

(1999) 06 CAL CK 0011
In the Calcutta High Court
Case No : Writ Petition No. 2195 (W) of 1999

Idris Ali and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Cal 337

Hon'ble Judges : S.B. Sinha, Acting C.J.; M.H.S. Ansari, J

Bench : Division Bench

Advocate : B.R. Bhattacharjee and D.K. Chatterjee, S.C. Bose, Party in person and Ziaul Islam, for the Appellant; S.P. Majumdar and S.N. Patra Bhatta for Respondent Nos. 2 and 3, Smriti Kana Mukherjee and Nabanita Pal, for the Respondent

Final Decision : Dismissed

Judgement

1. By an order of a Division Bench of this High Court (Green Bench) in 1998 directions were issued to the respondents herein to remove anti-socials and nuisances and for protecting the Babughat area.
2. The Municipal Authorities, it appears, organised a drive for beautification and development of the riverfront falling within the "Blue Zone".
3. The petitioners have espoused the cause of the people around the area in question and filed the instant writ application which was entertained by this Court as Public Interest Litigation.
4. The sole contention of the petitioners were that instead of protecting the area in question and permitting the performance of the religious rites of Hindus and Muslims, the authorities concerned have failed to do so and without any notice or lawful order undertook demolishing of such buildings. On January 30, 1999, it is stated the police tried to demolish the "Namaz Ghar" at Babughat Port Trust Land constructed for performance of Namaz by Muslims and also the "Shiva Temple"

by the Northern Side, however, due to the strong resistance of the local people the police failed to demolish them on that date.

5. Appropriate directions have been sought in the instant writ application restraining the respondents from demolishing the Namaz Ghar and Shiva Temple and for certain other similar directions.

6. By an interim order dated February 4, 1999 when the matter was moved before the Division Bench the following directions were issued :

"It appears from the receipt granted by the Calcutta Port Trust, copy whereof is annexed as Annexure "A" to the writ petition that a piece of land within 5 sq. metre has been allotted for the purpose of sitting for Namaz for the period from 1-1-99 to 31-3-99 (Quarterly) at the rate of Rs. 150/- per sq. Metre per quarter, Mr. Majumdar, Learned Advocate for the Calcutta Port Trust submits that only vacant land as above have been allotted by the Calcutta Port Trust. He has made such submission on the basis of the receipt granted as at Annexure "A". Mr. Bose, learned advocate for the petitioners, however, submits that there is a covered area in that land.

In that view of the matter, we are of the view that so far as the said 5 sq. metre of land of the Calcutta Port Trust, Calcutta Port Trust will demarcate the said area by raising pillars not more than one sq. metre height at their cost initially which will be recovered from the petitioners and it will be open to the Muslims offering Namaz prayer therein. It is, however, made clear that there will be no other construction in the said land of Calcutta Port Trust. Mr. Bhattacharya, Ld. Advocate for the Calcutta Municipal Corporation submits that he has no objection to such proposal. Regarding Shiva Temple at Babughat, Mr. Bhattacharya has suggested that the idol of Shiva may be shifted to a portion at Babughat without obstructing the Road. He further submits that there will be no obstruction to the performance of Shiva puja if the same is done in the Ghat there."

7. By another interim order dated 22nd March, 1999 the interim orders as above were modified on the application of the Calcutta Port Trust Authorities in the following terms :

"Mr. Bhattacharyya, learned advocate for the Calcutta Municipal Corporation submits that he has no objection to such proposal. Regarding Shiva Temple at Babughat, Mr. Bhattacharyya has suggested that the Idol of Shiva may be shifted to a portion at Babughat without obstructing the road. He further submits that there will be no obstruction to the performance of Shiva Puja if the same is done in the Ghat there.

Mr. Chakraborty, learned counsel for the Calcutta Port Trust Authorities had filed an application for deletion of the aforesaid direction made by the other Division Bench on the ground that the demarcation has already been made and therefore, no further direction would be required for demarcation. The learned advocates for the respondents have no objection if this part of the direction is deleted.

Accordingly, the application filed by the respondents is allowed by deleting the portion mentioned above.

The application for modification is thus allowed."

8. Thus, in so far as the matter pertaining to the Shiva Temple is concerned no further direction is required or any further order need to be passed in relation thereto,

9. In so far as the alleged place for offering Namaz is concerned it is apparent from the interim order (supra) that the 5sq. mt. of land of Calcutta Port Tryst was allotted for offering of Namaz as can be seen from the Annexure "A" relied upon by the petitioners themselves. The Annexure "A" to the writ application is a receipt for the charge for allowing 5 sq. mt. at Babughat (Temporary) for religious purpose for sitting for Namaz for the Quarter concerned.

10. In the Affidavit-in-Opposition it is stated the area of 5 sq. mt. is demarcated by putting Bamboo Stand and Bamboo Chips and on the top there is a coverage by tarpoline.

11. Thus, what is existing as the Namaz Ghar is a Temporary structure and not a building or edifice.

12. When a person espouses a public cause, he does not plead for himself nor for that matter seeks reliefs for himself. The benefit in respect of such matter is meant for the public and the cause therefore has to be in the public interest. The Court while entertaining such public interest litigation relaxes the rule of locus standi. The lis thereafter is not adversorial in nature. In such matters all parties before Court including the petitioners are required to assist the Court in arriving at a just decision and for passing of appropriate orders as may be required in exigencies of the facts and circumstances of the cases.

13. The petitioners have not placed before the Court the correct facts to which the appropriate legal principle of law may be applied for arriving at a just conclusion and for passing appropriate directions. In the instant case, we find that Calcutta Port Trust Authorities has said that for Namaz purpose the open space covered by tarpoline was being provided. The said arrangement was temporary in nature as is evident from Annexure "A" to the instant writ application. No building existed which can be said to have been demolished or proposed to be demolished. It is not the petitioners' case that the facility for offering Namaz is now not available as before.

14. In the circumstances we find that the petitioner has not made out a case on facts nor can it be said that the public interest has suffered for which directions as prayed for need to be issued by this Court.

15. The writ petition is accordingly dismissed. In the facts and circumstances of this case there will be no order as to costs.