
(2007) 10 CAL CK 0046

In the Calcutta High Court

Case No : M.A.T. No. 2228 of 2007 with C.A.N. 4836 of 2007

Noor Md.

APPELLANT

Vs

Mustaque Ahmed and Others

RESPONDENT

Date of Decision : 15-10-2007

Acts Referred:

Citation : 112 CWN 959

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Alok Kumar Ghosh, Kamal Hamid and Shamin Akhter, Dipak Mukherjee and Rajib Mukherjee, for the Appellant; Pratap Chatterjee, Kaushik Chatterjee, Arunava Ghosh and Ranajit Roy, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—The instant appeal has been preferred against the order dated 19th April, 2007 passed by the learned Single Judge while deciding the writ petition bearing W.P No. 6655 (W) of 2007. The said writ petition was filed on behalf of the respondent Nos. 1 and 2 herein without impleading the appellant as party respondent. Upon obtaining specific leave of this court, instant appeal has been preferred by the appellant herein. Assailing the order under appeal passed by the learned Single Judge it has been submitted on behalf of the appellant that the aforesaid writ petition was filed by the writ petitioners in collusion with the other respondents on suppression of the material facts and upon practising fraud upon the court with an intention to remove the "Khatal" of the appellant herein.

2. The learned Counsel of the appellant submits that the writ petitioners as well as the other respondents including the Chairman, Bhatpara Municipality and the respondent No. 6 herein were all along aware that the appellant herein had been running the Khatal in question at the concerned premises but with a mala fide intention and ill motive, the writ petitioners alleged in the writ petition that the Khatal belonged to Akhtar Hussain, namely the respondent No. 6 herein who purchased the premises in question in the month of December, 2003 and was

desperately trying to evict the appellant from the said premises.

3. Mr. Alok Ghosh, the learned Counsel of the appellant further submits that Akhtar Hussain, respondent No. 6 herein engineered the entire process and deliberately did not appear before the learned Single Judge in order to withhold the material facts from this Hon"ble Court. According to the learned Counsel of the appellant, the learned Single Judge of this Hon"ble Court was deliberately kept in dark by the writ petitioners and the private respondents in respect of the real facts in order to ensure removal of the Khatal of the appellant surreptitiously and without granting any opportunity of hearing to the said appellant. It has been submitted on behalf of the appellant that the entire premises in question was being used by the said appellant as Khatal-cum-residence.

4. The case made out by the appellant, in short, is that his father started running the Khatal from the premises in question since 1951 upon obtaining necessary licence from the Municipal authority. The description of the holding was also recorded in the municipal Assessment Register as Khatal. After the death of the father, the appellant had been running the said Khatal upon obtaining due licence from the Municipality. The Municipality granted licence upto the year 2002-03 but thereafter, withheld granting of such licence inspite of submission of necessary application upon depositing the requisite charges.

5. It has also been submitted on behalf of the appellant that a suit was filed by the said appellant in the court of the learned Civil Judge (Junior Division) at Barrackpore being Title Suit No. 199 of 2003 and the said learned Civil Judge upon considering the balance of convenience and inconvenience passed an ad-interim order of injunction restraining the defendants from creating hindrance and disturbance in the peaceful possession of the appellant herein over the suit property. The learned Counsel of the appellant further submits that the learned Civil Court ultimately disposed of the said injunction application filed by the appellant herein on 11th February, 2004 with the direction upon the parties to maintain status quo till disposal of the suit.

6. It is the case of the appellant herein that the respondent No. 6, Akhtar Hussain purchased the aforesaid holding after filing of the aforesaid Title Suit by the appellant herein and the said Akhtar Hussain was, therefore, subsequently added as the defendant in the said suit. According to the appellant the said Akhtar Hussain has been contesting the said suit and is fully aware of the entire facts. Mr. Ghosh, learned Counsel of the appellant submits that the Chairman, Bhatpara Municipality was also informed of the order of injunction passed by the learned Civil Judge in respect of the suit property and, therefore, Bhatpara Municipal authority was well aware of the entire facts in respect of the holding in question. It is the specific case of the appellant that the municipal authority never served any notice upon the said appellant prohibiting running of the business from the said premises in question.

