

21.05.2025
Sl. No.29(DL)
Ct. No.39
srm

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**W.P.A. No. 1499 of 2024
With
CAN 1 of 2024**

Nitai Sardar & Anr.

Versus

The State of West Bengal & Ors.

Mr. Malay Bhattacharyya,
Mr. Subhrajyoti Ghosh,
Ms. Sudipa Sengupta

...for the Petitioners.

Mr. K.J. Yusuf,
Ms. Rupsa Chakraborty

...for the State-respondents.

Mr. Pankaj Halder,
Mr. Neelabha Bera,
Mr. Bodhidipta Mandal

...for the Respondent No.6.

Affidavit of service filed on behalf of the
petitioners is taken on record.

This writ petition is filed for setting aside order
dated 29th December, 2023 passed by the respondent
No.5, the Block Development Officer, Mathurapur-II
Development Block.

The petitioners contend that undivided plot of
land comprised within Plot No.3546 situated at Mouza-
Raidighi, J.L. No.122, District-South 24-Parganas has
been occupied by the ancestor of the petitioners since
long. The private respondent No.6 is in occupation of
the adjacent plot and is creating nuisance in the
peaceful possession of the petitioners. The petitioners

filed a writ petition being W.P. No.4373(W) of 2018. Pursuant to the order passed in the aforesaid writ petition, Pradhan of the local Gram Panchayat conducted a meeting between the petitioners and the private respondent wherein it was observed that the petitioners are the occupiers of the plot in question and the *pucca* construction on the said plot of land has been done from the fund received under the *Pradhan Mantri Awas Yojna Scheme*. Hence, no sanction is required. Challenging such decision of the Gram Panchayat, the respondent No.6 filed a writ petition before this Court being WPA 13167 of 2021. The said writ petition was disposed of directing the private respondent No.6 to approach before the respondent No.5, Block Development Officer regarding his grievance as to whether any fund actually had been sanctioned in favour of the petitioners under the *Pradhan Mantri Awas Yojna Scheme*. Pursuant to the order passed in the aforesaid writ petition, the Block Development Officer passed order holding that no such fund has been sanctioned in favour of the petitioners under the *Pradhan Mantri Awas Yojna Scheme* and the matter has been referred to the Sub-Divisional Officer, Diamond Harbour under Section 23(5) of the West Bengal Panchayat Act, 1973. The Block Development Officer has failed to consider that the petitioners are the occupiers of the land in question and work of construction, which has been undertaken by the

petitioners, does not require a sanction building plan as is held by Gram Panchayat in the earlier meeting. Being aggrieved and dissatisfied with the order passed by the respondent No.5, the Block Development Officer, the petitioners have preferred the present writ petition.

Mr. Malay Bhattacharyya, learned Advocate for the petitioners submits that the petitioners are in occupation of the undivided plot-in-question and the work of construction has been undertaken from the fund under the *Pradhan Mantri Awas Yojna Scheme*. As per Rule 19 of the West Bengal Gram Panchayat (Administrative) Rules, 2004 no such sanction is required for making such construction from the fund under the *Pradhan Mantri Awas Yojna Scheme*. Hence, the order of the Block Development Officer is perverse and should be set aside.

On the contrary, Mr. Pankaj Halder, learned Advocate appearing for the respondent No.6 submits that the order of the Block Development Officer clearly records that no fund was sanctioned under the Scheme. As per Rule 17 of the West Bengal Gram Panchayat (Administrative) Rules, 2004 the sanction for building can be granted in favour of a person having right over the property. Further the fund under the *Pradhan Mantri Awas Yojna Scheme* is granted to persons who have right, title and interest over a specific property and not to the occupier. The

petitioners have filed a civil suit being Title Suit No.248 of 2021 before the Civil Judge (Senior Division), Diamond Harbour for declaration of their title on the basis of adverse possession. Until and unless the title is declared by a competent civil court the petitioners cannot have any right to make construction. He seeks that the order of reference made by the Block Development Officer should not be interfered with.

This is third round of litigation.

Mr. K.J. Yusuf, learned Advocate for the State also submits in similar fashion as argued on behalf of respondent no.6.

The earlier writ petition being WP No. 4373(W) of 2018 was disposed of on 27th February, 2019 as follows:

“Under such circumstances, this writ petition stands disposed of with a direction upon the concerned authority of the Gram Panchayat to consider and dispose of the aforesaid representation of the petitioner in accordance with law upon issuing prior notice to the petitioner as also the respondents Nos.9 and 10 and by passing a reasoned order after giving an opportunity of hearing to the petitioner and the respondent Nos.9 and 10.”

