

(2011) 12 CAL CK 0093

Calcutta High Court

Case No: W. P. No. 921 of 2011

Shree Shree Isswar Benode
Behary and Sree Sree
Binodeswar Mahadeva and
Another

APPELLANT

Vs

Kolkata Municipal Corporation
and Others

RESPONDENT

Date of Decision: Dec. 23, 2011

Acts Referred:

- Constitution of India, 1950 - Article 21

Citation: (2012) 3 CHN 140

Hon'ble Judges: J. N. Patel, C.J; Sambuddha Chakrabarti, J

Bench: Division Bench

Advocate: Amritaa Pandey and Ms. Anamika Pandey, for the Appellant; Anindya Lahiri, Advocate, for respondent No. 13, Md. Nizamuddin, Advocate, for respondent Nos. 9 and 10, Mr. N.C. Behani, Advocate, for the Pollution Control Board, Mr. Debangshu Mondal, Advocate, for the Kolkata Municipal, Corporation, for the Respondent

Final Decision: Dismissed

Judgement

Sambuddha Chakrabarti, J.

This writ petition is directed against an alleged wrongful action or inaction by the respondents authorities in not passing necessary orders against the private respondent, i.e., respondent no. 13 and thereby allegedly abetting conversion of a residential building into a factory premises which, according to the petitioners, is causing noise pollution and also endangering the heritage building.

2. There are two petitioners here. The petitioner no. 1 is a deity and the petitioner no. 2 is the sole trustee of the trust. They are owners of a certain premises which has been declared a heritage building by the Kolkata Municipal Corporation which carried an instruction that before undertaking any addition or alteration etc. of the

said building a prior intimation to the Chief Municipal Architect & Town Planner of the Kolkata Municipal Corporation who is the respondent no. 5 to this writ petition has to be made for getting necessary clearance of the Heritage Conservation Committee.

3. According to the petitioners this building houses the deity of Lord Shri Shri Krishna and the residential quarters for the priests and Maharajas are also in the said building. Therefore, the petitioners say that this building falls under the category of silence zone as per the provisions of the Noise Pollution (Regulation and Control) Rules, 2000. A part of the ground floor has been let out to some tenants and the rental income is utilized for the maintenance of the building and the benefit of the deity. The respondent no. 13 is a tenant in respect of one room on the ground floor of the building since 1979. Since inception of the tenancy he has been carrying on a business under the name and style of Messrs. Singh Iron and Steel Company.

4. According to the petitioner the said tenant had installed a heavy plant and machinery for the purpose of cutting iron sheets by digging plinth area inside the building without obtaining any permission. He was served with a notice to stop such work as the use of such heavy machinery was detrimental to the conservation of the building. The vibration caused by the machine has resulted in several cracks of the building. The operation of the machine also creates a sound above the prescribed decibel limits.

5. The further allegation of the petitioners is that in the presence of the respondent no. 13 a test of the Ambient Air Quality Standards in respect of noise generated by the machine was conducted by a recognized and accredited laboratory from which it will be evident that the operation of the machine was causing constant sound pollution above the prescribed limits for a silence zone. This act on the part of the respondent no. 13 is also violative of the municipal laws with regard to a heritage building as also the conversion of the use of the building as mentioned in the relevant schedule to the Kolkata Municipal Corporation Act. The petitioners further suspect that no prior permission from the municipal authorities had been obtained as is required under the relevant provisions of the said Act. Similarly no prior permission from the West Bengal Pollution Control Board (hereinafter referred to as "the Board") or the West Bengal Fire and Emergency Services had also been obtained which are mandatorily required before use of such a heavy machinery in any building.

6. Apart from this, the petitioners have also raised an issue that their right to practice religion has also been hindered and disturbed by this noise and the inmates of the building are also being disturbed by the wrong act of the respondent no. 13.

7. In spite of the existence of the relevant statutory provisions and in spite of the petitioners' request to the concerned respondent authorities no inspection has been conducted nor any action has been taken by the respondents for the

preservation and protection of the said building. The notice to the concerned respondents demanding justice has also not produced any result. On the contrary they are in the process of granting licences and regularizing the conversion of the use of the building without appreciating that the building was a heritage building. The petitioners assert that without a no-objection from them such regularization or grant of licence cannot be permitted. Thus, the respondents are aiding and abetting the offences of the respondent no. 13 in violation of the West Bengal Fire Services Act and the building rules and regulations of the National Building Code of India.