7. In the aforesaid background, the writ petition was filed before this court and

the same was disposed of by the order under appeal passed by the learned Single Judge as hereunder:

"Having heard the learned advocates for the parties, since I find a notice dated 18th April, 2007 has been issued on the private respondent No. 4 directing to stop the nuisance of maintaining the khatal, no order is passed on this application save and except if the private respondent does not remove the khatal on or before 25th April, 2007, the Chairman, Bhatpara Municipality shall take steps for removing the said khatal in question within a period of seven days from that date and in that event the Inspector-in-Charge, Jagatdal Police station, the respondent No. 3, shall render all assistance to the municipality."

8. It has been submitted by the learned Counsel of the appellant that the aforesaid direction issued by the learned Single Judge was in respect of the Khatal of the appellant herein since the private respondent namely, Akhtar Hussain did not run any Khatal at the said premises. The learned Counsel further submits that the appellant was protected by the order of status quo passed by the learned Civil Court and the writ petitioners in collusion with the respondent No. 6 herein obtained the aforesaid order under appeal from the learned Single Judge without disclosing the aforesaid order of status quo passed by the learned Civil Court.

9. It has been admitted by the learned Counsel of the appellant that the Chairman, Bhatpara Municipality issued a notice on 17th May, 2007, which was received by the appellant on 18th May, 2007 whereby and whereunder the appellant was directed to remove the Khatal from the premises in question pursuant to the aforesaid order under appeal passed by the learned Single Judge on 19th April, 2007. 18th May, 2007 was the last date before commencement of the Summer Vacation of this Hon'ble court. The learned Advocate of the appellant informed the said Chairman of the decision of the said appellant to prefer appeal from the order passed by the learned Single Judge on 19th April, 2007 and requested the said Chairman not to take any step in the matter in the meantime. The said learned Advocate of the appellant also served a copy of the said letter upon the Inspector-in-Charge, Jagatdal Police Station.

10. Referring to the records of this case, learned Advocate of the appellant submits that on 22nd May, 2007 the matter was mentioned before the Hon'ble Division Bench in Vacation presided over by the Hon'ble Justice Jyotirmay Bhattacharyya and the Hon'ble Justice Partha Sakha Datta to obtain leave to prefer an appeal against the said order and their Lordships were pleased to grant leave to prefer the appeal and to move the application on 25th May, 2007. Accordingly, the appeal and the application were duly filed.

11. It has also been submitted on behalf of the appellant that the learned Advocate of the said appellant, Mr. Kamal Hamid wrote a letter dated 22nd May, 2007 to all the respondents forwarding therewith copies of the said application and communicating thereby the direction as regards grant of leave as well as

fixation of the matter for hearing before this Hon''ble Court on 25th May, 2007. The Chairman of the municipality duly accepted the service on 23rd May, 2007, but the other respondents refused to accept the personal service and, as such, copies of the applications along with the forwarding letter dated 22nd May, 2007 were duly sent to them respectively by registered post with A/D.

12. Mr. Aloke Ghosh, learned Counsel of the appellant submits that on 24th May, 2007 at about 9 : 00 A.M. the appellant found that the Chairman and other municipal staff, Inspector-in-Charge and police personnel of Jagatdal Police Station, the writ petitioners, Akhtar Hussain and their men, agents and associates numbering about 700 thronged at the said premises to dismantle and/or damage the shed for cows and buffaloes and to remove the said cows and buffaloes, about thirty (30) in numbers, from the said Cattle Shed/Khatal. Mr. Ghosh also submits that the said operation was conducted at the instance of the Chairman who was physically present at the spot during the operation. According to the appellant, most of the aforesaid persons created a reign of terror within a few moments and infact, Akhtar Hussain and his associates, Police personnel as well as the staff of the Municipality started running riot at the said premises. It has been specifically submitted on behalf of the appellant that the said persons not only removed and/or took away the cows/buffaloes from the Khatal to the unknown place without preparing the seizure - list, but also caused severe damages to the shed. The learned Counsel of the appellant further submits that the persons crowded there removed the tiles of the shed and bamboo poles and thereafter took away the same. On behalf of the appellant it has been submitted that a pandemonium was created for taking over the possession of the said premises at the instance of Akhtar Hussain after removing the cows and buffaloes and demolishing the shed. Mr. Ghosh, learned Counsel of the appellant submits that the officers concerned, particularly the Chairman of the Municipality despite having the information of fixation of the matter for hearing by this Hon''ble Court on 25th May, 2007 wrongfully and illegally took action on 24th May, 2007 with mala fide motive to prevent this Hon''ble Court from rendering justice. The learned Advocate of the Municipality stated before this Hon''ble Court in course of hearing of the matter on 25th May, 2007 that the municipality had already removed the Khatal and such statement was recorded in the order dated 25th May, 2007.

