

IN THE HIGH COURT AT CALCUTTA

**Civil Appellate Jurisdiction
(Appellate Side)**

MAT 1025 OF 2022

**With
IA CAN 1 of 2022**

Falguni Mukherjee

Vs.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellant	: Mr. Sabyasachi Chatterjee, Adv. Mr. Subhas Chandra Atha, Adv. Mr. Sayan Banerjee, Adv. Ms. Payel Paramanik, Adv. Mr. Badrul Karim, Adv.
For the Respondent No. 8	Mr. Subhabrata Dutta, Adv. Mr. Sanatan Panja, Adv. Mr. Aranya Saha, Adv.
For the State	: Mr. Lalit Mohan Mahata, Adv. Mr. Prasanta Behari Mahata, Adv.
For the Respondent No. 10	: Smt. Falguni Majhi, Adv. Mr. Debnath Ganguly, Adv. Mr. Supriyo Dutta, Adv. Ms. Aishwarya Pratihari Ganguly, Adv.
CAV On	: 27.09.2022
Judgment On	: 17.11.2022

Apurba Sinha Ray, J. :-

1. Being aggrieved and dissatisfied with the Judgment and Order passed in Writ Petition no. 5513 of 2022, the present Appeal has been preferred by the appellant on the grounds, inter alia, that the impugned judgment and order passed by the Hon'ble Single Judge is bad in law and is required to be set aside.

The factual matrix

2. The backdrop of this appeal may be encapsulated as hereunder:
- a) One Jagannath Ganguly, being the respondent number 10 herein, preferred one writ petition being number WPA 11714 of 2021 alleging, inter alia, that the present appellant constructed buildings without sanction plan from the concerned authority on an undivided plot in excess of her share and also without having the land converted into bastu. The Hon'ble Single Judge disposed of the said writ petition on 28.03.2021 asking the respondent no.10 herein, to approach the concerned Gram Panchayat Authorities by a fresh application and directing the said authorities to dispose of the said application with reasons after making necessary inspection on the spot and also taking evidence, both oral and written, from the concerned parties.

b) After giving opportunities to the parties, holding inspection on the spot in presence of parties, their learned Advocates, concerned BL&LRO, R.I., examining documents produced on the spot, and consulting records of Panchayat Office, the Panchayat Pradhan, Medinipur Gram Panchayat, Onda, Bankura, came to the conclusion that the Appellant constructed buildings without sanctioned plan on several plots, and without permission from the Authorities.

c) Thereafter the matter was sent to the Sub Divisional Officer, Bankura at the instance of the Pradhan, Medinipur Gram Panchayat, Onda, Bankura for taking appropriate action. The prayer for post facto sanction, submitted by the appellant, was rejected by the said Pradhan. The Sub Divisional Officer, Sadar, Bankura had given opportunities to the parties for being heard but the appellant did not appear before the SDO Bankura on two occasions citing medical grounds. The SDO, after considering the material before him and also after taking into consideration the reports submitted by the concerned persons, directed the appellant to demolish the structure constructed by her. Against the said order the appellant filed WPA No. 5513 of 2022 praying for issuing writ of mandamus commanding the respondents and their agents to cancel or set aside the memo number 238 / MGP dated 02.03.2022 issued by the Pradhan of Medinipur Gram Panchayat, Onda, district Bankura and also to cancel/set aside

the order dated 10.03.2022 passed by the Sub Divisional Officer, Bankura. Prayer was also made for issuance of writ in the nature of mandamus commanding the respondents and their agents to grant post facto permission and approval by the respondent authority in favour of the petitioner for construction of her house on her own land situated at plot nos. 473/712 and 473/713 which are classified as bastu and 473/714, 472, 475 which are classified as Tora without any further delay.

d) The learned Single Judge by order dated 22nd June 2022 disposed of the writ petition no. 5513 of 2022 by holding that there is no reason to interfere with the demolition order passed by the SDO, Bankura. The learned Judge has also directed the SDO, Bankura to take necessary steps for implementing the order of demolition at an early date, positively within a period of 8 weeks from the date of communication of the order.

The present appeal has been preferred against the said order.

Submission from the Bar

3. The Learned Advocate, Mr Chatterjee, appearing for the appellant, has submitted, in a nutshell, that the construction of dwelling house of the appellant was admittedly made without any sanctioned plan but the enquiry report and the other documents do not disclose the fact whether the

appellant would have been refused a sanctioned plan for the construction in question, if a valid application had been made prior to the construction. This question requires a scrutiny of the scheme under Section 23 of the Panchayat Act. Section 23 of the West Bengal Panchayat Act, 1973 deals with control and management of buildings in the gram Panchayat area, and, therefore, if the purpose of the said section is to manage and control the buildings, it has to be construed harmoniously with the proviso in Section 23, Sub-section 6 of the Act which particularly mentions about the 'construction made' and also prescribes a procedure for demolition and fine which may be imposed by the Authority.

4. It was also submitted that the inherent power of the Panchayat can be applied in this particular case since it is the State Government which has the power to waive the consequences which could be faced for contravention of Section 23(1) of the Act.