8. To ascertain the actual state of things the petitioner made an application under the Right to Information Act to the respondent no. 6 which has not been answered.

9. Aggrieved by the said act the petitioner has come up with the present application, inter alia, praying for an order directing the respondents to ensure compliance of the said statutory provisions by the respondent no. 13, a writ in the nature of Mandamus commanding the concerned respondents to inspect the said building and to seal and stop the illegal use and operation of the heavy plant and machinery by the respondent no. 13 and its members, unit-holders, agents, servants etc. and a writ of Certiorari directing the respondents to disclose all permissions if they have been granted to the respondent no. 13 for running the heavy machinery in the tenanted premises and for other ancillary reliefs.

10. Mr. Anindya Lahiri, the learned Advocate appearing for the respondent no. 13 has submitted that the Board has already granted its "Consent to Establish" certificate to the respondent no. 13 for its unit located at the concerned premises to install grinding work (jobbing and machining work) and to discharge liquid effluents through outlets and to emit the gaseous emission in accordance with the conditions as have been mentioned in the said certificate.

11. Mr. Behani, the learned Advocate appearing for the Board, has refuted the allegations contained in the petition that the Board has not taken any step in this matter. He has submitted certain documents and submits that the complaint was referred to the Public Grievance and Assistance Cell (hereinafter referred to as "the Cell") of the Board. One Junior Environmental Engineer of the Board has also inspected the concerned premises and met certain representatives. It appears from the said inspection report that there are other shops also located in the same building which includes a steel company and a printing press. In the locality also there are other steel shops which are adjacent to the building in question. The inspection report further records that the shops are all located on the rented rooms of the trust building for the last 40 years and the respondent no. 13 had installed a steel cutting press machine with 20 HP motor.

12. Mr. Behani further submitted that the Cell of the Board had given both the complainant as well as the respondent no. 13 equal opportunity of hearing but unfortunately on various dates the complainant was not present. From the records

of the proceedings of the Cell of the Board it appeared that March 26, 2011 was the date fixed for a hearing when none appeared for the parties. But the record of proceedings noted that an inspection was conducted by the said Cell of the Board and no significant pollution aspect was noticed. The Cell was further of the view that it seemed that mainly a civil dispute between the parties existed and the Board had nothing to do in this regard. It was also directed that the inspection report was to be communicated to the Commissioner, Kolkata Municipal Corporation for his consideration and adjudication of the matter. From the record of the proceedings of the hearing on November 3, 2011 it further appears that the representative of the respondent no. 13 was present but nobody appeared on behalf of the complainant. The concerned Cell noted that there was no need for further action in this regard and they disposed of the matter from the Cell of the Board.

13. From the document produced in Court on behalf of the Kolkata Municipal Corporation it appears that the Executive Engineer (C), Project Management Unit, Kolkata Municipal Corporation had inspected the premises and gone through the records available to him. The report makes certain observations from which it appears that 10 to 11 shops are situated on the south-west and south-east side of the temple complex and all the open shops deal with steel sheets, beams, rods etc. The Executive Engineer (C) in his report had very specifically observed that no severe superficial distress was observed in the building. But they could not assess the quantum of impact of the machinery installed by the respondent no. 13, if any, on the building unless some scientific test and analysis could be done at the site. Since the Kolkata Municipal Corporation did not have any infrastructure, if the cost is borne by the owner and/or the private respondent, the Corporation may request the university as chosen by this Court to undertake the test and analyse whether the vibration caused by the machine would make any harm to the building in the long run.

14. The learned Advocate appearing for the petitioners was not willing to get the matter referred to any university. We had specifically enquired of the learned Advocate appearing for the petitioners about it and they seemed very resolute in their refusal to a fresh reference to any university or any other authority. On the contrary she was insisting on the acceptance of the report conducted by a private body to which we have already referred.