13. It appears from the affidavit-in-opposition of the Municipality affirmed by its Chairman that a letter dated 18th April, 2007 was issued asking him to stop the nuisance at the premises to Akhtar Hussain within seven days otherwise action would be taken. The purported inspection report dated 17th April, 2007 also spoke of the alleged nuisance.

14. The learned Counsel of the appellant, however, submits that the aforesaid alleged inspection was never held at the premises in question upon serving any notice to the appellant or in his presence. The learned Counsel of the appellant further submits that the Sanitary Inspector prepared a report in this regard at

the instance of some interested parties.

15. Going through the order under appeal, we find that the learned Single Judge was specifically informed about the issuance of the notice upon the private respondent, Akhtar Hussain, who was impleaded as the respondent No. 4 in the writ petition. The order of the learned Single Judge on the private respondent, Akhtar Hussain was to remove the Khatal on or before 25th April, 2007. The learned Single Judge in the aforesaid order under appeal specifically observed :

"if the private respondent does not remove the khatal on or before 25th April, 2007, the Chairman, Bhatpara Municipality shall take steps for removing the said khatal in question within a period of seven days from that date and in that event the Inspector-in-Charge, Jagatdal Police station, the respondent No. 3, shall render all assistance to the municipality."

16. The said learned Single Judge was not even aware that the appellant herein had been running the Khatal in question and is protected by the order passed by the learned Civil Court.

17. The writ petitioners with a dishonest intention suppressed the material facts from the learned Single Judge and gave wrong impression to the said learned Single Judge that the private respondent, Akhtar Hussain was responsible for commission of the nuisance at the premises in question and being so misguided, the learned Single Judge issued direction on the private respondent, Akhtar Hussain to remove the Khatal on or before 25th April, 2007, failing which the Chairman, Bhatpara Municipality was directed to remove the said Khatal in question. The said order was passed by the learned Single Judge upon hearing the submissions and in presence of the learned Counsel of the municipality on 19th April, 2007.

18. No explanation has been given why the Municipality served notice upon the appellant herein on 17th May, 2007 while pursuant to the order under appeal, respondent-Akhtar Hussain was directed to stop nuisance by removing the Khatal on or before 25th April, 2007. Furthermore, inspite of knowing the fact that the appellant herein had been running the Khatal at the premises in question, learned Counsel of the writ petitioner did not disclose the relevant facts before the learned Single Judge. Most surprisingly, the Chairman, Bhatpara Municipality inspite of having specific knowledge about the filing of the present appeal by the appellant herein plunged into action for removing the Khatal on the strength of the aforesaid order dated 19th April, 2007 passed by the learned Single Judge, although the said learned Single Judge never directed the Chairman, Bhatpara Municipality to take any step against the appellant herein.

19. It has been specifically urged by the learned Counsel of the appellant herein that the order dated 19th April, 2007 was obtained by the writ petitioners in connivance with the Bhatpara Municipality behind the back of the appellant herein and without impleading the said appellant as a party respondent in the writ petition. The learned Counsel of the appellant also submitted that the writ

petitioners suppressed material facts from the learned Single Judge and obtained the order under appeal and thus, practised fraud on the court.

