

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Gaurang Kanth**

***M. A. T. 1578 of 2024  
(CAN 1 of 2024)***

***Padmalochan Pannigrahi  
-Vs-  
The State of West Bengal & Ors.***

**For the Appellant** : Mr. Kaushik Sarkar, Adv.  
Mr. Suman Panigrahi, Adv.

**For the Respondent** : Mr. Mukteswar Maity, Adv.  
Ms. Kakali Pal, Adv.

**Heard on** : 11.09.2024

**Judgment on** : 11.09.2024

**Joymalya Bagchi, J. :-**

1. Appellant has assailed order dated 08.07.2024 passed by the Hon'ble Single Judge directing respondent no.4 i.e. Sub-Divisional Officer, Egra to implement the decision of the Pradhan dated 23.05.2023 with the assistance of the Officer-in-charge, Egra Police Station.

2. Appellant and private respondent nos.8 & 9 are brothers. They are co-owners of the property in question. A partition suit was instituted by respondent no.8 and is pending by and between the parties. No order of injunction was passed by the learned trial Judge and respondent no.8 preferred an appeal wherein an order of status quo has been passed. The said order is still continuing.

3. Respondent nos.8 & 9 took out a writ petition alleging unauthorised construction at the behest of the appellant on the joint property. Pursuant to the direction of the Hon'ble Single Judge, inspection was conducted by respondent no.6 i.e. Pradhan, Panchrol Gram Panchayat and inspection report was placed before the court. In the inspection report Pradhan, inter alia, recorded respondent no.9 had illegally made construction on the land. Accordingly, he directed respondent no.9 to remove the said construction failing which appropriate steps shall be taken.

4. Relying on the aforesaid report, Hon'ble Single Judge directed Sub-Divisional Officer, Egra to take immediate steps to give effect to the decision of the Pradhan dated 23.05.2023. Respondent/writ petitioners as well as District Magistrate, Purba Medinipur and Pradhan concerned were also directed to give necessary assistance.

5. Learned Advocate for the appellant contends there is no unauthorised construction on the land. He relies on photographs in support of his contention. He further submits order impugned runs

contrary to the order of status quo passed by the appellate court in the partition suit.

6. In response, Mr. Mukteswar Maity contends the issue of illegal construction is not the subject matter of the partition suit. Sub-Divisional Officer concerned who has been directed to take steps in the matter is not a party to the suit.

7. We have considered the rival submissions of the parties.

8. By the impugned order, Hon'ble Single Judge directed Sub-Divisional Officer, Egra to implement the order of the Pradhan.

9. Sub-section (5) of Section 23 of the West Bengal Panchayat Act, 1973 provides for demolition of unauthorised construction within the Panchayat area. The provision reads as follows :-

*“23(5). 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 permission granting authority shall refer the matter to the Sub-Divisional Officer concerned who may after giving the owner of such building an opportunity of being heard, make an order directing the demolition of the building or a portion of the building, as the case may be, by the owner within such period as may be specified in order and in default, the Sub-Divisional Officer may itself effect the demolition and impose a fine as may be specified by the State Government and recover the cost thereof from the owner as a public demand.”*

10. Perusal of the provision makes it amply clear in the event an illegal construction is undertaken, the Gram Panchayat shall refer the matter to the Sub-Divisional Officer concerned who after giving an opportunity of hearing to the owner of such building may pass the order of demolition. In such view of the matter, the order of the Pradhan directing selfsame

demolition of the construction is not warranted in law. As per law the Pradhan was to make a recommendation for demolition before the Sub-Divisional Officer who after hearing the owner may pass the order of demolition, if required as per law.

11. In light of the aforesaid, we modify the order passed by the Hon'ble Single Judge and direct the Sub-Divisional Officer, Egra to consider the recommendation of the Pradhan in terms of Section 23(5) of the West Bengal Panchayat Act, 1973 and after giving an opportunity of hearing to the appellant pass appropriate order in accordance with law.

12. We are in agreement with Mr. Maity that the pendency of the partition suit does not affect the powers of the statutory authority to direct demolition of unauthorised structure, if any, on the suit property. It is an exercise independent of the said *lis*.

13. However, to avoid any confusion, parties are at liberty to apply before the appellate court and the appellate court shall clarify the order of status quo in light of the aforesaid observations.

14. Sub-Divisional Officer, Egra shall pass necessary order in the matter within two months from the date of communication of this order.

15. With these directions, appeal is disposed of.

16. In view of disposal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

17. There shall be no order as to costs.

18. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

**(Gaurang Kanth, J.)**

**(Joymalya Bagchi, J.)**

**akd**