Pursuant thereto, the Raidighi Gram Panchayat by a reasoned order informed the respondent no.6 that the construction by the petitioners herein are not unauthorised and have been done from the fund received under *Pradhan Mantri Awas Yojna Scheme*. Challenging such order, the respondent no.6 filed a writ petition being WPA No.13167 of 2021 which was disposed of as follows:

“As the Gram Panchayat has already taken steps in the matter and have categorically stated that the structure

was raised by the respondent nos. 9,8,10 under the Pradhan Mantri Awas Yojana scheme, the Court is of the opinion that the further contention of the writ petitioner as to the correctness of such decision and observation with regard to the construction of the respondent nos. 9,8,10 under the Pradhan Mantri Awas Yojana scheme should be enquired into and decided by the Block Development Officer, Mathurapur-II. The petitioner shall approach the authority with his grievances as to whether any fund had been actually sanctioned under the Pradhan Mantri Awas Yojana scheme in favour the respondent nos.9&10 in respect of the aforementioned plot. The said Block Development Officer shall dispose of the application of the petitioner in accordance with law upon giving an opportunity of hearing to all the interested parties including the authorities of the Gram Panchayat. A reasoned order shall be passed and communicated to all concerned.

The entire exercise shall be completed within a period of three months from the date of receipt of the application of the petitioner.

At this stage, this Court has not decided on the correctness of the order of the panchayat authorities. Until the Block Development Officer takes a decision, the order of the panchayat authorities with regard to the construction made by the respondent nos. 9 &10, is not interfered with. The point is kept open.”

Pursuant thereto, the Block Development Officer has passed the impugned order on 29th December, 2023, the relevant portion of such order is reproduced for convenience:

“Whereas, Nimai Sardar and Nitai Sardar submitted that they are not recorded owners of the said plot of land, however, they have been occupying the said plot of land long ago, they have started construction in the end of 2017 and at the time of construction, no complaint/objection has been raised by said Dhananjay Sardar. Admittedly, no permission from the Gram Panchayet has been obtained by them (Nimai Sardar and Nitai Sardar.). But during the construction, they have received a fund from the concerned Gram Panchayet under PMAY in 2021 and the said construction has been completed from fund the said PMAY. It is further submitted that in support of the occupation of the said plot of land, Nimai Sardar and Nitai Sardar could not produce any valid documents.

After considering the submission of the parties, the alleged construction on the aforesaid plot of land is clear violation of the West Bengal Panchayet Act and the West Bengal Panchayet (Gram Administration) Rules, 2004, hence, the said construction is unauthorised and the appropriate authority may take steps in accordance with law.

So far the exemption from permission is concerned under Rule 19(6) of the West Bengal Panchayet (Gram Administration) Rules, 2001 is concerned and no such fund has been sanctioned either concerned Gram Panchayet or any other authority for construction on the plot in question in favour of non-recorded owners i.e. Nimai Sardar and Nitai Sardar, hence, the question of

exemption for permission of the said construction is no manner of application of the aforesaid Rules.”

Upon perusal of the impugned order it is found that the petitioners admitted that they are not the recorded owners of the plot-in-question, however, they are occupying the plot since long. In the present writ petition as well the petitioners have contended that their ancestors were the occupiers of said plot-in-question. No case made out by the petitioners that they are the owners of the land in question. As such there cannot be any quarrel that the petitioners are the occupiers of the land-in-question. Fact remains that the petitioners do not have any sanction building plan in respect of the construction undertaken. The petitioners have also not produced any document of sanction of funds under Poverty Alleviation Programmes, on which ground exemption from permission can be sought. Considering the above facts, the Block Development Officer has passed order observing that there is violation of West Bengal Panchayat Act and West Bengal Panchayat (Gram Panchayat Administration). Rules, 2004. The impugned order further records that no such fund has been sanctioned either from the concerned Gram Panchayat or any other authority for construction on the plot in question in favour of the non-recorded owners. In light of aforesaid aspect, the matter has been referred to the Sub-Divisional Officer for considering under the Section 23(5) of the West Bengal

Panchayat Act, 1973. Since the petitioners could not produce any documents in support of their right over the property in question and any sanction building plan or sanction of funds under Poverty Alleviation Programmes, the order impugned does not call for any interference.

Accordingly, the writ petition being **WPA 1499 of 2024** is dismissed.

CAN 1 of 2024 filed by the respondent No.6 is disposed of with a direction upon the Sub-Divisional Officer, Diamond Harbour, respondent No.4 to take appropriate steps in terms of the order passed by the Block Development Officer, Mathurapur-II Development Block dated 29th December, 2023.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)