20. Mr. Alok Ghosh, learned Counsel of the appellant submits, that fraud and justice can never dwell together and, therefore, act of fraud on court should be viewed seriously. Mr. Ghosh referred to and relied on the decision of the Supreme Court in the case of State of Andhra Pradesh & Anr. vs. T. Suryachandra Rao reported in AIR 2005 SCW 3603 wherein fraud has been explained as hereunder:

"8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See Dr. Vitnla vs. Delhi Administration (1963 Supp 2 SCR 585) and Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.,].

9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,).

10. "Fraud", as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. [See Ram Chandra Singh Vs. Savitri Devi and Others,].

12.....In a leading English case Derry vs. Peek [(1886) All ER Rep 1 :

(1889) 14 AC 337 (HL) what constitutes fraud was described thus : (All ER p. 22 B-C)

"Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false".

21. In the aforesaid circumstances, Mr. Ghosh submits that not only the order under appeal should be set aside, but a mandatory order should also be passed by this court directing maintenance of status quo as prevailing on 23rd May, 2007 regarding occupation of the premises in question and running of Khatal business by the appellant herein.

22. The learned Counsel of the writ petitioners, however, submits that the said writ petitioners are the owners of the adjacent premises bearing Premises No. 33/1 and 33, Chaltatala Road and have been residing in their respective premises with their family members. According to the writ petitioners, the adjacent premises bearing Premises No. 34, Chaltatala Road is owned by the respondent No. 6 wherein the said respondent No. 6 kept few cows and buffaloes. The said writ petitioners also submitted that the appellant and his father used to take care of the said cows and buffaloes kept in the premises in question. According to the writ petitioners, number of cows and buffaloes were increased during the period in question as a result whereof major portion of the premises in question were occupied by the said cows and buffaloes, which resulted in alleged tremendous nuisance in the entire locality.

23. It has been submitted on behalf of the writ petitioners that complaints were lodged with the Chairman, Bhatpara Municipality and Environment Engineer, Regional Pollution Control Board for seizure and removal of the animals from the Khatal in question. The learned Counsel of the writ petitioners submits that on account of the failure of the authorities of the Bhatpara Municipality to take steps regarding removal of the Khatal in question, writ petition was filed before this Hon'ble court, which was admittedly, disposed of by the order under appeal passed by the learned Single Judge. It has been submitted on behalf of the writ petitioners that the animals of the Khatal were removed by the appellant herein and shifted to a nearby Khatal upon realising the consequences of the aforesaid order of the learned Single Judge. It has also been submitted by the writ petitioners that the Municipal authorities being accompanied with a large police force upon receiving a threat from the said writ petitioners regarding initiation of a contempt proceedings, raided the premises in question and lifted the accessories of the structure pertaining to the Khatal and no animal was found at the relevant time.

24. On behalf of the Chairman, Bhatpara Municipality it has been submitted before this court that the learned Advocate of the writ petitioners gave a threat to the said Chairman by sending a letter dated 14th May, 2007 for initiating contempt proceedings for alleged violation of the order passed by the learned

Single Judge on 19th April, 2007. The learned Counsel of the said Chairman submits that on 17th May, 2007 a letter was sent to the appellant enclosing xerox copy of the certified copy of the order dated 19th April, 2007 passed by the learned Single Judge intimating that since the Khatal had not been removed, the municipality had no other option but to implement the order passed by the Hon"ble court. Thereafter on 24th May, 2007, Sanitary Inspector of the said Bhatpara Municipality with police force had been to the Premises No. 34, Chaltatala Road where the alleged nuisance was prevailing. It has been submitted on behalf of the said Chairman that the Sanitary Inspector of the municipality found that the owner of the holding had already removed the cows and buffaloes elsewhere leaving only 4 buffaloes, which were also taken away from the said Khatal by the person present at the time of visit of the said Sanitary Inspector.

25. Most surprisingly, the respondent No. 6 participated in the proceeding before the Appeal court and filed affidavit-in-opposition wherein the said respondent No. 6 admitted that the premises in question was used by the appellant and his father, who used to keep a small number of cows and buffaloes for supply of milk to the local inhabitants. It has also been mentioned in the said affidavit filed on behalf of the respondent No. 6 that the number of cows and buffaloes had increased manifold in the recent past which according to the said respondent No. 6, was the source of causing nuisance in the locality. The said respondent No. 6, however, did not appear before the learned Single Judge.

