

Item No.33
20.02.2023
Court. No. 19
GB

WPA 841 of 2023

Kalipada Sardar
Vs
The State of West Bengal & Ors.

Mr. Supratick Shyamal,
Mr. Koushik Banerjee,
Ms. Somoshree Dutta

...for the Petitioner.

Ms. Sipra Majmdar,
Ms. Sangeeta Roy

...for the State.

The Pradhan of Mallickpur Gram Panchayat shall treat the writ petition as a representation and dispose of the same in accordance with law.

The report filed in court, does not indicate who was responsible for the alleged construction of the temple on L.R. Dag No.112 of Mouza-Beralia. The Pradhan has not indicated that the respondent nos.10 and 11 are responsible for the alleged construction. The Pradhan has only indicated that a temple had been constructed around six years ago and the persons in the locality visited the temple to offer their prayers.

Under such circumstances, the writ Court is not in a position to determine the issue as to whether the said temple is unauthorized and without permission from the authority. The persons responsible for the alleged construction and all persons interested in such construction must be given opportunity to make their submissions, before any order is passed.

While doing so, the following procedure shall be adopted:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.10 and 11 and all other interested parties to ascertain whether there is any construction on the land in question. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.10 and 11 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.
- c) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties. The question of title, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The questions to be decided by the panchayat authorities would be whether the construction has been made without any permission and/or in violation of the building rules.

- e) A hearing shall be given to the petitioner and the respondent nos.10 and 11. The parties must also be allowed to furnish their written objection/version to the respective reports and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)