

(2016) 07 CAL CK 0043

CALCUTTA HIGH COURT

Case No: Writ Petition No. 53 of 2014

Ansar Ahmed

APPELLANT

Vs

The Kolkata Municipal
Corporation

RESPONDENT

Date of Decision: July 11, 2016

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 425-A, Section 425B, Section 425-C, Section 425D

Citation: (2016) 4 CalHCN 659 : (2016) 3 CalLJ 246 : (2017) 1 CalLT 305

Hon'ble Judges: I.P. Mukerji, J.

Bench: Single Bench

Advocate: Mr. Jishnu Saha, Senior Advocate, Mr. Surojit Chakraborty, Mr. Abhrajit Mitra and Mr. Biswarup Bhattacharjee, Advocates, for the Petitioners; Mr. Ashok Kr. Banerjee, Senior Advocate, Mr. Alope Kr. Ghosh, Mr. Fazlul Haque, Mr. Achintya Kr. Banerjee and Mr.

Final Decision: Disposed Off

Judgement

I.P. Mukerji, J. - Michael Madhusudan Dutta lived in the nineteenth century. He was born on 5th January, 1824. He died on 9th June, 1873 before attaining the age of 50 years.

2. His life was erratic. He was born of conservative parents. He converted to Christianity, thinking that this would help him to come to the same level as the British masters of India. His father, a lawyer of the Sadar Dewani Adalat and the Supreme Court which functioned prior to establishment of this High Court, disowned and disinherited him. He went to England and became a barrister. He was a complete failure. He started writing english poetry. Nobody read them. Then he turned to writing in Bengali which brought him lasting fame and made him a household name.

3. He was a rare genius. It is difficult to come across a more charismatic poet. When all the poets burnt their midnight oil, trying to make lines of a verse rhyme, Michael wrote poetry and epics, in the form of poetry, without rhyming. Yet, he produced verse that were more rhythmic than conventional poetry. He became immortal. But his life was more tragic than the fame that came to him. He was poverty stricken. His family was broken. He died a disillusioned and lonely man.

4. He never resided in one place for a long time. He moved from place to place. He is said to have spent some years of his later childhood, just prior to adulthood in a house in Kidderpore which is now numbered as premises no. 20B, Karl Marx Sarani, Kolkata-23 which has been declared to be a heritage building by the Kolkata Municipal Corporation. The present owners, the petitioners, acquired this house in 1990. They challenge this declaration.

5. Now, I will discuss the matter more detail.

6. The petitioners purchased this property on 4th January, 1990. On 11th May, 1999 the Kolkata Municipal Corporation mutated their names in their records. On 19th August, 1999 this mutation was cancelled on the ground that the building in the property had been declared as a heritage building. According to the petitioners it was only on their receipt of a reply dated 23rd July, 2008 to their application under the Right to Information Act that they came to know that the Government of West Bengal by a resolution dated 6th October, 1997 constituted an "Expert Committee on Heritage Building." Its task was to identify heritage buildings within the Kolkata Municipal Corporation area. On 2nd November, 1998 this Expert Committee published a report identifying inter alia the above premises as a heritage building and recommending that it be declared as heritage because according to them Michael Madhusudan Dutta resided there. On 10th December, 1998 the Government sent this list to the Commissioner Kolkata Municipal Corporation for action under the Kolkata Municipal Corporation Act, 1980. On 17th April, 2000 the Heritage Conservation Committee of the Kolkata Municipal Corporation declared 828 buildings as recommended by the said Expert Committee, as heritage. It was sent to the Mayor-in-Council. It approved it on 21st September, 2000.

7. In my opinion, the division bench judgement of this court in Kamal Dey, Editor and Publisher Barta Nyay v. Director General, Archeological Survey of India, New Delhi (WP 27784 (w) of 2014) with Manturanjan Das v. State of West Bengal (W.P. No. 6773 (w) 2015) with Asish Das v. Registrar General (W.P. No. 7502 (w) 2015) with Partha Ghosh v. Hon"ble High Court at Calcutta (W.P. No. 213 of 2015) together with connected matters reported in 2016 (1) CHN (Cal) 329 is very important for disposal of this case. Whether the Calcutta High Court main building was heritage or not was in issue in that case. Four public interest writ applications were assigned to that bench. The grievance was against construction of the AC plant within this High Court for air-conditioning selected parts of it. Construction had been completed. The writ petitioners said that this project was against the law relating to preservation of

heritage buildings.