5. The learned Counsel has submitted several case laws in support of his contention. According to him, in certain circumstances, the post facto sanction can be granted and that has been highlighted in Life Insurance Corporation of India versus Escorts Limited and others 1986(1) SCC 3264, [particularly paragraph numbers 62 63 69]. The appellant has relied on 2021 SCC online SC 1247, Electro Steel Limited versus Union of India and others [paragraph numbers 85, 86 and 87]. The appellant has also cited case laws reported in 2022 SCC online SC 362 Pahwa Plastic Private Limited

and another versus Dastek NGO and others [paragraph numbers 64, 65 and 66] and Shrimati Lila Gupta versus Laxmi Narayan and others (1978)3 SCC 258 [paragraph numbers 25 and 10]. The appellant also relies on the Statement Object and Purpose of the West Bengal Panchayat Amendment Act 2017 and also invites this Court's attention to the contextual construction and in this regard the Learned Counsel has referred to Rai Vimal Krishna and others vs State of Bihar and others (2003) 6 SCC 401, West Bengal Gram Panchayat (Gram Panchayat Administration Rules) 2004, particularly chapter IV, Rule 32 of the said rules which deal with the grounds for withholding or refusing permission. The appellant also relies on Section 23(2) to West Bengal Panchayat Act 1973. The appellant further contends that it appears from the records of the proceedings of the Panchayat that the minutes of the meeting date 16.03.2022 was signed by the Pradhan of Gram Panchayat on 11.02.2022. This is a clear case of manufacturing of records for which Pradhan is liable to face criminal proceedings.

6. Mr Mahata, Learned Advocate appearing for the respondent Nos. 1 to 7 and 9 submitted that as per direction of the Hon'ble High Court in writ petition no.11714 of 2021, the Pradhan, Medinipur Gram Panchayat, Onda District Bankura passed an order on 03.01.2022, upon conducting an enquiry and physical verification, to the effect that Smt. Falguni Mukherjee constructed a two storied pucca structure with other structures on the L R plot nos. 473/712, 473 /713, 473/714, 472 and 475 of Krishnanagar, J.L.

no. 179 within the jurisdiction of the Onda Police Station in the District of Bankura. No sanction was obtained from the concerned Gram Panchayat as per provisions of Section 23(1) of the West Bengal Panchayat Act 1973 and even no application was made for sanction according to law and, accordingly, the Pradhan passed a reasoned order holding ,inter alia, that the appellant was only able to produce the ownership documents in respect of plot number 473/713 measuring 0.05 decimal of land, though construction has been made in respect of 7 decimals of land as would be evident from page numbers 71 to 76 of the application for stay. The matter was referred to the Sub Divisional Officer Bankura, the respondent no. 5, under Section 23(6) of the said Act for further course of action. The Learned Counsel has further submitted that for violation of the provisions of Section 4-C of the West Bengal Land Reforms Act 1955 i.e. for failure to obtain conversion of the classification of the land, an FIR has been lodged against the appellant under section 4-D of the West Bengal Land Reforms Act 1955 and Onda PS case no. being 110 of 2021 dated 05.07. 2021 has been registered which has culminated in a chargesheet. After giving due opportunity of hearing to the appellant and causing due enquiry by all the officials concerned and experts in the matter on 11th April 2022, the Sub Divisional officer Bankura passed the order of demolition holding, inter alia, that entire construction made by Shrimati Falguni Mukherjee over plot number 473/ 712, 473 /713, 473/714, 472 and 475 is without any sanction/ permission from the Panchayat. It was also held that out of the five plots on which the alleged construction was made, only plot no.

473/712 and 473/713 are bastu and the rest are Tora (agriculture land) as would be evident from page no. 94-96 of the application for stay. An application for post facto sanction was made in respect of plot number 472/713 measuring 1 decimal of land; though she could produce documents of ownership only in respect of 0.5 decimal of land. The Hon'ble Single Judge while passing the order observed that any interference with the order of demolition will lower the morale of the officers who resisted the temptation to regularise the illegal and unauthorised construction by accepting illegal gratification.

7. The learned Counsel appearing for the above respondents has further submitted that the provisions of Sections 23 (1) and 23 (6) prohibit the appellant from constructing any structure without sanction/ permission from the gram panchayat. Rule 26 of the West Bengal Gram Panchayat Administration Rule 2004 strictly prohibits granting of permission for construction unless the classification of the land is 'bastu' and/or the applicant produces conversion certificate from the competent authority. The decisions reported in 2022 SCC online SC 362 [paragraph 65] and 2021 SCC online SC 247 [paragraph 85], relied upon by the appellant, which state that the Environment (Protection) Act, 1986 does not prohibit Ex Post facto environment clearance, cannot have any manner of application in respect of law relating to building rules.

