

S/L 5
3.1.2023
Court. No. 19
sn

W.P.A. 25347 of 2022

Sk.Golam Murshed
VS
The State of West Bengal & Ors.

Mr.S.N.Mukherjee
Mr.Niraj Gupta
Ms.A. Nursat

...for the Petitioners.

Mr. L.M.Mahata
Mr.P.B.Mahata

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

Despite service, none appears on behalf of the respondent no.4. As this Court is not passing any mandatory orders in terms of the prayers made in the writ petition, but is relegating the entire matter before the competent authority to decide the allegation of unauthorized construction, the matter is taken up in the absence of the said respondent. Affidavit of service is taken on record.

The petitioner alleges that the respondent no.4 had raised a construction without any sanction from the Panskura-I Gram Panchayat. Although there are allegations with regard to the grant of patta and the prayers have been made for cancellation of the same before the panchayat authorities, the panchayat authorities cannot decide such issues.

The petitioner must approach the appropriate authority in this regard.

It is the contention of the petitioner that the property is a Wakf property. The petitioner claims to be the Mutwalli. The allegation is that the respondent no.4 had forcefully entered into the property and had raised a construction on the basis of the purported patta. The issue of encroachment cannot not be decided by the panchayat authorities and the petitioner must approach the Wakf Tribunal, in accordance with law.

The only issue to be decided by the panchayat authorities would be whether any construction had been made without any permission from the concerned authority.

The writ petition is disposed of with a direction upon the Panskura No.1 Gram Panchayat to treat the writ petition as a representation of the petitioner and dispose of the same in accordance with law.

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, the respondent no.4, a representative of the Board of Wakf and other interested parties. An advance notice of the inspection shall be served upon the 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 had been

continuing, the authorities may take such interim measures by stopping such construction.

- c) The 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 right, title, possession and boundary disputes, shall not be decided by the panchayat authorities. This order shall not be construed as an observation of the court with regard to the claim of the petitioner to be the Mutwalli of the Wakf.
- e) A hearing shall be given to the petitioner, the respondent no.4 a representative of the Board of Wakf and all interested parties. The parties must also be allowed to furnish their written objection/version to the said report 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, upon hearing the parties.

The entire exercise shall be completed within a period of four months from 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.)