

LAWCHAKRA.IN
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Sabyasachi Bhattacharyya

And

The Hon'ble Justice Uday Kumar

F.M.A.T. No.172 of 2024

IA No: CAN 1 of 2024

CAN 3 of 2024

Mr. Shuvendra Mullick

-Vs-

Mr. Indranil Mullick and others

For the Appellant : Mr. Suddhasatva Banerjee
Mr. Prantik Garai

For the Respondents : Mr. Siddhartha Banerjee
Mr. Ayan Dutta
Ms. Debjani Sengupta
Mr. Rajib Mullick
Ms. Ayantika Saha

Heard concluded on : 22.01.2025

Judgment on : 10.02.2025

Uday Kumar, J.: -

1. The prayer of appellant /plaintiff for discontinuation of the operation of the CCTV cameras installed inside the dwelling house with immediate effect made under Order XXXIX Rule 1 and 2 read with Section 151 of Code of Civil Procedure, 1908, in Title Suit No. 530 of 2024, was rejected by the Learned Judge, VIIIth Bench, City Civil Court on 4th April, 2024. This order is impugned in this appeal.

- 2.** Late Gora Chand Mallick, the father of appellant/plaintiff and respondent/ defendants had settled at the Mullick Bhaban, his double storied dwelling house, at 9/1/1A, Khelat Ghosh Lane, under Jorabagan Police Station, in a private trust for the enjoyment of his sons, by executing a trust deed, which was lying in the custody of respondents.
- 3.** Primarily, the name of appellant was not inducted in the said trust deed. Later, his name was incorporated therein after modification and rectification of the earlier deed by devising three (03) registered deeds executed by Late Gora Chanda Mallick on 8th December 2004, with the intention to induct the name of the appellant as a co-trustee and to accredit his position in the trust. Accordingly, the north-eastern corner on the first floor and the south-western corner on the second floor of the undivided dwelling house i.e., Mallick Bhaban, were allocated to the appellant. Both, the appellant and the respondents have been residing peacefully in the respective portion allocated to them in the house as a co-trustee, since then. The appellant and his wife were living there while his son Souvanik Mallick was residing abroad in connection with his job.
- 4.** Subsequently, in 2022, the respondents decided to install dome shaped surveillance CCTV cameras in and around the suit property for the purpose of keeping vigil on the precious collections and for the protection and security of valuable property and rare antique pieces, preserved in the dwelling house, but they did not communicate this decision to the appellant.

5. Consequently, a total nine cameras with motion detection features were installed therein, out of which five (05) were installed in the interior portion of the dwelling house allocated to the appellant at the first and second floor, without his or his son's consent. These cameras were focused at the door, windows and interior of the appellant's share, intentionally to keep vigil over the appellant's day-to-day activity, amounting to threat on his right to privacy. In addition to that, the appellant had no access or control over those surveillance cameras, their records, contents and management to verify the recordings.
6. The appellant became aggrieved by the installation of the surveillance cameras in the interior portion of the dwelling house because it was causing hindrance in his unbridled right for enjoyment of his property as a co-trustee. He felt that such act of the respondents was detrimental to the appellant's right to privacy. As such, the appellant conveyed his concern to the respondents, but they did not pay any heed to his dissent.
7. Therefore, he was compelled to inform this matter to local police station at Jorabagan by filing a letter of complaint on 1st November, 2023, upon which, the police visited there and advised the respondents to maintain peace and tranquillity by not causing any annoyance to the appellant. But said advice was in vain, as the respondents continued to keep those cameras inside the property. So, the appellant approached the local police again on December 15, 2023 by filing a letter of complaint, but the respondents became hostile towards the appellant due to repeated complaints to the police.

8. Apprehending danger to his life, health and safety, the appellant filed a petition under Section 144 (2) of Code of Criminal Procedure, 1973 before the Executive Magistrate, upon which Misc. Case No. 41 of 2024 was started, wherein a report was called for from the Officer-in-Charge, of Jorabagan P.S. and he was directed to keep vigil over the locality to prevent any incident of breach of peace and tranquillity, however all went in vain.
9. Therefore, appellant instituted this suit on 2nd April, 2024 for declaration:
 - a. of legal and equitable right of plaintiff/appellant for enjoyment of the suit property with dignity and,
 - b. of indispensable right of plaintiff/appellant to have a say in the installation of the surveillance cameras in and around the suit property and,
 - c. of right to remove any threat, nuisance or annoyance caused to him due to unauthorized installation of surveillance cameras and,
 - d. of right of the plaintiff/appellant to access the records relating to the surveillance cameras installed without his consent and its management.
 - e. Therefore, he prayed for
 - i. mandatory injunction directing the respondents / defendants to remove the surveillance from the suit property and,