8. Now, by the above recommendation of the Heritage Conservation Committee, the High Court was included in this list of 828 buildings which were declared to be heritage. Mr. Justice Jyotirmay Bhattacharya delivering the judgement of the Bench expressed doubt whether the Corporation had applied its mind to the recommendation of the Heritage Committee.

9. I insert paragraphs 16 and 17 of that judgement.

"16. The said Expert Committee submitted its final report to the State Government on 2nd November, 1998. The report was discussed in a meeting on 1st December, 1998, which was presided over by the Hon"ble MIC, Home (Police) and I and CA Departments and attended by, inter alia, the Hon"ble MIC Urban Development Department, and the Hon"ble Mayor of Kolkata, the Principal Secretary, Urban Development Department, the Secretary, Municipal Affairs Department, the Chief Executive Officer KMDA etc. It was decided in the said meeting that the list recommended by the Committee would be sent to KMC for the acceptance and for taking suitable actions towards the preservation and conservation of those heritage buildings/sites in terms of the KMC Act, 1980 (Amendment). The KMC accepted and adopted report in principle.

17. On perusal of the said foreword we find that the Corporation did not form any independent opinion that the High Court building should be preserved and conserved for historical, architectural, environmental or ecological purpose on the basis of the recommendation of the Heritage Conservation Committee and also of the Mayor-in-Council. As a matter of fact, excepting the list of heritage building as on 25th February, 2009 published by the Kolkata Municipal Corporation no further material has been produced before us to show that such declaration was made by the Municipal authority on the basis of any recommendation of the Heritage Conservation Committee and also of the Mayor-in-Council. In the absence of those materials we have no hesitation to hold that declaration of the heritage status of the High Court building by the Kolkata Municipal Corporation was not made by the Kolkata Municipal Corporation in adherence to the provision contained in Section 425B of the said Act."

10. Then if one reads paragraphs 63 and 64 of the judgement, one would tend to form the impression that the above finding was only provisional. The Municipal Authorities and the State were given an opportunity to unearth the records and find out whether the Mayor-in-Council and the Corporation had applied their mind in declaring the High Court as heritage building.

11. I insert paragraphs 63 and 64 of that judgement:

"63. We have already held above that on the basis of the materials placed before us regarding the declaration of the High Court Building as heritage building, such

declaration made by the Corporation is not valid and effective as such declaration was not made on the basis of the recommendation made by the Heritage Conservation Committee and the Mayor-in-Council in terms of the provision of Kolkata Municipal Corporation Act.

64. However, if the Municipal authority and the State Government ultimately find from their records that the declaration of the High Court Building was made by the Municipal authority in terms of the provision contained in Chapter XXIIIA of the Kolkata Municipal Corporation Act on the basis of the recommendation of the Heritage Conservation Committee and of the Mayor-in-Council, and not merely on the basis of the State Government's recommendation then legality of such construction no doubt will depend upon the decision of the Heritage Conservation Committee in terms of the provision contained in Section 425E of the Kolkata Municipal Corporation Act. As such we make it clear that in the event it is found by the Municipal authority and the State Government that the High Court building was declared as heritage building by the Municipal authority by following the provision of the Municipal Laws then the Heritage Conservation Committee should also be involved for ascertaining as to whether any part of such construction which is made, destroys the heritage status of the said building and in the event it is found that heritage status of the building is destroyed by such construction, then the heritage building should be preserved and/or restored in the manner as it is required by rectification of such construction as per the recommendation of the said Heritage Conservation Committee. Needless to mention here that if it is found that declaration of the heritage status of the said building was not made in accordance with the Municipal law, then Heritage Conservation Committee need not be involved for ascertaining as to whether the impugned construction destroys the heritage status of the said building or not."

