

06.11.2024.

WPA 26534 of 2024
With
CAN 1 of 2024 & CAN 2 of 2024

Bally Sarvajanik Chath Puja Samity & Ors
Vs
The State of West Bengal & Ors.

Mr.Sakya Sen, Ld.Senior Counsel,
Mr. Jayanta Sengupta,
Mr.Ayan Mitra.

.....for the applicants in CAN 1 of 2024 & CAN 2 of 2024.

Mr.Partha Sarathi Bhattacharya, Ld.Senior Counsel,
Mr.Samrat Pal,
Mr.Saugato Mitra,

.....for the writ petitioners.

Mr.Dipanjan Datta,
Mr.Dipendu Narayan Banerjee,
Ms.Mahua Dutta Biswas,
Mr.Subrata Dasgupta.

.....for the State.

The intending intervenors are the owners of the property and seek recall of this Court's order dated October 30, 2024, by dint of which the Court has permitted celebration of "Chhat Puja", at the river bank (Ghat), within the premises of the property in question.

Thus two applications have been preferred. Those are for recalling of the order of this Court dated October 30, 2024 and addition of the applicants as parties in the writ petition, respectively.

Mr.Sen, Learned Senior Counsel, appears for the applicants. He has emphatically and elaborately submitted as to how misrepresentation and fraud has been committed upon the Court, to secure an order as above, behind the back of the applicants/property owners. He submits that the applicants have deliberately not been made parties in the writ petition. He would say that the applicants are the necessary parties, in absence of whom the writ petition could not have been properly adjudicated or, in fact, would have to be dismissed at the very threshold. According to Mr.Sen Learned Senior Counsel, reliance placed by the writ petitioner upon the earlier orders of this Court, particularly that dated November 9, 2023, is only a misplaced reliance. According to him, the said order of the Court, allowing "Chhat Puja" at the same premises is not an order simply permitting Puja, but also contains several directions issued to the police authority, particularly to take into

consideration and decide the objection raised by the applicants, regarding performance of “Chhat Puja”, in the said premises, owned by them. It is indicated that the police was directed to search out an alternative suitable place/ Ghat within the locality, for performance of the Puja. Allegedly, there has been an absolute disregard for and disobedience by the police authorities, of the order of the Court, as above, in so far as no steps have yet been taken by it for compliance of the directions of the Court, as above. On the contrary, the said order has been referred to, not in its proper perspective but in a manner to mislead the Court. That, the writ petitioner was allowed to perform Puja at the premises, only when no other suitable alternative place could be arranged for that. Therefore according to the applicants, there would not be any unrestricted, freehold right available to the writ petitioner to make use of the ‘khas’ property of the applicants, involving a large section of the population. Mr.Sen, Learned Senior Counsel would also indicate that on October 1, 2024, the applicants, in apprehension of such mischief, had written to the respective police and the administrative authorities, requesting to take appropriate action against any possible misuse of the property premises by an outsider, but to no avail. Neither any steps have been taken by the said authorities with respect to the said representation, nor the State has ever disclosed the same, in the Court, when the matter was heard. Hence, according to the applicants, who seek to join as parties in the case after recall of the order dated October 30, 2024, the said order is a nullity due to fraud and misrepresentation. Also that, the applicants being the owners of the property and having propensity to be adversely affected by an order of the Court with respect to the said property, would have been the necessary parties in the writ petition, without whom the matter could not have been properly adjudicated. Thus violation of the vital rights of the applicants, due to the alleged illegal action of the writ petitioner as well as the State, has been pleaded here. Mr. Sen Learned Senior Counsel would rely on a judgment of the Supreme Court in support of his argument that fraud and misrepresentation vitiates all, that is reported in **(1994) 1 SCC 1 [S.P.Chengalvalavaya Naidu vs Jagannath]**.

Mr.Bhattacharya, Learned Senior Counsel represents the writ petitioner/now the respondent. He would firstly challenge the very maintainability of the instant applications. He would say that upon disposal of the writ petition vide Court’s order dated October 30, 2024, the same has become ‘*functus officio*’. Hence, no miscellaneous application can be taken out, to revive the proceedings. The only remedy is to prefer an appeal, against such order. In this regard, he would refer to a judgment of the Hon’ble

Supreme Court, reported in **AIR 1987 Supreme Court 943 [State of Uttar Pradesh vs Sri Brahm Datt Sharma and Another]**. He has stated that as per the settled law, a person, even if not a party to a proceeding but affected adversely by an order thereof, would be entitled to challenge the same before the higher forum. Hence, that the application for recall of the Court's order dated October 30, 2024, would not be maintainable, Mr. Bhattacharya says. To buttress his such submission, he has relied on a judgment of the Hon'ble Supreme Court reported in **AIR 1974 Supreme Court 994 [State of Punjab now Haryana and Others vs Amar Singh and Others]**. Mr. Bhattacharya, Learned Senior Counsel would further say that due to the reason of "Chhat Puja" having been performed at the same place for years together, since 1996, the right to continue performance of Puja would emanate from the legitimate expectation evolving from the doctrine of past performance, though no particular form of legal right being existent there. He would refer to the letter of the writ petitioner dated October 25, 2024, to say that the petitioner has sought for permission to perform Puja and ultimately has been granted, subject to certain conditions, which the petitioner is ready and willing to perform. He would strongly deny the allegations of commission of any fraud and misrepresentation as alleged by the writ petitioner and submit that the instant applications are liable to be dismissed.

Mr. Sen Learned Senior Counsel would reply that the applicants being adversely affected by an order of the Court, in a case in which they have deliberately not been made party, would not be denuded with the power to seek recall of that order, even if no appeal has been preferred by them against the said order. He would distinguish the judicial pronouncements relied on by Mr. Bhattacharya, Learned Senior Counsel, as not to be applicable in this case.

Mr. Datta has appeared for the State and submitted a report in Court. He submits that the police authority would never determine about the rights of the parties in the property. He submits further that the police authority is duty bound to comply with the Court's order. In this regard, he would inform the Court that in terms of order dated October 30, 2024, necessary, proper and adequate arrangements, have already been undertaken by the said authority. He would deny about any allegation of connivance with the writ petitioner as alleged, to help it to illegally occupy and mis-use the property for the purpose of Puja.

The Hon'ble Supreme Court has held in **S.P. Chengalvalavaya Naidu (supra)** that fraud is an act of

deliberate deception with a design to secure something by taking unfair advantage of another. Cheating intended to get an advantage, would be fraud, according to the said judgment of the Supreme Court. Noticeable is that the applicant, has pleaded virtually nothing as to what advantage or unlawful gain the writ petitioner would possibly achieve, for its act of alleged and so called deception. On the contrary, the Court finds that the applicants though having reasonable apprehension as expressed in their letter before the police and the administration, have failed and neglected to take steps in order to protect their rights, if any, over the property or to save it from alleged mis-use or being intruded as alleged. The applicants, thus, neither can be called a diligent litigant to be eligible for an equitable remedy, nor can be held to have been able to bring on record with sufficient precision, that fraud in accordance with law, has been committed upon them by the writ petitioner. The writ petition has already been disposed of. The applicants would have other remedies available, if adversely affected by the order of the Court. So far as recall of the order of the Court is concerned, within the limited scope of the existing and prevalent laws as regards the same, the present applications would not be maintainable.

Hence, CAN 1 of 2024 and CAN 2 of 2024 in connection with WPA 26534 of 2024, are dismissed.

(Rai Chattopadhyay)