8. It has been also argued that the decision reported in (1986)1 SCC 264 relating to the Foreign Exchange Regulation Act 1973 and Section 29(1) of the said Act envisages that permission of the Reserve Bank of India may be given ex post facto for the economic interest of the country and there is no bar for granting Ex Post facto permission, if applied early. According to him, under the West Bengal Panchayat Act 1973 and West Bengal Gram Panchayat Administration Rules 2004, there is no scope for granting post facto sanction to the illegal and unauthorised construction under any circumstances and no prior application was made by the petitioner before construction. According to the Learned Counsel, in the decision reported in (2021)10 SCC 1, the Court observed that an unauthorised construction destroys the concept of planned development and places an unbearable burden on the basic amenities provided by the public authorities. The Court further held that it was imperative for the public authority to not only demolish such construction but also to impose penalty on the wrong doers involved. Admittedly, according to the Learned Counsel, in this instant appeal the appellant has not only constructed buildings and other structures without any permission/ sanction under the West Bengal Panchayat act 1973 but also violated the provisions of the West Bengal Land Reforms Act 1955 and, thus, the petitioner should be penalized in accordance with law besides the demolition of the unauthorised and illegal constructions without any further delay.

9. The Learned Advocate, Mr. Dutta appearing for the respondent no. 8, being the Pradhan, Medinipur Gram Panchayat, Onda District Bankura submitted that though the appellant challenged the memo no. 238/MGP dated 02.03 2022 issued by the Pradhan of Medinipur Gram Panchayat, Onda, District Bankura and the order dated 10.03.2022 passed by the Sub Divisional Officer, she did not challenge the order dated 03.01.2022 passed by the respondent no.8, and as such the said order is still subsisting and enforceable as on today. Section 23 of the Panchayat Act 1973 speaks that no person shall erect any new structure or new building or make any addition to any structure or building in any area within the jurisdiction of a gram panchayat except with the previous permission in writing of the gram panchayat. Upon a reading of the said provision, it is found that the said provision has been couched in a negative term and in view of such negative command, the provision in Section appears to be mandatory in nature. In support of the aforesaid contentions, reliance has been placed on a decision reported in (2019)9 SCC 789 [para 7]. It also appears from the said provision that the phrase 'previous permission' as mentioned therein goes to show that the word 'permission' is being qualified by the word 'previous' and ,therefore, it can be construed that taking prior permission is the intention of the Legislature and as such the same is sine-qua-non. With a view to buttress the aforesaid submission reliance has been placed upon a decision reported in (2010) 3 SCC 616 [paragraph 12 and 15]. In the said decision, it has been laid down that if there is any prefix to the aforesaid words either as prior or previous, it is mandatory on the part of the statutory authority to

take such approval and/or permission before action is taken. With a view to draw an analogy, section 392 of the Kolkata Municipal Corporation Act of 1980 was referred to. The said provision of the Act of 1980 is similarly worded. An identical issue came up for consideration before a Single Bench of this Court. In the matter of Lipika Das versus KMC reported in 2012 CHN Cal 65. It was categorically observed that post facto sanction is against the legislative mandate contained in sections 392 and 393 of the said Act of 1980. Therefore, post facto sanction as sought for by the appellant is contrary to the statutory mandate as envisaged in Section 23 of the Panchayat Act of 1973. Accordingly, Learned Counsel argued that the permission of the gram panchayat shall be subject to the rules, and, therefore, the respondent no. 8 is under a statutory obligation to follow the procedural prescriptions as enumerated under Rules 17, 23, 24, 26 and 27 of the Gram Panchayat Administration Rules 2004. In the instant case, admittedly the appellant never filed any application in the prescribed format disclosing the material particulars as required to be furnished in consonance with the Rules of 2004. Therefore, the order impugned herein does not warrant any interference.

10. The Learned advocate, Mr Meghnad Pal, appearing for the respondent no. 10 has submitted that admittedly, the appellant made a construction, without any sanctioned plan, of a two-storied brick built dwelling house along with covered parking space for cars , courtyard, cattle-shed with a single continuous boundary wall and the said construction was spread over

parts of plot no. 473/712 (Bastu land) for 473/713 (Bastu land), 473/713, 475 and 472 (all cultivable lands) and the size of the entire construction was 5886 square feet . The Learned Advocate has also argued that in plot no. 473/ 713, the appellant owns only 218 square feet out of 2616 square feet, but she has constructed to the extent of 1962 square feet. Though she has ownership of 152 square feet out of 1744 square feet in plot number 473 /714, she has constructed in the said plot to the extent of 872 square feet. In plot no. 475 she has ownership of 453.44 square feet out of 21800 square feet but she has constructed over 872 square feet of land. Similarly in 472 the appellant has ownership over 145.3 1 square feet out of 1308 square feet but she has constructed over 1308 square feet. Moreover, the appellant has constructed 872 sq. ft. out of 2180 sq. ft claiming that she has purchased 436 sq ft in plot Nos. 473/712. The Learned Counsel has further pointed out that there is no express provision for post facto sanction of an unauthorised construction under Section 23 of the West Bengal Panchayat Act. By referring to 23(6) of the West Bengal Panchayat Act 1973, the Learned Counsel has tried to impress that the opportunity of hearing to the owner as envisaged in this subsection is not dependent upon the discretion of the SDO concerned, but the demolition has to be carried out since Section 23(1) of the said Act is imperative and mandatory in nature as it starts with the word 'no'. In this regard, he has referred to case law reported in (2019)9 SCC 789 [Ebha Arjun Jadeja vs State of Gujarat]. The Learned Counsel has also submitted that the arguments of the appellant that there is a hidden provision for the post facto sanction in the word 'may' could have been