26. The learned Counsel representing the Chairman, Bhatpara Municipality submitted before the learned Single Judge at the time of hearing of the writ petition that a notice was issued to the respondent No. 6 herein with a direction to stop the nuisance by running the illegal Khatal. The said notice dated 18th April, 2007 issued to the respondent No. 6 herein for removal of the alleged unauthorised Khatal at the premises in question bearing Premises No. 34 Chaltatala Road has been annexed with the affidavit-in-opposition filed by the Chairman, Bhatpara Municipality. The said notice dated 18th April, 2007 is set out hereunder:

To : Akhtar Hossain H/No. 29, Kankinara Housing. Complex, Flat No. C-I, B.L. 3.

From : Dr. Pradip Kumar Bhattacharyya Chairman, Bhatpara Municipality

Ref No. K-4/212

Date 18.4.2007.

Sir,

It is reported that an unauthorised Khatal is being maintained in your premises at H/no. 34, Chalta Road in Ward No. 8.

About 30 Nos. of Buffaloes remain there. Accumulation of exereta of Buffaloes and dirty water creating nuisance and bad smell coming out from the said Khatal.

The Khatal also is a breeding place of mosquito causing health hazard among the surrounding locality.

So you are hereby asked to stop nuisance within 7 days on the receipt of this letter, failing which legal action will be taken against you as per provision of W.B.M. Act.

Thanking you,

Yours faithfully, Sd/- Chairman, Bhatpara Municipality."

27. Scrutinising the said letter we find that the Chairman of the Municipality asked the respondent No. 6 herein to stop the nuisance within seven days from the date of receipt of the said letter as otherwise legal action would be taken against him. The respondent No. 6 inspite of receiving the aforesaid notice did not intimate the Chairman that he was neither occupying Premises No. 34, Chaltatala Road nor running any Khatal therein. The Chairman, Bhatpara Municipality also knew that the appellant herein was in occupation of the aforesaid premises in question and had been running the Khatal therein since the said Chairman issued a notice on 17th May, 2007 to the appellant herein as hereunder:

" To : Noor Md., Occupier/ Tenant, H/No. 34, Chaltatala Road, Ward No. 8.

From :

Dr. Pradip Kumar Bhattacharyya Chairman, Bhatpara Municipality

Ref. No. 565

Date 17.5.2007.

Sub: Removal of Khatal from H/No. 34, Chaltatala Road, in Ward No. 8 as per Order of Hon''ble Justice of High Court, Kolkata dated 19/4/2007 passed by vide Case No. WP 6655(W) of 2007.

Sir,

As per Order of the Hon''ble High Court at Calcutta in the matter of WP 6655(V) of 2007 you were to remove the unauthorised Khatal within seven (7) days from the date of Order but you have not complied the Hon''ble Court's Order.

So, we have no option but to implement the Hon''ble Court's Order in any day without further intimation to you.

Yours faithfully, Sd/- Chairman, Bhatpara Municipality."

28. The Chairman, Bhatpara Municipality was very much aware that the learned Single Judge never issued any direction to the appellant herein as the said appellant was not impleaded as a party to the said writ petition decided by the learned Single Judge. Furthermore, the learned Counsel representing the said Chairman at the time of hearing of the writ petition made a specific submission

before the learned Single Judge that a notice dated 18th April, 2007 was issued to the respondent No. 6 herein directing him to stop the nuisance. The learned Single Judge referring to the said notice dated 18th April, 2007 passed an order on 19th April, 2007 directing the Chairman, Bhatpara Municipality to take steps for removal of the Khatal in question in the event the said private respondent, who is respondent No. 6 herein, did not remove the Khatal on or before 25th April, 2007. The Chairman, Bhatpara Municipality with a mala fide intention and ulterior motive misled the learned Single Judge by not disclosing that the appellant herein had been running the Khatal being the occupier of the premises in question.

