

D/L
Item No. 3
24.04.2023
KOLE

**MAT 606 of 2023
With
IA No. CAN 1 of 2023**

**Tarapada Sandhaki & Ors.
-Vs.-
The State of West Bengal & Ors.**

*Mr. Kamalesh Bhattacharyya,
Mr. S. P. Lahiri,
Mr. A. Pradhan,
Mr. Tapan Kr. Mahapatra,*

...for the appellants.

A judgment and order dated March 20, 2023, whereby the writ petition of the appellants being WPA 5202 of 2023 was disposed of, is under challenge in this appeal.

The writ petitioners approached the learned Single Judge with a prayer for a direction on the concerned Gram Panchayat to dispose of the application of the writ petitioners seeking permission to construct a temple on plot no. 1134 of Mouza Kalikakundu. The learned Judge disposed of the writ petition with the following observations:-

“Under such circumstances, the Lakhya No. 2 gram panchayat shall decide the entire issue by treating the writ petition as a representation, strictly in accordance with law.

It is made clear that if the panchayat authorities require the petitioners to file further applications and comply with the other formalities, they shall inform the petitioners, accordingly.

This Court has not gone into the merits of the allegations of the petitioners. The Panchayat authorities shall deal with the entire issue strictly in accordance with law and the rules.

It is made clear that necessary permission shall be given only if there are no-co-sharers in respect of the land in question and the concerned plan which has been submitted by the petitioners, conform to the requirements under the Building rules and Panchayat Act. The panchayat authorities may also require other interested parties, if any, including the petitioners, if further clarifications are required and it appears that there are other claimants in respect of the land in question”

The Pradhan of the concerned Panchayat had refused to accept service of the writ petition as would appear from the envelope returned by the postal department, which has been produced in Court. Let the same be kept with the records.

Learned Advocate for the appellants says that the documents on record would show that the Pradhan received the application for sanction on January 21, 2023 by post. Under Rules 27 and 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, the Panchayat is under an obligation to take a decision on such application within 30 days from the date of receipt of the application. Under Rule 30 of the said Act, the Panchayat is under an obligation to communicate its decision within 60 days from the date of receipt of the application. In this case, there has been no communication at all from the Panchayat. Hence, this is a case of deemed sanction. No further question of the Panchayat taking a decision on the application of the appellants can or does arise.

We have considered the submission made by learned Counsel for the appellants. From the affidavit of service filed in Court today, it is not clear that the Pradhan has actually

received notice of this application. Be that as it may, we are not inclined to pass any direction to the effect that this is a case of deemed sanction.

We direct the Pradhan of the concerned Gram Panchayat to grant an opportunity of personal hearing to one of the writ petitioners and/or their representative and take a decision as regards the application made by the appellants/writ petitioners seeking permission to construct a temple on the plot of land mentioned hereinabove. The appellants will be at liberty to urge all points before the Pradhan including the point of deemed sanction. The Pradhan shall complete the entire exercise and pass a final reasoned order within 30 days from the date of receipt of a copy of this order along with a copy of the writ petition. If the Pradhan is satisfied that this is a case of deemed sanction, necessary directions relating to construction will be passed by him.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

With the aforesaid modification of the order under appeal, the appeal and the connected application are disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)