substantiated if there would have been a “, ” after the word ‘may’ appearing for the second time in Section 23(6) of the said Act. Moreover, if the intention of the Legislature was to regularize illegal Constructions then it could have enacted ancillary regulations to recover fines, regularization fees and specific regulations as to what can be regularized and what not. Construction over cultivable land and even unpartitioned, undivided bastu lands is also not possible without a ‘no objection certificate’ from the concerned department (in case of all lands except bastu land) and from the co-owners (in respect of undivided bastu land)and that post facto sanction in respect of other four plots of lands were also not sought.

Points for consideration

11. From the arguments, submission and also from other material on record, it transpired that it is an admitted case of the parties that the appellant has constructed over certain plot(s) of land without any sanctioned plan and also without obtaining conversion certificate of classification of lands from the competent authority. It is true that the appellant has taken the stand that she has submitted a prayer before the competent authority for granting post facto sanction in respect of the construction made by her. The record shows that the said prayer of the appellant was rejected by the competent authority and there is also an order of demolition passed from the side of the Sub Divisional Officer Bankura on the strength of the provisions under Section 23(6) of West Bengal Panchayat Act 1973. According to the appellant, as she submitted prayers for post facto sanction before the Sub

Divisional Officer Bankura or the Competent Authority, they should have allowed her prayers and as they failed to allow her prayers for post facto sanction, she has filed the Writ proceedings with a prayer for issuance of Writ of mandamus directing the Sub Divisional Officer or the Competent authority to allow her prayer for post facto sanction. The respondents oppose the contention of the appellant on the grounds, inter alia, that there is no such provision in the West Bengal Panchayat Act 1973 to allow the prayer for post facto sanction in favour of the appellant. The respondents have also alleged that the appellant has constructed a two storied buildings with car park, cattle-shed spreading over several plots of land within a continuous boundary line and in excess of her share. The respondents have further argued that there is no document on the part of the appellant to show that she has received necessary sanction from the panchayat or the competent authority for such construction. She has utterly failed to show that she has converted the land from agricultural to bastu with appropriate permission from the Competent Authority under West Bengal Land Reforms Act. The appellant, on the other hand, has submitted that she has constructed a building on bastu land and as such there is no need for taking permission from the competent authority for raising construction over Bastu land.

12. Needless to mention, the Writ Court or the Division Bench dealing with an order of Writ Court in an appeal, is not authorised under the law to go into details of the title of the parties to the land and it is also not authorised

to decide whether a person has encroached the land of others or has constructed on the alleged unpartitioned or undivided land. It is trite that the writ court or this Division Bench in appeal cannot go into the merits of the allegation that the person concerned purchased the land by means of fraud or by illegal means. There are other fora which are entrusted to deal with such issues under our scheme of law. Only question which drew our attention in this case is that whether the appellant is entitled under law to the ex post facto sanction from the side of the competent authority in the facts and circumstances narrated above and therefore, in our view this court should confine its query to the fact whether the appellant can pray for post facto sanction for any construction, after such construction is over under the Panchayat Act 1973 . Therefore, the points for consideration are as follows

Firstly, whether post facto sanction can be granted under Section 23(1) & (6) of Panchayat Act 1973 in respect of a construction which has already been completed.

Secondly, whether the concerned sub Divisional Officer Bankura or the Learned Single Judge of this court has committed any wrong or error which calls for interference from this Division Bench.

Decision with reasons

13. For the purpose of understanding the arguments of the learned counsel of the parties, it is better to have a glance over the relevant provisions on

which they have tried to interpret the law and have submitted different decisions to impress upon this Court. Section 23(1) of West Bengal Panchayat Act 1973 [In short, 'Act of 1973'] provides as follows:

“23(1)- No person shall erect any new structure or new building or make any addition to any structure or building having plinth area of not more than 150 square meters and height not more than 6.5 meters in any area within the jurisdiction of a gram panchayat except with the previous permission in writing from the gram panchayat.”

14. For the purpose of the present discussion, we should also look into the provision of 23 (6) of the said Act which has provided as hereunder:

“Where any new structure or new building or any addition to any structure or building is being or has been erected or made , as the case may be ,in contravention of the provisions of Sub-section (1), the authority may, after giving the owner of such building an opportunity of being heard, make an order directing the demolition of the building by the owner within such period as may be specified in the order and in default the authority may itself effect the demolition and recover the cost thereof from the owner as a public demand.”

