondent. The letter dated 15-21st June 1921 has already been referred to. It appears from the said letter that in all proposals for erection of building, the General Officer Commanding Presidency and Assam District will be consulted and if the said authority disagrees then reference be made to the Government of India and the Defence Department. Similarly, from the notification dated 4th July, 1934, it is clear that the power of the Commissioner of Police is one of supervision only. From an old document dated 28th April 1854 disclosed in the affidavit of the 5th respondent, it appears that in case of any difference of opinion between the Chief Magistrate and the Town Major, the decision must rest with the Government of Fort William. Therefore, the authority of the State has to be exercised subject to the final order of the Government of Fort William which is now the Central Government. From the subsequent document dated 13th January 1938 issued to the Chief Secretary of the Government of India by Major General, Commander P & A District, it appears that the Government of India on behalf of the town are the sole trustees for the whole of Maidan and the Government of India have reserved delegated their power as trustees in the following manner. In the instant case, the Court is concerned with the Blue Zone Area and in respect of Blue Zone Area, the following conditions are mentioned:

"Delegated to the Government of Bengal authority over the Blue area, excluding the Red hachured area, subject to agreement with COC, P & A District in all matters of buildings, permanent or temporary excavations, tree planting etc. as military considerations given all proposals."

24. It appears that even in case of tree planting, military consideration should be given in pre-eminence.

25. The same position continues even after independence. It appears from a D.O. letter dated 20th August 1974 written by Babu Jagajibari Ram, the then Defence Minister, to the Chief Minister of Bengal that the administrative control over the Blue Line area which has been delegated to the Local Government is subject to the condition that the General Officer, Commanding Presidency and Assam District must be consulted regarding all proposals for erection of building and if there is a disagreement reference must be made to the Government of India and in the Army Department.

26. In the subsequent letter of the Ministry of Defence of Government of India dated 6th August 1980 addressed to the Secretary, Home Department, Government of West Bengal, it appears that even for a temporary function in the Blue Zone Area control has been entrusted to the Local Government subject to the conditions mentioned hereinabove. The same position continues even, thereafter, as it appears from letter dated 2nd March 1995 written from the Ministry of Defence to Mr. M. Krishnamurti, the then Chief Secretary of the Government of West Bengal. In the said letter it has been made clear that the

State Government may approve temporary use of the land for function organised by civil administration, private organisation or individuals for holding political or trade union meeting. In all such cases obtaining of a no objection certificate from the Headquarters, Bengal area is mandatory. In the said letter it has been made clear that the Defence Ministry attaches great importance to Calcutta Maidan and is aware of the ever growing need to preserve it as part of the city's heritage.

27. In the 1997 there was a meeting between the Military Authorities and the Authorities of the State Government and after a detail discussion the following decisions were taken in the said meeting held on 5th June 1997. The relevant minutes of the said meeting are discussed hereinbelow:

"a) The Commissioner of Police, will prepare a list of prospective organisers of Fairs, Exhibitions, etc., for the coming season, showing the area of the Maidan proposed to be used, the period of such proposed use etc. The said list will be sent to the Headquarters Bengal Area for their concurrence. On receiving the Army Authority's concurrence the permission will be granted by the Commissioner of Police, subject to usual terms and conditions. If any organisation approaches the Army Authorities directly, the Army Authorities will ask such organisation to apply to the Commissioner of Police.

The arrangement outlines above will be a temporary one, pending final resolution of the aforesaid differences."

28. It is clear from the above minutes that even for temporary holding of fairs or exhibitions the permission/concurrence of the Headquarters, Bengal area is required. The same position is also reflected in the letter dated 24th May 1999 written by the Joint Secretary, Government of India, Ministry of Defence to Sri Manish Gupta, the then Chief Secretary, Government of West Bengal that in respect of the Blue Zone Area of the Maidan, the provisions of the notifications dated 15.06.1921 is still governing the field and in case of any difference of opinion, the issue is to be discussed in the meeting between the representative of the State Government and the Army Headquarters.

29. Considering the position, in the light of the aforesaid notifications and orders issued from time to time it is clear that the authority of the State Government in the Blue Zone area in Calcutta Maidan is very limited. It is merely one of supervisions. But the initiation of the show cause proceeding in the instant case to withdraw the tent facilities from the said club is certainly a decision which is much more drastic and cannot be said to fall within a right of mere supervision.

30. In this connection, this Court thinks that it will not be wholly without any relevance to look at the history of Calcutta Maidan and the reason why so much importance is attached by military authorities for its control and proper maintenance.

31. This Court finds that the earliest records of Calcutta is to be found in a book written in 1596 called Ain-i-Akbari by Abul Fazal, Prime Minister of the Emperor

Akbar. Thereafter, in 1699 Bengal was declared a separate Presidency and Charles Eyre returned to Calcutta the following year as the First President of the Settlement and he came with instructions that a fort was to be built and named after King William III. Thus the idea of building a fort in Calcutta originated. Then came the attack of Nawab Siraj-ud-Dowla on the fort in 1756 and it fell. But in 1757 Clive and Watson recaptured the Fort. The relevance of this historical narrative with the development of Calcutta Maidan has been clearly linked by David William Martin in his book entitled *The Changing Face of Calcutta*". The learned author has recorded that the creation and preservation of Calcutta's Maidan is solely due to "an accident of history" or probably may be due to "several accidents of history". The story goes that the Maidan might not have been located where it now stands had Siraj-ud-Dowla not attacked the British at Calcutta in 1756 and inflicted such a humiliating defeat upon them.

