

Form No. J (2)

**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 75 of 2025
IA NO: CAN/1/2025**

**Sanyasi Naskar & Ors.
vs.
Ajit Naskar & Ors.**

For the Appellants : Mr. Nilanjan Bhattacharjee, Senior Advocate
Mr. Abhilash Chatterjee, Advocate

For the State : Mr. Tapas Kr. Adhikari, Advocate
Mr. Somraj Dhar, Advocate

For the Respondent
No.1 : Sk. Abu Abbas Uddin, Advocate
Ms. Nahid Rahman, Advocate
Mr. Amit Ganguly, Advocate

For the Howrah
Zilla Parishad : Ms. Mekhla Sinha, Advocate
Ms. Malabika Roy Dey, Advocate

For the Respondent

Nos. 7 and 8

: Mr. Sukanta Chakraborty, Advocate
Mr. Anindya Halder, Advocate
Mr. Saikat Dey, Advocate

Heard on : 14.02.2025

Judgment on : 14.02.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the private respondents and directed against the judgment and order dated December 24, 2024 passed in WPA 8486 of 2018.
2. Learned Senior Advocate appearing for the appellants submits that, the private parties in the proceeding are co-owners in respect of two plots of land. He submits that, there was a mutual partition amongst coowners that such partition was embodied in a sketch map signed by the parties.
3. Learned Senior Advocate appearing for the appellants submits that, appellants applied for conversion of the two plots of land. Appellants also applied for grant of sanction for construction which was granted. According to him, the construction was made in terms of at least the regularization of an “as made” plan.
4. So far as the conversion is concerned, learned Senior Advocate appearing for the appellants submits that, such conversion are governed under the

West Bengal Land Reforms Act which provides a statutory right of appeal to the Tribunal to a person aggrieved. He submits that, learned Single Judge erred in quashing the order of conversion, in view of the existence of statutory alternative remedy.

5. Learned senior advocate for the appellants rely upon **(2003) 1 Supreme Court Cases 726 (Beg Raj Singh versus State of U.P. and others)** and submits that subsequent events should not be taken into consideration to grant any relief.
6. Learned advocate appearing for the appellant submits that, there are other structures standing in the two plots concerned which are without requisite sanction.
7. State, Zilla Parishad, Gram Panchayat and the writ petitioner are represented.
8. Learned advocate appearing for the Gram Panchayat submits that, some conversions were made prior to the grant of sanction and some conversions were made subsequent to the grant of sanction.
9. In response to a query of the Court, learned advocate appearing for the State, Zilla Parishad and Gram Panchayat submits that, neither the application for conversion nor the application for grant of regularization of the “as made” plan contained the signature of the writ petitioner.

10. Learned advocate appearing for the writ petitioner submits that, his client never consented to the conversion of the property belonging to his client. His client also never applied for sanction or for grant of regularization in terms of the “as made” plan. He contends that, there was no partition by metes and bounds of the immovable properties. His client continues to remain a co-sharer possessing one fifth right, title and interest in respect of the plots concerned. A suit for partition filed at the instance of the appellants was dismissed for default.
11. Two plots of land are involved being old plot no. 588 corresponding to L.R. plot No.621 and old plot no. 589 corresponding to L.R. plot no.622 in Mouza Jagadishpur, Police Station Liluah.
12. Appellants before us claim to be cosharers in respect of such plots of land along with the private respondents.
13. Apparently, application for both conversion of the plots of land as also for obtaining sanction of a building to be erected on such plots of land were made on behalf of the appellants. Application for conversion was allowed. Application for grant of regularization of the “as made” plan was made which was allowed by the authorities.
14. There is no material on record to establish that there was a partition amongst the owners of the two plots of land by metes and bounds. Reliance is placed on a site plan claimed to be signed by the private

parties, on behalf of the appellants to contend that, there was a partition amongst the private parties, by metes and bounds. There was also a civil suit for declaration and partition filed by the appellants which was dismissed for default.

15. Writ petitioner does not acknowledge that, the property was partitioned by metes and bounds by virtue of the site plan as sought to be relied upon by the appellants. Writ petitioner also denies any partition of the two plots by metes and bounds.
16. As on date, therefore, there is no material on record to establish that, there was partition of the two plots by metes and bounds amongst the owners of such property.
17. Admittedly, the writ petitioner is a cosharer in respect of two plots claiming one fifth right in respect thereof. Again admittedly, neither at the stage for application for conversion nor for grant of regularization for “as made” plan did the writ petitioner sign on such document.
18. In absence of a coowner joining the application for conversion, the authorities were not authorized to consider the application for conversion as it was not made by all the owners.
19. Learned Single Judge, took such aspects into consideration and proceeded to quash such conversion.

20. Application for conversion as also the application for grant or regularization of the “as made” plan are intertwined with each other. Regularization will follow the conversion.
21. Learned Single Judge did not dissect the two causes of action since they were intertwined and considered all the issues involved in the writ petition.
22. It is trite law that, notwithstanding availability of statutory alternative remedy, a writ petition is maintainable when it is established that, the authority acted in breach of fundamental rights or in excess of jurisdiction or in violation of principles of natural justice or that the impugned order was perverse, amongst others.
23. In the facts and circumstances of the present case, the application for conversion was not made by the writ petitioner as a co-owner. The writ petitioner was admittedly not heard prior to the passing of the order of conversion. Therefore, the order of the authority allowing conversion, is hit by the principles of natural justice. Constitutional rights recognized under Article 300A thereof of the writ petitioner stood affected by the decision of the authority in allowing conversion.
24. In such circumstances, we find no infirmity in the impugned judgment and order of the learned Single Judge where the learned Single Judge proceeded to quash the order of conversion.

25. So far as regularization of the building plan is concerned, again, the same was submitted without the consent of the writ petitioner. Writ petitioner did not sign the same. As a co-owner, the right of the writ petitioner in respect of two plots stood affected. The writ petitioner did not waive such right at that material point of time. Writ petitioner is not waiving their right as on date also. In such circumstances, the grant of regularization of “as made” plan is also amongst other hit by principles of natural justice.
26. In **Beg Raj Singh (supra)**, the Hon’ble Supreme Court found that, although the State may be earning little higher revenue, the same cannot be a ground for not enforcing the obligation of the State which occurred in accordance with its own policy. There, the policy of the State in relation to the mining lease was sought to be enforced. Facts and circumstances of the present case, are entirely different.
27. Learned Single Judge directed the jurisdictional Sub Divisional Officer to conduct appropriate proceeding under Section 23(5) and (6) of the West Bengal Panchayat Act, 1973 after receipt of the reference from the Pradhan, Jagadishpur Gram Panchayat, Howrah.
28. Court is informed that, Gram Panchayat also made the reference in terms of the impugned judgment and order.

29. In such circumstances, the Sub Divisional Officer will proceed in accordance with law to implement the directions contained in the impugned judgment and order forthwith.
30. With the aforesaid observations **MAT 75 of 2025** along with connected application are disposed of without any order as to costs.

(Debangsu Basak, J.)

31. I agree.

(Md. Shabbar Rashidi, J.)

CHC