

30.04.2025
Sl. No.1&3(DL)
Ct. No.39
srm

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

W.P.A. No. 2357 of 2025

With

W.P.A. No. 9074 of 2025

Sri Shymal Kumar Dutta

Versus

The State of West Bengal & Ors.

Mr. Kaustav Banerjee,
Mr. Imran Hossain Layek,
Ms. Ria Kundu

...for the Petitioners.

Mr. Santan Kumar Mitra,
Mr. Subhabrata Das

...for the State-respondents in
WPA 2357/2025.

Mr. Lalit Mohan Mahata, ld. AGP
Mr. Prasanta Behari Mahata

...for the State-respondents in
WPA 9074/2025.

Mr. Pratip Kumar Chatterjee,
Mr. Mihir Kundu,
Mr. Asish Deb,
Ms. Maitrayee Chatterjee

...for the Respondent No.11.

Affidavit of service filed on behalf of the petitioner
in WPA 9074 of 2025 is taken on record.

As the subject matter of challenge in these two
writ petitions is same, both the writ petitions are taken
up analogously.

These writ petitions are filed for setting aside the
order dated 16th January, 2025 and order dated 26th
March, 2025 passed by the respondent No.6, Sub-
Divisional Magistrate, Katwa in LR Case no. 2 of 2024.

The petitioner contends that one Abhibhusan Dutta purchased a plot of land situated within Plot No.5018, J.L. No.36 under Mouza Kandra, Police Station Ketugram, District- Purba Bardhaman measuring more or less 3 decimals of land and he transferred the said property to Satyabhusan Dutta, father of the present petitioner, who died intestate in the year 1997. During his lifetime, Abhibhusan Dutta executed a deed of trust on 10th September, 1986 in respect of the property lying and situated within Plot No.5020, J.L. No.36, Mouza Kandra, Police Station Ketugram, District-Bardhaman measuring more or less 6 decimals of land along with two-storeyed building wherein the petitioner, private respondent No.11 and their six cousins were trustees and beneficiaries of the trust. The said building was given on rent to the State Bank of India, Ramjibanpur Branch.

Previously, the private respondent No.11 filed a writ petition being WPA 15382 of 2019 alleging of illegal and unauthorised construction by the petitioner herein, which was disposed of by an order dated 5th July, 2022 with the following direction:

“In view of the above, the Prodhan of the Gram Panchayat is directed to forward the enquiry report along with other relevant documents to the Sub-Divisional Officer for taking appropriate steps in the matter in accordance with the provisions of law. Steps shall be taken by the Prodhan at the earliest but positively within a period of fourteen days from the date of communication of this order.

On receipt of the necessary documents from the Prodhan, the Sub-Divisional Officer shall take appropriate steps to deal with such unauthorized

construction in accordance with the provisions of law, at the earliest, but positively within a period of twelve weeks from the date of receipt of the documents from the Proadhan.”

The order passed in WPA 15382 of 2019 was challenged in appeal by the present petitioners in MAT 1117 of 2022 which was disposed of by an order dated 5th August, 2022 with the following direction:

“Accordingly, we grant liberty to the respondent no.1/writ petitioner to make comprehensive representation regarding his grievance to the concerned Block Development Officer within three weeks from date. If such representation is made within the time period indicated above, the Block Development Officer, being the respondent no.8, herein, shall take a reasoned decision thereon in accordance with law and the applicable rules, within a period of eight weeks from the date of receipt of the representation, after giving an opportunity of hearing to the appellant herein and the writ petitioner and/or their authorized representatives. It is made clear that the parties shall be given full opportunity of filing all documents they wish to rely upon before the respondent no.8. The respondent no.8 shall take a fresh decision without being influenced by his earlier report which was filed before the learned Single Judge. Since the appellant specifically says that there is a sanctioned plan in his favour, the respondent no.8 shall look into the matter. The respondent no.8 shall conduct such enquiry, as he may deem necessary. If required, the respondent no.8 shall be at liberty to seek which assistance of the concerned Gram Panchayat which will render such assistance. Needless to say, if the respondent no.8 finds that the appellant has made illegal construction, he will communicate the same to the concerned Sub-Divisional Officer for appropriate action being taken in accordance with law.”

Subsequent thereto, the private respondent No.11 filed another writ petition being WPA 3338 of 2023 and on 13th March, 2023 the writ petition was disposed of with the following direction:

“If such representation is filed, the same shall be disposed of in accordance with law upon providing an opportunity of hearing to the parties. The issues to be decided would be whether the construction of the respondent no.10 has been made strictly in accordance with the sanction granted and whether the building rules with regard to maintenance of side spaces had been complied with or not. A reasoned order shall be passed by the authority and steps shall be taken in accordance with law if there are any violations. An inspection shall precede in hearing.”

The aforesaid order passed in the writ petition was challenged in appeal by the present writ petitioner in MAT 757 of 2023 and on 4th January, 2024 the appeal was disposed of with the following order:

“In the aforesaid factual scenario, firstly, we find that the order of the learned Single Judge has been carried out and, therefore, nothing remains in this appeal. Secondly, even on merit, we see no infirmity in the said order. The learned Judge has rightly held that the issue of encroachment has to be decided by the Civil Court in the pending suit. However, the issue as regards construction having been raised by the appellant herein, in deviation from the sanctioned plan, has to be decided by the concerned Panchayat Authority. In fact, such decision has been arrived at by the Panchayat Authority. It is now for the appellant to challenge such decision of the Panchayat Authority in accordance with law, before the appropriate forum, if he is so advised.”

