

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 93 of 2025

With

IA No.: CAN 1 of 2025

With

IA No.: CAN 2 of 2025

Tarak Nath Dey

Vs.

The State of West Bengal & Ors.

For the appellant : Mr. Supriyo Chattopadhyay, Advocate
Mr. Sudip Kumar Maiti, Advocate

For the State : Mr. Amal Kumar Sen, Ld. AGP
Mr. Lal Mohan Basu, Advocate

For the respondent nos.6 & 7 : Mr. Atarup Banerjee, Advocate
Mr. Rajdeep Pramanik, Advocate

Heard & Judgment on : February 27, 2025

DEBANGSU BASAK, J.:-

1. Affidavit of service filed in Court be taken on record.
2. Appeal is at the behest of Tarak Nath Dey.

3. The appeal is directed against an order dated July 10, 2024 passed in two writ petitions, namely, W.P.A. 18343 of 2023 and W.P.A. 13147 of 2023.
4. Department in the memorandum of appeal reports that, one of the respondents is not made party in the appeal.
5. We note that, there are four private parties in the two writ petitions, namely, Tarak Nath Dey, Swapan Dey, Chandan Dey and Kallol Dey. All of them are parties in the memorandum of appeal. Therefore, the appeal is held to be in order.
6. There is an issue of limitation in making and filing the appeal.
7. Department reports a delay of 161 days. There is an application for condonation of appeal.
8. Application for condonation of delay is opposed on behalf of the private respondents in the appeal on the ground that, adequate and proper explanation is not there.
9. With respect, we are unable to take the contentions of the private respondents so far as the application for condonation of delay is concerned.
10. We remind ourselves that, while considering an application for condonation of delay Court is required to be lenient. Court is concerned with the quality of the explanation rather than the quantity of the delay.

11. In the present case, the contention of the appellant is that, he engaged an Advocate for the purpose of preparing and filing an appeal. Learned Advocate prepared the draft, misplaced the file and, therefore, the delay was occasioned.
12. A litigant cannot be foisted with the liability of his Advocate in causing the delay. We do not find that, the appellant was not diligent in conducting the appeal.
13. In such circumstances, we accept the explanation for condonation of delay and condone the delay of 161 days in making and filing the appeal.
14. **IA No.: CAN 1 of 2025** is disposed of accordingly.
15. By consent of the parties, the appeal is taken up for final consideration.
16. Learned Advocate appearing for the appellant submits that, appellant approached the Writ Court on the basis of a writing dated May 10, 2023 issued by Khanakul-1 Gram Panchayat to the effect that, the concerned structure was unauthorized. He submits that, the private respondents in the appeal approached the Writ Court for different reliefs. Learned Single Judge held that, there is a suit for preemption and, therefore, the issue of unauthorized construction need not be entered into.
17. Learned Advocate appearing for the private respondents submits that, the construction made by his clients is not unauthorized. Such

- construction was existing prior to the Panchayat Act or the Building Rules coming into effect.
18. By the impugned order, learned Single Judge noted a suit for preemption pending in respect of the property concerned and, therefore, adjourned both the writ petitions *sine die* to await the decision in the suit for preemption.
 19. With respect, we are unable to agree with the view taken by the learned Single Judge. Issue in the suit for preemption is whether or not the plaintiff therein is entitled to exercise the right of preemption. Such suit obviously will not cover an issue as to whether or not the construction at the locale is authorized or unauthorized. Decision in the suit for preemption would not affect the validity or legality of the construction. Such decision would neither impede nor decide the validity or lack of it of the construction.
 20. In such circumstances, nature of construction alleged, *prima facie*, demonstrates that, the issue of the legality of the construction should be decided by the Sub-Divisional Officer in terms of Section 23(6) of the West Bengal Panchayat Act, 1973.
 21. In such circumstances, the issue as to the construction being authorized or unauthorized at the locale is relegated with the Sub-Divisional Officer for decision.
 22. No doubt, jurisdictional Sub-Divisional Officer will afford an opportunity of hearing to the private parties involved in the appeal. He

is at liberty to hear such other parties and consult such documents that he deems appropriate. He will endeavour to complete the exercise within a period of eight weeks from the date of communication of this order. He will pass a reasoned order which will communicate to the parties forthwith thereafter.

23. The impugned order dated July 10, 2024 is set aside by our order.
24. Since nothing survives in the two writ petitions, parties invite us to dispose of the same after treating the same on the day's list.
25. In such circumstances, W.P.A. 18343 of 2023 and W.P.A. 13147 of 2023 are disposed of. Department will incorporate such noting in the two writ petitions.
26. **MAT 93 of 2025** and **IA No.: CAN 2 of 2025** are disposed of.

(Debangsu Basak, J.)

27. I agree.

(Md. Shabbar Rashidi, J.)