In this matter no materials were produced which would impel this court to form an opinion, different from that of Mr. Justice Jyotirmay Bhattacharya, that there no material to suggest that the Mayor-in Council and Corporation had properly dealt with the issue of declaring the buildings annexed to the recommendation of the Heritage Committee, as heritage.

12. As the subject premises is also included in the list, doubts remain whether this exercise was properly done or not.

13. The unreported decision of this Court in the case of Purti West Enclave Private Limited & Anr. v. Kolkata Municipal Corporation & Ors. (W.P. No. 146 of 2010) decided on 31st March, 2016 is also very relevant to decide this case. The Court held that the statute gave finality to the decision of the Corporation, declaring buildings as heritage. The Kolkata Municipal Corporation Act, 1980 did not provide a machinery to challenge this declaration. This Court was entitled to examine the correctness of this decision exercising its jurisdiction under Article 226 of the Constitution of India. That jurisdiction was very limited. If on the face of the records

the building did not show any characteristics so as to classify it as a heritage building, the Court could set aside the declaration of heritage status by the Corporation.

14. I quote a very important passage from this judgment:

"In my opinion, the title introducing the chapter as well as Section 425B should be looked into. First of all a building should be fit enough to be declared as a heritage building. If it is fit enough it is to be preserved and conserved. A building may be architecturally imposing and beautiful. But there may be numerous other buildings of the same architecture and equally beautiful. The same kind of building may have been built over several decades. In that case there would be nothing to preserve or conserve in the building because it is very common and likely to be built again. But if the construction of a building reflects an architectural technique, which is to some extent unique and confined to a particular era, then a historian has to think whether the building is to be preserved and conserved. It is not just the architectural beauty and uniqueness that should be taken into account. Whether the building is part of our heritage should be considered. When considering the heritage of a building, its historical importance is also relevant.

Therefore, the Heritage Committee in my opinion has to make a very serious deliberation before declaring a building as a heritage building. More so because when a building is declared as heritage, the owner is deprived of many of his ordinary rights of dealing with the property.

Now, if one examines the reason advanced by the committee for declaring the said building a heritage, one is bound to feel very disappointed. No details are given. The owner of the building and the public are entitled to know why the building is declared as heritage. It is very common for part of the building to "extend over portico". It is also very common for a building or a portico to be arcuated or curved. Why was 22, Park Street declared as heritage building? What is the historical importance of this building? What is the architectural significance and originality of this building? All these reasons had to be given but had not been given. It appears as if the committee went on an inspection spree of buildings of the city and tabulated hundreds of them, often without any cogent reason at all.

For these reasons also any declaration of heritage status of 22 Park Street is set aside.

In those circumstances, both the declaration of 22 Park Street as a heritage building and its classification or gradation as Grade-I is set aside.

This writ application is accordingly allowed."

15. The facts are a little different here. The classification is not under architecture.

16. The classification is made under the heading: residence of eminent personalities. The classification is entitled - "residential." Then the names of eminent personalities are listed. Against each eminent personality the premises in which he resided is mentioned. Premises 20B Karl Marx Sarani is amongst four premises relating to Michael Madhusudan Dutta, declared to be heritage.

17. There are no facts, documents etc. on record, considered by the Committee before declaring 20 Karl Marx Sarani as heritage. There is also no evidence of the consideration made by the Mayor-in-Council and the Corporation at the time of approving the said recommendation.

18. The writ petitioners argue that Michael Madhusudan Dutta never resided in the said premises. They say there is no evidence to suggest this. Mr. Jishnu Saha appearing for them laid the following facts before this Court:

19. In 1874 one Balai Behari Sarkar transferred a portion of the land within the property now numbered as 20B and 20F Karl Marx Sarani, Kolkata- 700 023, comprising of 3 cottahs to Harimohan Banerjee. Banerjee purchased the remaining portion of the said property comprising of 9 cottahs from the other owners of the property.

