

07.10.2024
ct. 6
Sl. No.12
SG

MAT 285 of 2024
CAN 1 of 2024

Kauchar Ali Molla and Ors.
Vs
Ramjan Molla & Ors.

Mr. Mainak Bose
Mr. Lakshminath Bhattarjee
....for the appellants

Mr. Jahar Datta
Mr. Bipin Ghosh
...for the State

1. Petitioners contend the construction in question does not require lawful permission under Section 23(1) of the West Bengal Panchayat Act. Accordingly, the Hon'ble Judge erred in referring the matter for consideration by the SDO concerned under the Panchayet Act.
2. We have considered the materials on record. Writ petitioner-respondent alleged unauthorized construction erected by the appellant-private respondents. On the basis of his complaint, BDO vide memo dated 07.12.2018 directed the Pradhan to take steps with regard to the unauthorized construction. Thereafter, no steps were taken and the writ petitioner approached this Court for relief. After considering these facts Hon'ble Single Judge directed the Pradhan to submit his report before the SDO concerned and the latter was directed to take necessary steps after giving an opportunity of

hearing to the appellant and the writ petitioner-respondent within a specified time frame.

3. Mr. Bose strenuously argues the construction in question did not require prior sanction.
4. As the order impugned does not finally decide the issue, we are not inclined to interfere on such score. It is open to the appellants to demonstrate before the SDO concerned that the construction is not an unauthorised one and the said officer after giving opportunity of hearing to parties shall pass appropriate order under Section 23(5) of the West Bengal Panchayat Act within the stipulated time frame. It is also clarified mere pendency of application for sanction cannot clothe an illegal construction with validity.
5. With these observations, appeal and the connected application are disposed.
6. There shall be no order as to costs.
7. Photostat certified copy of this order, if applied for, be given to the parties on compliance of all formalities.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)