15. In the present case, the Learned Advocate for the appellant has harped on the point that 'previous permission' in Section 23 (1) of West Bengal Panchayat Act 1973 also, in fact, includes 'subsequent permission' or 'ex post facto permission'. In other words, according to him, the appellant can pray for post facto sanction after her construction was over, and Section 23, subsection 6 also empowers the competent authority, that is, the Sub Divisional Officer Bankura in this case, to grant ex post facto sanction as he has been given power to hear the appellant and to pass necessary order. The learned counsel of the appellant has further submitted that the scheme of Section 23 of the Act 1973 does not prohibit post facto sanction since the authority has the discretion to allow such prayer under section 23(6) of the said Act, if the authority finds that the construction which has already been made is in accordance with Panchayat Act and Rules. Merely because sanction was not obtained prior to the raising of construction, it cannot deprive the appellant if it is found that construction was made as per provisions or as per parameters of construction which are required to be scrutinized before granting sanction to a concerned person. The Learned Counsel in support of his contention has referred to several case laws wherefrom it is revealed that though the law requires permission from the competent authority, but later it is found that competent authority granted subsequent permission considering the beneficial effect on the public. The learned Counsel has also emphasised the need for taking into consideration the 'doctrine of proportionality'.

16. The basic rules of interpretation suggest that when there is no ambiguity or confusion in the letters of the statutes, plain meaning of the words used is required to be taken and it is also trite law that nothing can be added to or subtracted from the statute or its provisions to give effect to a purpose commensurate with the desire of a party .

17. The Apex Court has held in case of Gurudev datta VK SSS Maryadit and others vs State of Maharashtra and others[2001 (4) SCC 534] that “.... it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or a popular sense and construed according to their grammatical meaning unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts should have adhered to the principle that effort should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute at being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.”

18. In Nasiruddin versus Sita Ram Agarwal reported in 2003 (2) SCC 577 the Hon'ble Supreme Court held that in a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner only because of harsh consequences arising therefrom.

19. It is also observed therein that the courts' jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or something into it which is not there. It cannot rewrite or recast the legislation. It is also necessary to determine that there exists a presumption that the legislature has not used superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of expression 'shall' for 'may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is equally well settled that when negative words are used the courts will presume that the intention of the Legislature was that the provisions are mandatory in character.

20. In Easland Combines Coimbatore versus Collector of Central Excise reported in 2003(3)SCC 410, the Apex Court held that it is a well settled law that merely because a law causes hardship it cannot be interpreted in a

manner so as to defeat its object. It is also to be remembered that the courts are not concerned with the legislative policy or with the result whether injuries or otherwise by giving effect to the language used nor is it the function of the courts where the meaning is clear not to give effect to it merely because it would lead to some hardship. It is the duty imposed on the courts in interpreting a particular provision of law as to ascertain the meaning and intendment of the Legislature and in doing so, they should presume that the provision was designed to effectuate a particular object or to meet a particular requirement.

21. In Balaram Kumawat versus Union of India reported in 2003(7)SCC 628 the Supreme Court held that contextual reading is a well-known proposition of interpretation of statute. The classes of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject matter.

22. In Institute of CA of India versus Ajith Kumar Iddya reported in AIR 2003 Karnataka 187, Karnataka High Court held that so far as the cardinal rule of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislature. Otherwise, any addition or subtraction of a word is not permissible. In other words, it is not proper to use a sense which is different from what the word used ordinarily conveys. The duty of the court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a

whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own.

23. If we peruse the provisions of Section 23(1) of the Act 1973 , we shall find that it contains not only the word 'permission' , but it is qualified by the word 'previous'. In fact, by adding 'previous' with the word 'permission', the Legislature in this regard has made it amply clear that requirement of 'prior permission' or 'previous permission' is sine-qua-non in respect of any proposed construction in the area of Gram Panchayat under section 23(1) of the Act of 1973. Had Section 23 (1) of the act 1973 contained the word 'permission' only ,instead of words 'previous permission', there would have been a scope for interpretation that the word 'permission' includes prior or subsequent permission but as the said section specifically mentions that previous permission from the gram panchayat is essential for any proposed construction in the relevant area, there is no scope either for the learned advocates or for the court to interpret that the legislature intends that previous permission also includes subsequent permission or the competent authority can grant Ex Post facto sanction after construction was over. Therefore, by inserting the word 'previous permission' in Section 23(1) of the Act of 1973, the legislature has clearly and unambiguously specified the criteria of 'previous permission' in writing from Gram Panchayat for any proposed construction in the relevant area under Section 23(I) of the said Act, and not the subsequent permission, is one of the essential requirements.

24. If we peruse the case law reported in 1986 (1) Supreme Court cases 264 Life Insurance Corporation of India versus Escorts Limited and others, we shall find that the above case law supported the above observation. It has been observed therein “that the word ‘permission’ in the expression ‘General or special permission of the RBI’ in section 29 (1) of FERA cannot be limited to previous permission only but comprehends subsequent permission as well. The word permission is not qualified by the word prior or previous in section 29 (1) of the said Act. Though the qualifying word may be implied if the contextual situation or the subject and design of the legislation demands it, but here there are no such compelling circumstances justifying reading any such implication into section 29 (1). That the Parliament made distinction between permission simpliciter and previous permission is clear from the use of the qualifying word in some provisions while its non-use in some other provisions of the Act. The significance of such use and non-use of the qualifying word should not be disregarded. This shows that the Parliament deliberately avoided the qualifying word previous in Section 29(1)” of FERA