29. The learned Counsel of the Bhatpara Municipality also did not disclose the fact regarding pendency of the Civil Suit between the appellant and the respondent No. 6 herein although the learned Counsel of the appellant herein by the letter dated 2nd April, 2004 informed the Chairman, Bhatpara Municipality about the pendency of the civil suit bearing Title Suit No. 199 of 2003 in the court of the learned Civil Judge, (Junior Division), at Barrackpore and also the interim order passed by the said learned Civil Judge directing maintenance of status quo on the scheduled property till the disposal of the said suit. The Chairman of the Bhatpara Municipality suppressed material facts from the learned Single Judge with a mala fide intention to help the writ petitioners to obtain an order behind the back of the really affected person namely, the appellant herein.

30. The respondent No. 6 herein contested the present proceeding before the Division Bench, but chose to remain absent before the learned Single Judge in order to avoid his obligation to disclose the facts relating to the pendency of the civil proceeding and the order of status quo passed by the learned Civil Judge (Junior Division). The writ petitioners herein proceeded at the behest of the respondent No. 6 herein, who was impleaded as respondent No. 4 in the writ petition, since the said writ petitioners with a mala fide intention and ill motive did not implead the appellant herein as party to the writ petition inspite of having specific knowledge being the residents of the adjacent premises that the appellant herein had been running the Khatal being the actual occupier of the premises in question.

31. From the records we find that the respondent No. 6 herein, who was impleaded as respondent No. 4 in the writ petition, was claiming ownership in respect of the premises in question and the same was not only disputed by the appellant herein but also a civil suit was filed in the court of the learned Civil Judge (Junior Division), at Barrackpore. An order of injunction directing maintenance of status quo was also passed by the said learned Civil Judge (Junior Division). Considering the aforesaid facts, we are satisfied that the writ petitioners, Chairman, Bhatpara Municipality and the respondent No. 6 herein connived together in order to remove the Khatal of the appellant herein from the premises in question upon suppressing the information from the learned Single

Judge regarding pendency of the civil suit and the order passed therein by the learned Civil Judge.

32. The appellant herein after coming to know the order under appeal filed an application before the Division Bench of this court and a notice of the same was served upon the Chairman of the Municipality. The said Chairman, admittedly, received the said notice regarding filing of the proceeding before the Division Bench of this court on 23rd May, 2007. In spite of receiving the aforesaid notice and having specific knowledge of initiation of a proceeding before the Division Bench of this court, said Chairman, Bhatpara Municipality did not restrain himself and with the help of the local police authority plunged into action in order to frustrate the proceedings before this court. The learned Counsel of the appellant duly served a notice upon the Chairman, Bhatpara Municipality on 21st, May, 2007 informing him of the order passed by the civil court and this Hon''ble court in different proceedings in respect of the ownership of the Khatal in question and also about the steps taken on behalf of his client regarding initiation of the proceedings before the Appeal Court challenging the order passed by the learned Single Judge on 19th April, 2007. It was also mentioned in the said letter that the writ petitioners are the close relatives of the respondent No. 6 herein. The said letter dated 21st May, 2007 issued on behalf of the appellant to the Chairman, Bhatpara Municipality is set out hereunder:

Dated: 21.05.2007.

To The Chairman Bhatpara Municipality P.O. Kankinara Dist. North 24-Parganas

Dear Sir,

Re: Removal of Khatal of my client Noor Md. without implementing and/or making him as a party in the Writ Petition being W.P. No. 6655 (W) of 2007 (Mustaque Ahmed & Anr. vs. The Chairman, Bhatpara Municipality & Ors.) and sought an action against him.

My client: Noor Md.

Your letter dated 17.05.2007 was served upon my client on 18.05.2007 at about 4.30 P.M. just fifteen minutes after the closure of the Hon''ble High Court, Calcutta summer vacation only with a view to restrain my client to draw the fraudulent intention of the petitioner, who have succeeded to obtain an order from the Hon''ble High Court, Calcutta by playing a fraud upon the Hon''ble Court.

My client, since the life of his father Rajab Ali Mia, for the last 50 years is running a khatal as a sole owner upon the suit land i.e. 34, Chaltatala Road in Ward No. 8 and the said Akhtar Hossain has got no connection with the said plot of land. He is a fictitious person got up by the Police Authority and the Bhatpara Municipality only with a view to evict my client therefrom.