32. After Clive's retaliation took place and then it was decided that new and more defensible and spacious barracks were to be built. Having thus decided the question of building a new fort, questions of better defensibility were considered. In those days and for many more years to come, the conventional military strategy was that every strategic defender should see his attacks while they are at a considerable distance away. So the military authorities in those days opted for a clear view to fire from the guns and constructed the fort with much open area around it after the name of William III of England.

33. This decision led to the establishment of Calcutta Maidan in the areas adjacent to the new fort. Those areas were cleared by removing the jungle. Thereafter, the appearance of Maidan changed with the advent of Lord Dalhousie in 1848. Lord Dalhousie supervised and assisted in large scale planting of trees in many avenues across the Maidan when initially the area remained without a tree.

34. It is most surprising and may even appear intriguing that nobody has tried to give the Maidan at Calcutta a different name. The word "Maidan" is an Urdu word which means an open space. So there are thousands of Maidans all over India but the Maidan as a proper noun only relates singularly to Calcutta Maidan meaning thereby almost 1300 acre expanse of open land between the river Hooghly and Chowringhee Road.

35. This Calcutta Maidan, therefore, holds a great appeal and attraction for Calcutta masses. Today, the great Maidan presents a most refreshing picture with her giant trees and vast expanse of emerald-green grass. The Maidan is most attractive when it is ablaze with the scarlet splendour of its golmohur trees. This has been amply described the finest lung of the city. In *"Calcutta Landmarks"* published by the Director of Publicity, Government of West Bengal, Calcutta Maidan has been described as the foetus from which the city has grown".

36. H.E.A. Cotton in *"Calcutta Old and New"* described the infinite variety of shades and moods of Calcutta and her Maidan very elegantly and which I quote:

"In the gorgeous hues of her sunsets, Calcutta is wholly beautiful, and never lovelier than in the chill of some misty winter's evening, or at the close of a sullen monsoon day, when the crimson clouds are piled over Hastings like the reflection from some giant conflagration, and the silent river rushes along, black and unfathomable, faintly illuminated by the twinkling lights of Howrah and the Strand. Another witching mood is hers when she lies sleeping in the while enchantment of the Indian moonlight, which turns her stucco to rubies, her plaster pearls, and pours out its flood of silver upon her dark waters."

37. Therefore, the importance which is put on a maintenance of Calcutta Maidan is justified not only from the military point of view but from the view of an environmentalist also.

38. Coming now to the brass tacks, this Court is of the view that as a delegated authority, State Government cannot exercise its jurisdiction in a manner which is contrary to the stand of the Ministry of Defence. In the instant case, in the affidavit of the 5th respondent, the stand taken before the Court does not support the action taken against the said club by the 4th respondent. On the other hand, it has directly opposed the stand of the 4th respondent.

39. In the notification dated 31st July, 1893, disclosed by the State respondent, a club pavilion or tent is described as "a quasi-permanent building" (annexure "A" at page 17 of the affidavit). From the subsequent notification dated 29th January 1903 at page 19 of the said affidavit (annexure "C"), it is clear that no quasi-permanent structural changes in the Maidan can be made without the cognisance and sanction of the Supreme Government which is now the Central Government. The show cause proceeding may bring about such quasi-structural changes. The same has been initiated without any sanction or cognisance of the Central Government. So the same has been initiated overstepping the delegated authority of the State Government.

40. It has already been come on record that the said club is not a defaulting club for non-compliance with the direction of the Central Government. It is nobody's case that In the premises of the said club there is any bar without a Bar Licence, Nor it is anybody's case that illegal activities are carried on in the tent of the said club or that any untoward incident has happened. The allegation is only one of lack of sporting activities by the said club. It may be possible that there may be some truth in the allegation. But it is difficult for this writ Court to decide the correctness of those factual allegations. But one thing is certain that without obtaining the concurrence of the Central Government or the Military Authorities the initiation of the proceedings with a threat to withdraw tent facilities of the said club Is a step which has been taken in transgression of the limited authority of the State Government.

41. In that view of the matter the show cause proceeding initiated by the State-respondent for cancellation of tent facilities of the said club is without Jurisdiction and as such is quashed. Thus the show cause notice dated 22nd February 2000

Is quashed for the reasons aforesaid.

42. This Court, however, observe that it has not made any pronouncement of the allegations of mala fide raised in the writ petition as It is not necessary to decide those questions since the action of the said respondent is otherwise found not sustainable.

43. This Court, further, observes that if the State Government finds that the running of tent by the said club is done unauthorisedly or otherwise there is any violation of any direction of the Defence or the said club is carrying on any activity in the tent which is vitiating the atmosphere in the Maidan, the said authority can, with the concurrence of the 5th respondent initiate appropriate proceedings. But since the instant show cause proceeding does not fall in the aforesaid category, the same is quashed.

There will be, however, no order as to costs.

Later:

Xerox certified copy of this judgment and order be made available to the parties expeditiously, if applied for.