- ii. to deliver the records of the surveillance cameras which were preserved for the whole period of installation and,
 - iii. for perpetual injunction to prohibit the defendants/ respondents from doing any acts or omissions of installation of surveillance cameras in the property without the consent of the plaintiff.
- 10.** He also prayed for an order to stop the operation of the surveillance cameras installed inside the dwelling house with immediate effect by his application for temporary and ad-interim injunction under order XXXIX Rule 1, 2, and Section 151 of Code of Civil Procedure, 1908, made in Title Suit No. 530 of 2024. The Learned Judge, Bench-VIII, City Civil Court refused his prayer after considering the material on record. He concluded thereupon that these CCTV cameras were installed in 2022 and were functioning since then, but appellant never complained to any authority regarding the infringement of his right to privacy being jeopardized by the installation of these cameras. Rather, the respondents/defendants were directed to file their show cause within 15 days from the date of receipt of the notice as to why the application of temporary injunction filed by the plaintiff / appellant shall not be allowed.
- 11.** Appellant challenged this order on the ground that
 - a. Privacy of the appellant was continuously violated by the CCTV cameras installed by the respondents, but the Learned Trial Judge failed to appreciate this fact.

- b. He also failed to appreciate that the CCTV cameras were facing towards the internal portion of the house allocated to the appellant/petitioner and were pointing towards his bedroom.
 - c. The cameras were installed without the consent of the appellant, a co-trustee of the property.
 - d. The respondents are clandestinely recording the activities of the appellant illegally and unconstitutionally.
- 12.** As such, appellant prayed for setting aside of the impugned order on the ground that the Learned Trial Judge passed this order without application of mind as he did not appreciate the photographs attached with the injunction application, which reveal how his right to privacy was continuously infringed, and the order suffers from infirmity and illegality, and is bad in law.
- 13.** Mr. Suddhasatva Banerjee, Learned Counsel for the appellant, submitted that these cameras are installed in the corridors and in the common passage and are pointing towards the entrance of the bedroom, intentionally, to keep continuous vigil on the activities of appellant, which amounts to intrusion in his privacy, but the Ld. Trial Judge refused the prayer of ad-interim injunction on flimsy ground. Therefore, he prayed for setting aside of the impugned order.
- 14.** On the other hand, Mr. Siddhartha Banerjee, Learned Counsel for the respondents, submits that the suit property was the dwelling house of late Gora Chand Mullick and his descendants. A number of old and valuable art and artefacts were preserved there. The possibility of theft of those articles or mischief with those articles by someone always

remained. As such, proper steps for protection of these articles from imminent threat of theft or mischief could be provided by installing CCTV cameras. None of the CCTV cameras were focused on the door of the appellant. All are installed in the common passage and the entrance gate. These CCTV cameras were not installed with the intention to cause any intrusion on the privacy of any person. However, the respondents wereready to shift any of such cameras which caused any nuisance to the appellant, and they also agreed to provide common access to pictures, data and the records of CCTV cameras. One camera was installed inside the hall to protect many small pieces of valuable artefacts kept openly, which could be easily removed by anyone.

- 15.** In reply, Learned Counsel for the appellant submits that there was no threat of theft to any of the articles. The respondents have suddenly taken the decision to install CCTV cameras unilaterally and such decision was unjustified. He further submits that in case of any security threat, security staff could have been deployed and the privacy of a person cannot be breached.
- 16.** The pivotal issue involved in this appeal is whether installation of CCTV cameras in the residential portion of a dwelling house, without consent of co-trustee would amount to violation of his right to privacy?
- 17.** In view of the order dated 13th January, 2025, Ms. Devlina Lahiri was appointed as a Special Officer for inspection of the premises i.e., Mallick Bhaban in respect of the position of the CCTV cameras and the possibility of infringement of privacy of appellant thereby. Accordingly,

the learned Special Officer submitted her report along with photographs of CCTV cameras and details of location of each camera and focused towards the inside and outside of the building after inspection. This report reveals that: -