That the said Akhtar Hossain on the basis of fake and forged sale deed claiming the ownership of the said khatal and several proceedings both in Barrackpore

Civil Court and in the Hon''ble High Court at Calcutta are subsisting. A xerox copy of the order in Civil Revision matter being CO. No. 1107 of 2005 (Noor Md. vs. Hiralal Shaw & Anr.) is hereto annexed and marked with the letter "A".

A writ petition being W.P. No. 7123 (W) of 2007 (Noor Md. vs. The State of West Bengal & Ors.) has been filed by me on behalf of my client for inaction and/or non-action of Police authorities to protect both property and life of my client's family therein, wherein the said Akhtar Hossain and the police authorities have been impleaded as necessary parties.

That the petition of the instant writ petitioners have also got no connection with my client's said khatal, but the petitioners are close relatives of the said Akhtar Hossain, the respondent No. 4 herein.

That the respondent No. 1, running a gambling "Adda" with the kind patronage of the Jagatdal P.S. and also acting as "Police informer" to the local P.S. The respondent No. 1 is a worker in the Jute Mill and also doing illegal activities in the locale with the help of respondent No. 1. Both are close relative to the said Akhtar Hossain.

My client has a belief that this is a collusive Petition between your Municipality, Jagatdal Police authority and the said anti social Akhtar Hossain only to harass my poor Client. On the plea of the Hon''ble High Court order to which my client is not even a party thus the said order may not be binding upon my client.

Therefore I on behalf of my above client give you this notice that my client is neither a tenant nor a ordinary occupier of the said Khatal, but he is a sole owner since for the last fifty years and he is enjoying the said Khatal peacefully without any interruption and/or obstruction whatsoever.

It is further to bring into your kind notice that since 1951 my client has been granted all sort of statutory license by you including the certificate of enlishment in favour of my client as a sole owner.

In the circumstances do not take the advantage of the Hon''ble High Court closure for summer vacation as I am taking necessary steps to prefer an appropriate appeal before the vacation bench of the Hon''ble High Court at Calcutta and till then please do not take any steps therein failing which my client will suffer irreparable loss and injury.

I, on behalf of my above client, undertake to communicate the order, so passed by the Division Bench of the Vacation Court of the Hon''ble High Court at Calcutta and even this, if you proceed with the order which has no binding upon my client, then you shall be responsible for the same.

Thanking you,

Yours faithfully, Sd/- (Kamal Hamid) Advocate"

33. Thereafter, the learned Counsel of the appellant also served another notice

dated 22nd May, 2007 upon the Chairman, Bhatpara Municipality to the effect that the appeal preferred by the appellant herein would be taken up for consideration by the Hon"ble Vacation Bench on 25th May, 2007. The text of the said notice is set out hereunder:

"Dear Sir(S),

22.05.2007.

I am acting on behalf of my above client Noor Md. of 34, Chaltatala Road, Kankuiara, 24-Parganas.

This is to inform you that I have mentioned the above appeal before the Hon"ble Justice Jyotirmay Bhattacharya and the Hon"ble Justice Partha Sakha Datta (Vacation Bench) seeking for a leave to file the instant appeal against the order passed by the Hon"ble Justice Soumitra Pal on 19.04.2007 in W.P. No. 6655 (W) of 2007 (Mustaque Ahmed & Anr. vs. The Chairman & Ors.) when Their Lordships after considering the urgency of the matter allowed a leave to file the instant appeal with leave petition along with stay application affirmed by my above client with a direction upon me to serve a copy of the same upon you and fixed the hearing of the instant appeal on 25th day of May, 2007 in your presence.

Therefore, please accept a copy of leave petition along with a copy of stay application with all the complete annexures and acknowledge the receipt of the same with a request to appear at the time of hearing of the instant appeal otherwise the matter will be heard in your absence.

Kindly attend the court at the time of hearing on 25.05.2007.