25. The case law of Electrosteel Steels Limited versus Union of India and others reported in 2021 SCC online SC 1247, has also been referred to. According to the Hon’ble Supreme Court, ex post facto environmental clearance should not ordinarily be granted and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of relevant notification under

the Environment (Protection) Act 1986, cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant. The Hon'ble Supreme Court has quoted the observation of the three judge bench of the Hon'ble Supreme Court in Lafarge Union Mining Private Limited versus Union of India reported in 2011(7)SCC 338 "the time has come for us to apply the constitutional doctrine of proportionality to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with the principles of sustainable development and intergenerational equity, but balancing these activities may entail policy choices." The Apex Court has also referred to the case law reported in Alembic Pharmaceuticals Limited versus Rohit Prajapati reported in 2020 SCC online SSC 347 and observed that though the Hon'ble Supreme Court deprecated ex-post-facto clearances but the Hon'ble Supreme Court did not pass orders in the said case for closure of the three industries concerned on consideration of the consequences of their closure.

26. But by citing the said case law, the learned counsel of the appellant has failed to show what greater public good can be achieved by allowing the post facto sanction in favour of the present appellant. In fact the above case law is not squarely applicable to the facts of the present case since in the referred case law the industries which did not have the appropriate prior environment clearances were allowed to have ex post facto sanction on

consideration that a huge number of employees will be rendered jobless. But in the present case, the appellant has failed to show as to why the above case law is applicable to the present case when the appellant is more interested with her own individual construction rather than the interest of the society.

Needless to mention, it is a settled principle of law that when an act is required to be performed or to be done under any statute or provision of law, the same has to be done in that manner only, and not in any other manner.

27. The second proviso to Section 23 of the Act 1973 has prescribed that erection of a new structure or a new building as referred to Section 23 (1) of the Act 1973 or such permission from the gram panchayat shall be subject to such rules as may be made by the State Government on this behalf. If we peruse West Bengal Panchayat (Gram Panchayat administration) Rules 2004, we shall find that by Rule 17, it has been laid down that any person intending to erect a new structure or a new building or to make any addition to an existing structure or building in any area within the jurisdiction of a gram, shall make an application in duplicate in Form 4 to the gram panchayat. It is further laid down that an application in Form 4 shall be submitted along with a plan in duplicate of the proposed structure or building, a site plan in duplicate, copy of records of right and copy of such other records showing title and interest of the applicant in respect of the land as may be necessary. Therefore, the law and its Rule are very much

clear to the effect that before constructing any building or part thereof, it is the duty of the concerned person to show that the proposed construction is in accordance with settled parameters by submitting a plan of proposed structure and also records of rights and other records showing the title and interest of the applicant in respect of the land on which the applicant proposes to construct. It goes to show that before granting any sanction to any proposed plan, the Panchayat or the Competent Authority has authority to ascertain, by going through the documents, whether the applicant was able to establish primarily his/her right, title, interest over the property. The duty of the Panchayat also extends to scrutinizing and verifying the structural stability of the proposed construction, as well as the fact whether, if constructed, it would injure or impede the interest of neighbouring people etc. The bounden duty cast upon the applicant to submit all necessary documents, cannot be overlooked by saying that the Gram Panchayat or the competent Authority can grant *expost facto* sanction, if the construction, which has been made without sanction plan, is in accordance with the parameters of the construction rules. It is unfortunate that the appellant did not submit the requisite plan for construction or other documents showing her title and interest over the land on which she already constructed, to the Authority concerned on the pretext that she had no knowledge of such legal requirement, which is totally unacceptable in the realm of law.

28. The ratio of case law of Leela Gupta versus Lakshmi Narayan(supra) has no manner of application in the present case, as the petitioner is unable to show that by allowing her prayer for post facto sanction, how the society at large would be benefitted to a great extent in the long run.

29. Another important aspect of argument of the learned counsel of the appellant is that as under section 23(6), the Competent Authority is to hear the applicant for violation of provision of Section 23(1) of the Act, it can condone the violation and grant ex post facto sanction to the construction raised by the applicant without prior permission or prior sanctioned plan. The learned Counsel of the appellant submits that there is a scope for interpretation of the provision of Section 23(6) of the Act 1973 in this manner and accordingly, he has pointed out that the court can consider this aspect since the Authority has been given power to hear the applicant who has palpably violated conditions of section 23(1) of the Act and therefore , the intention of the legislature, hidden in the said provision, is to authorise the Competent Authority to grant ex post facto sanction in suitable cases, particularly if it is found that the construction was raised as per parameters of the Construction rules.

30. The learned counsel of the respondent number 10, on the other hand, has categorically submitted that there is no scope for such interpretation as placed by the learned counsel of the appellant. The learned Counsel of the respondent 10 has further submitted that the provision of Section 23(6) of

the Act of 1973 is very much clear and the competent authority has no discretion to go beyond the provisions or letters of Section 23 (1) of the said Act.