20. Subsequently, one of the heirs of Harimohon Banerjee, Bany Lal Banerjee became the owner of 20B and 20F. It is said that till 1931, the legal heirs of Bany Lal Banerjee were in occupation of 20B and 20F. On or about 20th November, 1941, 20B and 20F Karl Marx Sarani were sold, in a court auction to various persons. The purchasers mutated their names in the assessment records of the Kolkata Corporation. These purchasers are the direct predecessors-in-interest of the writ petitioners.

21. Mr. Ashok Kumar Banerjee, appearing for the Kolkata Municipal Corporation made most captivating submissions. He said that Michael Madhusudan Dutta was very gifted but wayward. He moved from place to place. As recorded by his client he spent the years of his adult life in residential accommodations in Rabindra Sarani, Wood Street and 22 Beniapur Road. According to Mr. Banerjee, he also spent some time in Uttarpara. This place is not recorded by the Heritage Commission as the residence of the poet, because it does not fall within the Kolkata Municipal Corporation area. What is most important according to Mr. Banerjee is that Michael spend some years of his later childhood and early adulthood at 20B Karl Marx Sarani. He referred to an article published in the monthly magazine "Bharatbarsha", 2nd Year, 2nd Vol, Issue No. 5, Baishakh 1322 Bangabda equivalent to 1915 AD entitled "Madhu-Smriti" written serially by Nagendranath Som which was later published as a book " Madhu-Smriti" by Gurudas Chattopadhyay. With those series of articles, a photograph of the subject premises was published and identified as the residence of Michael Madhusudan Dutta during the said period.

22. He also drew this Court's attention to the monthly magazine "Manasi O Marmabani" a Monthly Magazine, 20th Year, 1st Vol, Issue No.3, Baishakh 1335 Bangabda equivalent to 1928 AD containing an article "Rangalal" written serially by Manmathanath Ghosh. These articles were also later published in the book "Rangalal" by Gurudas Chattopadhyay. The selfsame premises were identified as the residence of the great poet during his later childhood and early adulthood years.

23. Although some submissions of Mr. Banerjee were off the record, their contents are so much a part of our history and culture that this court notes them. He said that Michael's father Rajnarayan originally belonged to Jessore, in undivided Bengal. He was a lawyer by profession. He migrated to Calcutta and set up practise in Sadar Dewani Adalat and in the Supreme Court. When Madhusudan embraced Christianity, his father disowned and disinherited him. Thereafter, he left 20B Karl Marx Sarani and moved from place to place. He revisited the place to see his mother.

24. When a building is declared as heritage, under the Kolkata Municipal Corporation Act, it imposes great restrictions on the owner or occupier of the property, to deal with it.

25. The writ petitioners want this Court to set aside the declaration of this building as heritage.

26. This would remove all restrictions on the owners and occupiers to preserve the building as a heritage property.

27. Some uniform principles should be applied in declaring a building as heritage. We are here only concerned with buildings where an eminent personality is said to have resided.

28. In order to declare a building as heritage on the ground that an eminent personality lived there, first of all, it must be established very clearly that the personality actually resided there at some point of time. Secondly, the person must be so famous that a significant number of persons are or would be interested in his place of residence. Thirdly, the duration of stay is very important. The period of stay should not have been temporary or transient. For example, Rabindranath Tagore was born in Jorasanko and spent a substantial part of his life there and in Santiniketan. He also visited several places in India and outside India and stayed in each place for a temporary period. A significant number of persons would not be so interested in those places where he stayed for a day or two or a week.

29. They would be interested in Jorasanko and Santiniketan. Therefore, those places which Rabindranath visited for a short duration of time may not be declared as heritage and perhaps have not been so declared. Therefore, the duration of stay and the interest of a significant number of persons in that place of residence is a very important consideration for the Heritage Commission in declaring the

residence of an eminent personality as a heritage building.

30. The only evidence advanced by the Corporation are two publications by Gurudas Chattaopadhyay, "Madhu-Smriti" and "Rangalal". Both the books are by the same publisher. They consist of articles published from 1915, more than 40 years after the death of Michael Madhusudan Dutta.

