

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri**

03.03.2023
37
as

MAT 8 of 2023
with
C.A.N. 1 of 2023

Subrata Debnath @
Nirapada Debnanth
Vs.
State of West Bengal & Ors.

Mr. N. N. Das,
Mr. P. Roy Basunia,
Ms. B. Singha.
...for the Appellant.

Ms. Rima Sarkar.
...for the Respondent no.7.

Mr. Subir Kr. Saha,
Mr. M. Rahman.
...for the State.

Order dated 5.1.2023 directing removal of illegal construction viz., a temple on Mahananda Barrage Division is the subject matter of challenge in the appeal.

Learned Advocate for the appellant submits that the learned Single Judge while directing initiation of proceedings under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 with regard to another alleged illegal construction viz., a shop did not give similar direction with regard to the temple. He also submits that the

writ petitioner does not have *locus standi* to institute the proceeding.

In response, learned Advocate for the respondents submits that the appellant had fairly considered before the 1st Court that he had no claim over the temple. This fact is also recorded in the order.

In response, learned Advocate for the appellant submits the recording is incorrect.

We have considered the materials on record. With regard to the plea of *locus standi*, we note that the illegal construction was made on public land. Every citizen has a right to invoke the high prerogative writ to direct respondent authorities to discharge its statutory duties. It is the statutory duty of the respondent authorities to remove unauthorized construction on public land.

Hence, institution of the proceeding by a citizen aggrieved by inaction of the respondent authorities to take appropriate steps against illegal encroachment on a barrage cannot be said to be illegal.

It is also noted in the impugned order that the appellant did not lay claim over the temple. In appeal they cannot turn around and oppose its removal from public property.

Hence, we are of the opinion that the impugned order does not call for interference.

Accordingly, the appeal and connected application are dismissed.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)