

11 18.04.2023
RP Ct.No. 1

WPA(P) 174 OF 2022

Shamim Akhter
vs.
State of West Bengal & Ors.

Mr. Srijib Chakraborty
Ms. Riya Das ... for Petitioner

Mr. Dhiraj Trivedi
Mr. Amit Sharma
Mr. Varun Kothari
Mr. Hamidul Haque
Mr. Bhupendra Gupta
...for Respondent Nos.17 & 18

Sk. Md. Galib
Ms. Tanwishree Mukherjee
... for Board of AUQAF

Mr. Lalit Mohan Mahata, AGP
Mr. Prasant Behari Mahata
... for State

Mr. Alok Kumar Ghosh
Mr. Arijit Dey
... for KMC

1. By way of this public interest litigation the petitioner has sought for a writ of certiorari to quash the building plan which was sanctioned by the Kolkata Municipal Corporation on 29th October, 2021.
2. The case of the writ petitioner is primarily based upon a photocopy of the copy of the Assessment Book of the Kolkata Municipal Corporation in respect of Street No.39 and it is stated that the classification of the area is a burial ground. Therefore, it is submitted that no sanctioned building plan could have been approved by the Kolkata Municipal Corporation to permit construction on a burial ground. The petitioner had sent a legal notice on 6th April,

2022 to as many as eleven authorities and the Mutwalli of the concerned Wakf Estate and not even waiting for a reasonable time for such authorities to reply or act the instant writ petition has been filed on 20th April, 2022. On going through the records, which have been placed by the writ petitioner, we find that already the said Mutawalli has initiated action and the matter traveled to the WAQF Tribunal, Kolkata and the WAQF Tribunal passed an order on 9th June, 2015 and at present the AUQAF Board is in seisin of the matter. Thus, in the facts and circumstances, a writ petition in the nature of a public interest litigation at the behest of the petitioner cannot be entertained. Furthermore, we find that the AUQAF Board by a memo dated 8th December, 2022 requested the DG, Building, Kolkata Municipal Corporation, the Deputy Commissioner of Police, South East Division, Park Court and the Officer-in-Charge, Beniapukur Police Station, Kolkata to look into the matter so that nobody can make any construction work on the said land being premises no.39, Darga Road, Kolkata till the final decision of the Board.

3. The learned advocate appearing for the private respondent submitted it is not clear as to how the petitioner came into possession of the documents, which are privy only to the Mutwalli of the said WAKF Estate. We do not wish to make any observation in this regard as the appropriate authority is already in seisin of the matter. Hence, at this juncture, no directions as sought for can be

issued in this writ petition and the same is dismissed.

However, the parties and the WAQF Board are directed to proceed with the matter in accordance with law.

4. In the result, the writ petition is **dismissed**.

(T. S. Sivagnanam)
Acting Chief Justice

(Hiranmay Bhattacharyya, J.)