- i. Camera Nos. 1 & 2 were installed inside the boundary of Mullick Bhaban facing towards the main gate.
- ii. Camera No. 3 was installed at the south-east corner of the common corridor leading to the staircase and focused on the common corridor area and vacant space upon entering the inside the residential wing of Mullick Bhaban.
- iii. Camera No. 4 was installed on the first-floor staircase landing inside the residential wing, focused on the staircase leading to the second floor.
- iv. Camera No. 5 was installed at the north-east corner of the common corridor of the residential wing focused on the common corridor of the residential wing inside the building.
- v. Camera No.6 was installed in the north-east corner inside the room of the Late Gora Chand Mullick on the first floor and focused on the inside of the room of Late Gora Chand Mullick.
- vi. Camera No. 7 was installed in the north-west corner of the common corridor of the building focused inside the room of Late Gora Chand Mullick.
- vii. Camera No. 8 was installed at the balcony adjoining the TV room on the first floor of residential wing, focused towards balcony and car parking area.

- viii. Camera No. 9 was installed at the connecting corridor between the residential and non-residential wing and focussed towards the car parking area and main entrance gate.
 - ix. Camera No. 10 was installed at the south-east corner of the 'Hall Ghar' primarily focused inside the 'Hall Ghar' where ceremonies and small gatherings were held.
 - x. Camera No. 11 was installed at the north-west corner of the 'Hall Ghar', but was inoperative at the time of inspection.
 - xi. Camera No. 12 was installed at the south-east corner of the common corridor of residential wing and focused on the common corridor of the residential wing.
 - xii. Camera No. 13 was installed at the north-west corner of the common corridor of residential wing, but was inoperative at the time of inspection.
 - xiii. Camera No. 14 was installed at the south-east corner inside the room of Late Gora Chand Mullick on the second floor of the residential wing focused towards inside the room of Late Gora Chand Mullick.
 - xiv. Camera No. 15 was installed on the north-west corner inside the room of Late Gora Chand Mullick on the second floor of the residential wing focused towards the room of Late Gora Chand Mullick.
- 18.** The report of the Special Officer shows that out of 15 cameras only five cameras are installed inside the residential wing of the building, recording of which may cause annoyance for the individual. Two

among them (camera number 11 and 13) were found inoperative at the time of inspection.

19. We find that Camera Nos. 5,10,11,12, and 13 are installed in the common corridor or passage and hall room, and that these cameras are focused towards residential portion of the dwelling house. Continuous recording of activities of appellant in the internal area of his dwelling house are violating his privacy. As such, appellant prayed for stopping of the operation of those cameras, which are focussed on the door, windows and rooms of the appellant.
20. It is true that the right of privacy is a precious right of an individual. In *Justice K.S. Puttaswamy (Retd.) and Anr. vs Union of India*, AIR 2017 SC 4161, the Supreme Court has ruled unanimously that the right to privacy of every individual is guaranteed and protected by Article 21 of the Indian Constitution, as it is an intrinsic part of the right to life and personal liberty. The dignity, autonomy and identity of an individual shall be respected and cannot be violated in any condition. The right to privacy is also recognized as a fundamental right in International Covenant on Civil and Political Rights. This right is fundamental to protect the inner sphere of the individual.
21. Therefore, we are of the view that installation and operation of CCTV cameras inside the residential portion of dwelling house without the consent of co-trustee/appellant would amount to restrictions in his right to free enjoyment of property, and violation of the appellant's right to privacy.

- 22.** In view of the above deliberations, we are convinced that operation of CCTV Camera nos. 5, 10,11,12,13 installed inside the residential portion of the suit property definitely affects the unbridled right of the appellant to enjoy his property with dignity. As such, he deserves to get order for restraining of the operation of such camera, which appear to invade the fort of his intrinsic right to privacy.
- 23.** Accordingly, the appeal succeeds.
- a. The impugned order dated 4th April, 2024 is set aside.
 - b. Respondents are restrained from using and operating the aforesaid five cameras which were installed inside the residential portion of the dwelling house.
 - c. However, parties are at liberty to take an alternative measure for security of valuable articles preserved in the building.
 - d. Parties shall enjoy joint control over the CCTV cameras, their record and management.
- 24.** Consequently, FMAT 172 of 2024 is disposed of in the light of the above observations, but without any order as to costs.
- 25.** CAN 1 of 2024 and CAN 3 of 2024 are disposed of accordingly.
- 26.** Interim order/orders if any, stands vacated.
- 27.** Urgent photostat copy of this order shall be provided to the parties, in consonance of the existing law and rules.

I agree

(Sabyasachi Bhattacharyya, J)

(Uday Kumar, J)