31. Even at the cost of repetition, I must say that scope of interpretation of the provisions will arise only when there is an apparent ambiguity or conflict between the provisions or letters of a statute. But it appears from the provisions of Section 23(1) and 23(6) of the Act 1973, there is hardly any ambiguity or any deficiency in the language or letters used in both subsections which require departure from the plain meaning rule. It is crystal clear that provision of section 23(1) has been started with negative command and thereby necessary implication arises that requirement as espoused in the said provision is to be construed as a mandate and the same is to be mandatorily complied with by the persons concerned. If we peruse both subsection (1) and subsection (6) of Section 23 of the Act 1973, we shall find that there is no conflict between the two provisions of the same section. It is clear from Section 23(1) that the concerned applicant who wants to raise any construction on a plot of land has to obtain mandatorily prior permission from the concerned Gram Panchayat, and Section 23 (6) of the Act clearly provides, when there is a violation of Section 23 (1) of the Act 1973 by the concerned person, what are the next steps to be taken by the competent authority. We all know that one of the golden principles of natural justice is 'audi alteram partem' implying none can be condemned unheard and this principle is required to be followed not only in the judicial

forum, but also by quasi-judicial bodies as well as in all administrative spheres. Where there is a chance of affecting the interest of any person by the order or decision of the judicial, quasi-judicial or administrative bodies, it is trite that he or she should be given an opportunity of being heard.

32. In *Ram Niwas Bansal versus State of Bank Of Patiala and another* (1998) 119 PLR 768 the Punjab and Haryana High Court has specifically observed that the maxim *audi alteram partem* means hear the other side; hear both sides. In other words, the authority hearing the matter must afford opportunity of hearing to the party who is likely to be affected by its decision. The right to be heard has been accepted by all civilized countries as part of due process of law where questions affecting rights, privileges or claims of the persons are considered or adjudicated.

33. The Hon'ble Supreme Court in the case of *State of Uttar Pradesh versus Sudhir Kumar Singh*, judgment delivered on 16th October 2020, has clearly laid down that while applying the rule of *audi alteram partem* the Court/ Tribunal/ Authority must always bear in mind the ultimate and overriding objective underline the said rule viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

34. Therefore, there is no occasion to conclude that as the opportunity of being heard is embedded in Section 23(6) of the Act 1973, the legislature

intends that the authority can make a somersault and grant Ex Post facto sanction to the persons who violated the provisions of Section 23 (1) of the Act.

35. Considering all the aspects, I do think that there is no need for interfering with the order passed by the learned Single Judge as well as the order passed by the Sub Divisional Officer, Bankura. A criminal proceeding and civil suits are pending between the parties. If the appellant has made pakka construction on agricultural land without converting the same to bastu land and also without obtaining permission from the competent authority, the criminal proceeding, will take its own course. The Civil Courts in the District should not be influenced by any of the observations made above, in deciding the civil proceedings.

Arijit Banerjee, J.:

1. I have had the benefit of reading the detailed judgment of my learned brother and I completely agree with the conclusion reached by him. However, I take this opportunity to add a few words of mine.

2. The material facts of the case are not in dispute. The appellant has constructed a two storied house on five contiguous plots of land. She is the owner of only a portion of one of the plots. Only two of the plots are classified as 'Bastu'. The other plots are classified as 'Tora' (cultivable land).

The construction has been made by the appellant without obtaining conversion of classification of the land in question. Most importantly, the building has been erected without obtaining sanction of a building plan from the concerned Panchayat.

3. It is also not in dispute that the appellant has applied to the concerned Panchayat for grant of post facto sanction of a building plan. The short question that arises is whether the scheme of Section 23 of the West Bengal Panchayat Act, 1973 contemplates granting of post facto sanction of a building plan submitted to the permission granting authority after constructing the building?

4. My learned brother has elaborately discussed the relevant case law on the subject. To avoid prolixity, I refrain from referring to such authorities.

5. Section 23 of the 1973 Act reads as follows:-

“23. Control of building operations._ (1) No person shall [erect any new structure or building or make any addition to any structure or building] in any area within the jurisdiction of a *Gram Panchayat* except with the previous permission in writing of the *Gram Panchayat*:

[provided that such erection of new structure or new building or such addition to any structure or building or such permission of the Gram Panchayat shall be subject to such rules as may be made by the State Government in this behalf:

[Provided further that a Gram Panchayat shall not accord permission for erection of a new structure, or construction of a new building, if the proposal for such erection or construction, as the case may be, _

(a) has any provisions for erection or construction of any dry latrine, by whatever name called, and

(b) does not have any provision for erection or construction of a sanitary latrine of any description.]]

(2) Every person seeking permission under sub-Section (1) shall make an application in writing to such authority, in such form, containing such particulars and on payment of such fee as may be prescribed:

[Provided that no permission under sub-section (1) shall be necessary for erection of any new thatched structure, tin shed or tile shed without brick wall covering an area not exceeding

[eighteen square meters where such structure or shed does not cover more than three-fourths of the total area of the land (including appurtenant land) and there is a setback of not less than nine-tenth metre on the road-side:]

Provided further that the State Government may, by order, exempt any structure or building or any class of structures or buildings from the operation of the provisions of sub-section (1) and of this sub-section.]

