

06.02.2023
Sl. No.12(ML)
srm

W.P.A. No. 28379 of 2022
Sri Sunand Prasad Shaw & Ors.
Versus
The State of West Bengal & Ors.

Mr. Debasish Chattopadhyay,
Mr. Loknath Paul,
Mr. Tirthankar Basu

....for the Petitioners.

Mr. Gausul Alam,
Mr. Yusuf Ali

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears either on behalf of the respondent No.9 or on behalf of the panchayat authorities.

The Court is not inclined to pass mandatory directions as prayed for. The matter is sent back to the appropriate authority for appropriate steps. The writ petition is taken up in the absence of the respondent No.9 who will be given adequate opportunity of hearing by the authority.

The learned Advocate-on-record for the petitioners is directed to add the Block Development Officer, Barrackpore-I Development Block, District-North 24-Parganas as a respondent to the proceeding, here and now.

The petitioners allege that the respondent No.9 and the authorities of Jethia Gram Panchayat had encroached into the land of the petitioners situated at 21, Ashok Mitra Road, Kanchrapara, District-North 24-Parganas.

According to the petitioners, 0.05 acres of land was donated to a free primary school. The remaining 0.46 acres was still recorded in the name of the petitioners. The petitioners claim that on a portion of the said vacant land, the gram panchayat had erected a temple and had installed a tube-well.

The Officer-in-Charge, Jetia Police Station has filed a report, which is taken on record. According to the report, the villagers had erected the temple. A tube-well was installed by the respondent No.9 in his personal capacity. When the petitioners protested, they were threatened and abused by the respondent No.9 and Bizpur PS Case No.173 of 2019 dated April 13, 2019 under Sections 341/323/506/34 of the Indian Penal Code has been registered against the said respondent No.9. The investigation is pending. The school authorities also submitted before the police that the land was attached to the school and was being used as a playground for the school.

Thus, while the petitioners assert their right, title and interest in respect of the land in question, the school

authorities, the respondent No.9 and the villagers have raised claim of possession and use of the land since long.

The issue with regard to the title, it is neither for the writ Court nor for the panchayat authorities to decide. However, as the petitioners submit that the panchayat authorities had constructed the temple and installed the tube-well, the writ petition is disposed of with a direction upon the Block Development Officer, Barrackpore-I Development Block, North 24-Parganas to treat the writ petition as the representation of the petitioners and dispose of the same in accordance with law, upon hearing the petitioners, the school authorities, the respondent No.9 and the Pradhan of the concerned gram panchayat.

A reasoned order shall be passed and communicated. If it is found by the concerned authority that the land continues to belong to the petitioners and the panchayat authorities had encroached thereupon, necessary directions shall be given by the Block Development Officer for steps to be taken in accordance with the provisions of Section 44 of the West Bengal Panchayat Act, 1973. However, if it appears that any member of the gram panchayat or the school or the respondent No.9 or the villagers were claiming rival interest and adverse possession in respect thereof, such

reason shall be recorded in the order to be passed and in that case, the remedy of the petitioners would be before the learned civil court.

A copy of the writ petition along with a server copy of this order be served upon the Block Development Officer, Barrackpore-I Development Block, District-North 24-Parganas.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)