Thanking you,

Yours faithfully, Sd/- (Kamal Hamid) Advocate"

34. The Chairman, Bhatpara Municipality in his affidavit filed before this court also admitted that the said notice dated 22nd May, 2007 was received by him on 23rd May, 2007. The relevant extract from paragraph 4(g) of the affidavit filed by the Chairman, Bhatpara Municipality is set out hereunder:

"4(g). That on 23.05.2007 the department of the Municipality received a letter from Mr. Kamal Hamid, Advocate which was sent to me along with other several documents received in the filing Section. At about 7 p.m. on 23.5.2007 those documents were found on my table; I distributed all papers to the concerned, departments for their comments....."

35. In spite of receiving the aforesaid communications dated 21st May, 2007 and 23rd May, 2007 from the learned Counsel of the appellant herein, the Chairman, Bhatpara Municipality hurriedly plunged into action with the help of the police force and on 24th May, 2007, removed the Khatal of the appellant by force with an intention to frustrate the proceedings initiated by the appellant herein and pending before the Division Bench of this court. The steps taken by the

Chairman, Bhatpara Municipality as discussed hereinabove, should be viewed seriously so that nobody can dare to play with the court of law like the said Chairman, Bhatpara Municipality. The writ petitioners also approached this Hon"ble court with unclean hands and are guilty of gross suppression of material facts.

36. We are convinced that the writ petitioners had acted at the behest of the respondent No. 6 herein in connivance with the Chairman, Bhatpara Municipality and suppressed material facts from the learned Single Judge in order to obtain an order behind the back of the really affected party, namely, the appellant herein. The appellant herein suffered serious prejudice due to the illegal acts and/or actions of the Chairman, Bhatpara Municipality. In our opinion, it is a fit case where an appropriate order should be passed by this court directing maintenance of status quo ante as prevailing on 23rd May, 2007 so that the Chairman, Bhatpara Municipality and other conspirators including the writ petitioners and the respondent No. 6 herein can understand and realise the implications for misleading this Hon"ble court with mala fide intention and ill motive.

37. For the identical reason, the said Chairman and the other conspirators namely, the writ petitioners and the respondent No. 6 herein should also pay exemplary costs assessed at 300 G.Ms. each. The aforesaid costs assessed by us should be paid by each of the aforesaid conspirators namely, the Chairman, Bhatpara Municipality, the writ petitioners and the respondent No. 6 to the appellant herein within two weeks from the date of this order.

38. From the records we also find that 30 buffaloes were kept in the buffalo shed at the premises in question by the appellant herein, which according to the appellant, was removed on the fateful day by the men and associates of the Chairman, Bhatpara Municipality in presence of the police authorities, although the Sanitary Inspector in his report mentioned that only 4 buffaloes were kept in the buffalo shed at the premises in question at the relevant time. Furthermore, according to the said Sanitary Inspector of the Bhatpara Municipality, other buffaloes were removed beforehand by the appellant herein.

39. In the aforesaid circumstances, we direct the Superintendent of Police, 24-Parganas (North) to look into the matter personally and to find out the whereabouts of the buffaloes, which were admittedly, kept in the buffalo shed at the premises in question as recorded in the report of the Sanitary Inspector, Bhatpara Municipality. The living buffaloes cannot evaporate all of a sudden and, therefore, it is directed that upon conducting proper enquiry, Superintendent of Police, 24-Parganas (North) will ascertain the fate of the buffaloes, which were kept in the buffalo shed at the premises in question and not found after the raid conducted by the Bhatpara Municipality with the help of the police personnel on 24th May, 2007.

40. We also make it clear that we have not decided whether the appellant would be entitled to run any Khatal in the premises in question. Upon restoring the

status quo ante at the premises in question in terms of this order, the Chairman, Bhatpara Municipality would be entitled to take appropriate decision regarding running of the Khatal at the said premises in question after taking note of the fact regarding the pendency of the Title Suit No. 199 of 2003 and the order passed by the learned Civil Judge (Junior Division) at Barrackpore in the said proceeding.

41. With the aforesaid observations and directions, this appeal and the connected application stand disposed of with costs as mentioned hereinabove. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Kalidas Mukherjee, J.

I agree.