31. At the close of hearing Mr. Banerjee placed an article by Indrajit Chowdhury published in Kolkata Purashree in April, 2005 describing 20B Circular Garden-Reach Road, which was the previous name of Karl Marx Sarani as the residence of Michael Madhusudan Dutta.

32. Against this evidence are the official records produced on behalf of the petitioners which have trace the ownership of the said premises up to 1874. At least, from 1874 onwards there is nothing in the official records to suggest that Michael's father Rajnarayan or his successor in interest owned the property. Of course, there is no record prior to 1874 and Michael Madhusudan Dutta is said to have lived in the said premises some 30- 40 years or so prior to 1874.

33. The owner of a heritage building cannot sell it, save and except to a purchaser who would buy the building but do nothing further with it. He has to keep on maintaining and preserving it. Now-a-days this kind of a sale is rare. If a building such as the subject premises which is a large and long building is acquired by a purchaser, he is surely, likely to develop it by its destruction and erection of a new modern building or a block of buildings.

34. As valuable civil rights of the owner are involved, if there was a dispute regarding the residence of Michael, it was the duty of the Expert Committee or the Heritage Commission to give a notice to the petitioners. Putting up a notice on the Board of Corporation, inviting objections or publishing an advertisement signifying its intention to declare a host of buildings as heritage, was in my opinion, not a proper way of dealing with the issue. After all on being declared a heritage building, the rights of the owner were affected. Notices should have been served properly on all owners. The petitioners should have been called for a hearing, to hear their objections. Upon hearing them and considering the evidence produced by them, the Commission ought to have taken the decision.

35. The above evidence was insufficient, in my opinion, to come to a firm conclusion, that the subject building was occupied by the family by Michael Madhusudan Dutta and that the poet lived there in his formative years. Neither is there any evidence to suggest that at that point of time he did not live there and lived in some other place.

36. The great poet lives in the sentiments of the people of Bengal. By now they have come to know that the Heritage Commission has identified premises No. 20B Karl Marx Sarani, Kolkata- 700 023 as the place of residence of the poet in his later childhood and early adulthood. Although the evidence is not sufficient as, I have

said, the Corporation has acted on some materials. I see no justification at this point of time to set aside the recommendation of the Heritage Commission.

37. In 2001, the State legislature enacted the West Bengal Heritage Commission Act, 2001. Another body was created. It was called the West Bengal Heritage Commission. It had the power, inter alia, to advise the State Government with regard to "Heritage Conservation" (See: Section 11(2)(i)(xv) of the Said Act). Sub-Section 3 thereof goes to the extent of saying that no local body, (which includes the Kolkata Municipal Corporation) shall take any step for "preservation, conservation or restoration of any heritage building" against the advice of the Commission. I find from a reading of Section 11(1) that a local authority has a duty to refer identification of a heritage building to the Commission.

38. The Heritage Commission was represented by learned Counsel, at the time of hearing of this application.

39. I think, in the circumstances, I should refer the declaration of the subject building as Heritage to the Commission, to review and reassess the view taken by the said Expert Committee and the Heritage Conservation Committee endorsed by the Corporation. This review or reconsideration should be done following the guidelines given in this judgement and upon notice to the petitioners upon hearing them or upon giving them an opportunity of hearing and by a reasoned decision within three months of communication of this order. I order, accordingly. If the decision of the Heritage Commission is that the recommendation of the Heritage Conservation Committee was correct, then that is the end of the matter. If the decision is that it was incorrect, then the decision of the Commission will be send to the Mayor-in-Council under Section 425B of the Kolkata Municipal Corporation Act, 1980 and, thereafter, to the Corporation for final approval of the same. The Corporation should be able to take the decision, if so required within a further period of eight weeks from the date of communication of the decision of the Heritage Commission. The Corporation will not ordinarily interfere with the decision of the Commission. If it does, it has to be supported by detailed reasons.

40. These two writ applications are, accordingly, disposed of.

41. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.