(3) On receipt of such application the authority, after making such enquiry as it considers necessary and [in accordance with such rules as may be made by the State Government in this behalf,] shall, by order in writing, either grant the permission or refuse it, recording in the case of refusal the reasons therefor.

(4) Any person aggrieved by an order of the authority under sub-section (3) refusing permission may, within ninety days from the date of communication of such order to him, prefer an appeal to such appellate authority as may be prescribed.

(5) No appeal shall lie against the order of the appellate authority referred to in sub-section (4).

(6) Where [any new structure or new building or any addition to any structure or building is being or has been erected or made, as the case may be,] in contravention of the provisions of sub-section (1), the authority may after giving the owner of such building an opportunity of being heard, make an order directing the demolition of the building by the owner within such period as may be specified in the order and in default the authority may itself effect the demolition and recover the cost thereof from the owner as a public demand.

(7) Any person who [contravenes] the provisions of sub-section (1) shall be liable on conviction by a Magistrate to a fine which may extend to two hundred and fifty rupees.”

6. Section 23 is a regulatory provision. It makes it mandatory for a person to obtain **prior** permission from the concerned Panchayat before he can construct a building beyond a certain dimension. Two of the important objects of a statutory provision regulating construction of buildings or addition/alteration to buildings are to ensure optimal utilisation of land which is a scarce commodity and also planned development of a particular locality. In my understanding, keeping those objects in mind, the State Legislature has included Section 23 in the 1973 statute, making it obligatory for a person to obtain **previous** permission of the concerned Panchayat before putting up a building beyond the dimension mentioned in the said

Section. The entire object and rationale behind Section 23 would be defeated if a person is permitted to construct a building without having a building plan sanctioned by the Panchayat, as per his own whims, and then apply for post-facto permission for regularising the unauthorised construction.

7. In my considered opinion, section 23 of the 1973 Act does not envisage grant of post facto sanction of a building plan after construction of the building is completed. The language of Section 23(1) is plain and clear. There is no ambiguity, no scope for confusion. The language is not capable of more than one interpretation. No canons of construction of a statute are required to be pressed into service for ascertaining the true scope, effect and meaning of Section 23(1) of the 1973 Act.

8. An interpretation has to be given to a provision of law like Section 23(1) of the 1973 Act, which will discourage people from taking law into their own hands and dissuade them from putting up constructions without obtaining prior permission of the concerned authority. A building constructed in violation of the provisions of Section 23(1) of the 1973 Act must be held to be illegal and unauthorised and incapable of being regularised. If Section 23(1) is construed as permitting the Panchayat to accord post facto sanction, the same is also likely to lead to show of money power and corruption. On this aspect, the learned Single Judge has observed, and in my opinion very aptly, as follows:-

“In the present day there is a growing tendency to flout the law. Mindset of the public is developing that anything and everything is possible by spending money and by greasing the palms of the persons who are in power. The petitioner mustered the guts to make construction of two storied pucca construction, photograph of which has been produced in Court, without the minimum permission from the competent authority. In fact, permission to make construction was never sought for. The petitioner was absolutely confident that somehow or the other the construction raised will be regularized in a circuitous manner by paying money on the garb of fine.

If the prayer of the petitioner for post facto sanction is allowed, nobody will care for the law and apply for obtaining sanction prior to making construction. The said idea is to be nipped in the bud otherwise the rule of law cannot be applied. There ought not to be different set of rules/law for different people. When a law is there in place the same is bound to be followed.

...

Any interference with the order of demolition will lower the morale of the officers who resisted the temptation to regularize the illegal and unauthorized construction by accepting money from the

petitioner. The authority ought to be encouraged for sticking to the law and it is expected that they should continue to keep strict vigil so that the violators of law are suitably dealt with.”

9. Learned Advocate for the appellant submitted that sub-section 6 of Section 23 contemplates that the concerned authority **may** order demolition of a building which has been constructed in contravention of the provisions of sub-section 1. He contended that an element of discretion remains with the authority and it is not mandatory for the authority to order demolition. This necessarily implies that the authority has power to grant post facto approval to a building plan if an application for sanction is made even after completion of construction.

I am unable to agree with the above submission of learned Counsel. A degree of discretion may be there with the authority to be exercised in cases where there may be minor deviation from the sanctioned plan or where the builder is able to persuade the authority that there are other good reasons for not directing demolition. In such cases, the authority may refrain from order in demolition upon such terms as the law may envisage. However, I am unable to interpret sub-section 6 of Section 23 in a manner so as to infer that the authority has power to grant post facto sanction to a building plan where a building is constructed without obtaining any sanction at all from the concerned authority.

10. Persons who think they can flout the law with impunity, deserve no sympathy. Unauthorised construction has become a major problem in our society which has to be tackled with iron hands. No leniency ought to be shown to persons who have scant regard for law. If such persons are treated with misplaced sympathy, Rule of Law will be the casualty, which cannot be countenanced.

11. There is no infirmity in the order under appeal. The appeal and the connected application are dismissed without any order as to costs.

12. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)

Later

After the judgment is delivered, learned Advocate for the appellant prays for stay of operation of the judgment and order. Such prayer is considered and rejected.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)