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Ct. no.39
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 22524 of 2022

**Subhash Mal & ors.
-Vs-
The State of West Bengal & ors.**

Mr. Soumitra Banerjee
Md. Giasuddin Molla
... for the petitioners

Mr. Gausul Alam
Mr. Ranjit Rajak
... for the State-respondent

Mr. Sourat Nandy
... for the respondent nos.14 & 15

This writ petition under Article 226 of the Constitution of India has been filed for restraining the respondents and their men and agents from causing any encroachment in respect of the plot No.668 within J.L. No.15, L.R. Khatian No.12 and 562 of Mouza Kismat Nispibiral, Police Station Sagardighi, District Murshidabad and/or causing illegal unauthorized construction on the aforesaid plot of land.

The brief fact of the petitioners' case is that the petitioners purchased the land in respect of plot No.669 measuring .07 decimal and plot No.673 measuring .04 decimal in L.R. Khatian No.12, J.L. No.15 and Khatian No.1183, 1510 and 1512 of Mouza Kismat Nispibiral within Sagardighi Police Station District Murshidabad in

the year 2009 vide Deed No.6526 dated 15th October, 2009. The petitioners are possessing said property including pathway on plot No.668 since purchase of the land. There is a *Sib Mandir* and *Durga* Temple just adjacent to the plot through which the petitioners have ingress and egress to their plot. The erstwhile vendor of the petitioners also used the portion of the land as a pathway and a written agreement was made by the vendor for such usage. The private respondent nos.9 to 17 are making illegal unauthorized construction of a *pucca mandir* without sanction plan with the political influence. In relation to the same, a proceeding under Section 144(2) of the Code of Criminal Procedure was initiated before the learned Executive Magistrate, Jangipur. The petitioners also filed an application under Section 156(3) of the Code of Criminal Procedure. The petitioners made representation for redressal of their grievance as well as submitted a letter seeking demand of justice before the appropriate authorities alleging of such illegal construction at the instance of the private respondents. However, no steps have been taken as yet. Hence, this writ petition.

Mr. Soumitra Banerjee, learned Advocate appearing on behalf of the petitioners submit that the construction of *pucca mandir* over the plot No.668 undertaken by the private-respondents no.9 to 17 is unauthorized and illegal since the same has been undertaken without any proper

sanctioned building plan. The said construction obstructs the easementary right of the petitioners of using a portion of plot No.668 as a pathway for their ingress and egress. He also indicates that no permission has been sought for by the private respondents from the Collector of the concerned District in terms of The West Bengal Religious Buildings and Places Act, 1985 (*in short, Act of 1985*) for constructing of such *pucca mandir*. He seeks for appropriate order for removal of the unauthorized construction.

On the contrary, Mr. Gausul Alam, learned Advocate for the State-respondents submits that the plot No.668 over which the construction of *pucca mandir* has been undertaken belongs to “*Sri Sri Sib Mandir*” measuring 3 decimals of land. The land of the petitioners is alongside the public road and therefore, the construction of the *pucca mandir* will in no way affect the ingress and egress of the petitioners. He seeks for dismissal of the writ petition. He files a joint inspection report, which is taken on record.

Copy of the joint inspection report is handed over to the learned Advocate for the petitioners.

Mr. Sourat Nandy, learned Advocate for private respondent nos.14 and 15 submits that the work of construction has been undertaken by the trustees on the basis of a sanctioned building plan issued by Pradhan, Baneshwar Gram Panchayet. Thus, there is no illegality

so far as the work of construction of temple/*mandir* over the land-in-question is concerned. He files a copy of the sanctioned building plan, which is taken on record. He also indicates that the provision of Sections 3 and 4 of the Act of 1985 does not apply to the facts and circumstances of the present case. He also seeks for dismissal of the writ petition.

Upon perusal of the sanctioned building plan, it is found that the construction of the temple has been sanctioned to be undertaken over plot nos.660, 661 and 668. The joint inspection report shows that a vacant portion in plot nos. 660 and 661 was used as ingress and egress by the petitioners in spite of existence of public pathway for the same purpose. It further records that there was a mud built *mandir* over the said plots and in plot no.668 there was an old *Durga Mandir*. Record of Rights annexed to the joint inspection report at page 5 records that 3 decimals of land belongs to “*Sri Sri Sib Mandir*” within plot no.668. Therefore, from the above materials, it is found that the work of construction has been undertaken on plots of land belonging to the *mandir*.

It has been strenuously argued on behalf of the petitioners that the entire construction is illegal since no permission from the concerned Collector under Sections 3 and 4 of the Act of 1985 has been sought for from the concerned authorities by the private respondents.

In order to appreciate the aforesaid contentions, it would be appropriate to reproduce the relevant provisions of the Act of 1985 as hereunder:-

“3. Bar to construction or conversion. – (1) No person shall construct any public religious building or convert any private building or public building or private place or public place into a public religious building within a radius of 250 metres of any existing public religious building or public religious place for a different religious community.

(2) Nothing in this section shall apply to any public place traditionally used for a long period as a public religious place.

Explanation. – The expression “any public place traditionally used for a long period” shall mean a public place used for a period of not less than twenty years.

4. Restrictions on use of public place for religious purposes. – (1) No person shall use any public place –

(a) as a permanent religious place, or

(b) save with the previous permission, in writing, of the Collector in the district, or of the Commissioner of Police in Calcutta, obtained in the prescribed manner, as a temporary religious place.

(2) Nothing in this section shall apply to any cremation ground or burial place, or to the holding of any function or taking out of any procession in connection with death or marriage, or to any purely social and secular function or religious procession.”

Upon bare reading of Section 3 of the Act of 1985 it manifests that no person shall construct any public religious building or convert any private building or public building or a private place or public place into a public religious building within a radius of 250 metres of any existing public religious building or public religious place for a different religious community. The fact of the case is not that the work of construction has been undertaken for a different religious community. Therefore, the bar of construction or conversion as provided under Section 3 of the Act of 1985 does not apply to the facts of the present case.

As far as the provision of Section 4 of the Act of 1985 is concerned, no case has been made that a public

place has been used for a permanent or temporary religious place. Thus, provision of Section 4 of the Act of 1985 also does not apply.

In light of the above discussion, the writ petition falls short of merit.

Accordingly, the writ petition being **WPA 22524 of 2022** stands dismissed.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(**Bivas Pattanayak, J.**)