15. Thus, it appears that much of the grievances of the petitioners is not borne by the records of the case. Their main grievance that the respondents authorities had not taken any step towards the matter even after receiving complaints is not correct and on the contrary when the Cell of the Board was dealing with the complaint and gave hearing to the parties the complainant himself was not represented by any representative on various occasions. This clearly showed the lack of seriousness on the part of the petitioners in pursuing their remedies before the appropriate authority. On the contrary, from the record of the proceedings of the Cell it appears

that there existed a civil dispute between the petitioners and the respondent no. 13 which is apparently supported by a copy of the challan produced in Court showing deposit of rent and other charges in favour of the landlords thorough the Rent Control.

16. That apart the inspection report of the Kolkata Municipal Corporation had clearly held that no severe superficial distress was observed in the building. The said report further records that about 10 to 11 shops located in the temple complex deal with tin sheets, beams, rods etc.

17. Thus, the claim that only the respondent no. 13's acts were causing sound pollution is not factually correct. It appears from these reports that the premises is located at such a place where one cannot prevent all noises.

18. It appears that apart from the petitioner there are many shops in and around the temple which also deal in tin sheets, beams etc. and the sound caused by the private respondent no. 13 should not be the only disturbing factor. It is not clear why the respondent no. 13 alone has been targeted in the petition. This lends some justification to the observation made by the Board. If the whole purpose of this petition would have been to make the temple free from all sorts of sound pollution the sound caused by other shops as well would have been specifically mentioned therein. On the other hand the main relief sought for in the petition is to direct the respondent no. 13 to seal and stop the operation of the heavy plant and machinery for the purpose of cutting tin sheets. This being the position we cannot really subscribe to the submission that this petition was filed in the genuine public interest as the interest against the respondent no. 13 is quite obvious. If the petitioners are really aggrieved by any unauthorised use of the tenanted premises or by the sound caused by the respondent no. 13 they most certainly can approach the appropriate forum under the relevant tenancy Act. But a Public Interest Litigation may not be used for the same.

19. The learned Advocates for the petitioners have relied on the judgement of the apex Court in the case of Forum, Preservation of Environment and Sound Pollution Vs. Union of India and Another. reported in AIR 2005 SC 136. It has been laid down therein that nobody can indulge into aural aggression and if anybody indulges in any such act then that person is really violating the right of others to a peaceful, comfortable and pollution free life guaranteed by Article 21 of the Constitution of India. Since we have already found from the reports of the statutory authorities that the premises concerned is located in an area such were shops are not a totally unknown or when the noise caused by the respondent no. 13 could not be ascertained and the petitioners also were not willing to refer the matter to any of the universities as suggested by the Kolkata Municipal Corporation we do not think that the grievance of the petitioners can be entertained in a public interest litigation. All said and done the complainant had not attended regularly the hearings before the relevant Cell of the Board suggesting that he was not serious in pursuing his

remedies before the appropriate forum. The conduct of the petitioners thus, has made some space for the allegations of the respondents that there is more in this petition styled as a Public Interest Litigation than what is apparently visible.

20. After considering relevant materials and after hearing the learned Advocates for the respective parties it appears that this application does not contain any element of being treated as a Public Interest Litigation. In the case of [Ashok Kumar Pandey Vs. The State of West Bengal and Others](#), the apex Court observed that when there is material to show that a petition styled as Public Interest Litigation is nothing but a camouflage to foster personal disputes the petition is to be thrown out. The Supreme Court further held that there must be real and public interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe. A public interest litigation cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge or enmity. It appears from the records produced by Mr. Behani that the Board had also come to a similar finding that the dispute between them was basically a civil dispute and a Public Interest Litigation is not permissible to settle personal disputes. The allegations contained in the writ petition are quite vague. Moreover, if the petitioners had really been very seriously disturbed by the noise created by the respondent no. 13 they would have attended the hearing before the Board and ventilated their grievances before the appropriate authority. The petitioners are thereby estopped from making any allegation that the statutory authorities are aiding and abetting the wrongful act of the respondent no. 13.

21. It does not appear that the petition has been filed to espouse any obvious public interest nor do we find that the same has been filed for the welfare of the people which has been highlighted by the Hon"ble Supreme Court in [Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others](#). It is not clear from the petition how the public in general have been affected by the acts of the respondent no. 13. The Public Interest Litigation should not be very lightly used as a means to a further aid unless a positive element of public interest is shown to be rooted in it. We do not find any such element in this petition. The petition deserves to be dismissed and it is so dismissed.

22. There shall, however, be no order as to costs.

23. I agree.