Again, the private respondent filed another writ petition being WPA 9352 of 2024 alleging of non-consideration of the representation dated 16th February, 2024 issued to the Sub-Divisional Officer, Katwa Sub-Division being the respondent No.9 therein. The writ petition was disposed of on 26th November, 2024 with the following direction:

“In view of the fact that the representation was filed as far back as on February 16, 2024 and has not yet

been disposed of, WPA 9352 of 2024 is disposed of by directing the respondent no.9 to consider the dispose of the representation of the petitioners dated February 16, 2024 within a period of six weeks from the date of communication of this order to the said respondent after giving a right of hearing to the affected parties including the petitioners, in accordance with law and without being influenced by any observation or direction made in this order.

It is made clear that there has been no adjudication on the merits of the case and all questions are left open to be decided by the respondent no.9.”

The principal contention of the petitioner is that despite there being finding of the writ Court and the Court of appeal that the aspect regarding encroachment is a matter to be decided by the civil court, the impugned orders have been passed by the Sub-Divisional Officer holding that there is encroachment. The private respondent in the earlier writ petition raised the issue that adequate side spaces have not been left following the building rules. The measurement made by the Revenue Officer does not depict of any deviation so far as the side space of the construction is concerned. Hence, impugned orders passed by respondent no. 6, Sub-Divisional Officer, Katwa are palpably bad in law since it fails to adhere to the direction issued in earlier writ petition as well as in appeal.

Mr. Kaustav Banerjee, learned Advocate for the petitioner submits that the orders of the writ Court as well as by the appellate Court is passed directing the appropriate authority to take steps if there is any

deviation in the construction pertaining to side space. However, there is no such specific finding in the impugned orders regarding deviation in construction pertaining to the side spaces. Therefore, the impugned orders are liable to be set aside. Both the writ court and the appeal court have consistently observed that the aspect of encroachment is to be decided by the civil court. Therefore, the aspect of encroachment cannot be gone into by the Sub-Divisional Officer. However, the impugned orders hold encroachment, which is not sustainable in law. In the civil court, they have failed to prove any encroachment. Further, the issue before the civil court would become infructuous in the event the order of the Sub-Divisional Officer is executed. He seeks for setting aside of the impugned orders.

Learned Advocates for the State in both the writ petitions indicate that the construction undertaken by the petitioner has exceeded on the northern, southern, eastern and western sides which is depicted in the report of the Revenue Officer dated 14th January, 2025. Therefore, there is clear deviation from the sanctioned building plan. Both the learned single Judges as well as the Hon'ble Division Bench has opined that if there is any deviation from the sanctioned plan the authority shall takes steps in accordance with law. The impugned orders have been passed after finding such deviation from the sanctioned plan and as such the orders does not call

for any interference. They submit for dismissal of the writ petition.

Similar submission is also advanced by the learned Advocate for the respondent No.11.

It is a fact that in the earlier round of litigation in WPA 3338 of the 2023, this Court observed that the findings of encroachment of the Block Development Officer and the Sub-Divisional Officer can only serve as a supporting evidence in title suit filed by the petitioner (respondent no. 11, herein) being Title Suit No.44 of 2019. The final decision has to be taken by the civil court. However, the issue as to whether the construction of the respondent No.10 has been made strictly in accordance with the sanctioned plan and in accordance with the rules will be decided by the appropriate authorities at appropriate stages under Section 23 of the West Bengal Panchayat Act, 1973. In the appeal in MAT 757 of 2023, the Hon'ble Division Bench observed that the learned Single Judge has rightly held that the issue of encroachment has to be decided by the civil court in the pending suit. However, the issue as regards constructions having been raised by the appellant therein, in deviation from the sanctioned plan has to be decided by the concerned panchayat authorities. Therefore, from the aforesaid orders it manifests, in the event of deviation from the sanctioned plan the appropriate authority is to decide the aspect of deviation.

Admittedly, on 16th January, 2025 an order was passed by respondent no. 6, Sub-Divisional Officer, Katwa. It is informed by learned advocate for the petitioner that on being approached by the petitioner, a further order has been passed on 26th March, 2025.

The impugned order dated 26th March, 2025 under challenge records as follows:

"BDO, Ketugram-1 Block is heard. He has submitted his joint enquiry report along with sketch map as ordered by this Ld. Court on 18.03.2025 having memo no: 939/Ketu-I, dated: 25.03.2025 and the same has been given to both the parties for perusal. The report depicts that;

"..... The demarcation and measurement of plot no. 5018 & 5020 under Mouza- Kandra, JL No. 36 has been conducted. After thorough measurement on the basis of LR map it appears that there is a deviation in construction of building in question from the sanctioned building plan issued by the Gram Panchayat."

"During measurement deviation in construction of the building is observed & excess occupied areas as identified are: In the northern side 48 ft & 4 inches, Southern side 35 ft. & 2 Inches, Eastern side is 11 ft & in Western side is 8 ft. & 10 inches" (Joint enquiry report & sketch map annexed)."

From the aforesaid order, it is clear that there is a deviation in construction of building-in-question from the sanctioned building plan issued by the gram panchayat. The order of demolition has been passed after finding such deviation from the sanctioned plan. The earlier orders of this Court as above, also record that in case of any deviation the authority would decide the aspect. Accordingly, this Court does not find any infirmity in the order passed by the authority

concerned for demolition. Hence, the writ petitions fall short of merit.

With the aforesaid directions, both the writ petitions being **WPA 2357 of 2025** and **WPA 3409 of 2025** are dismissed.

Interim order, if any, stands vacated.

All connected applications, if any, stand disposed of.

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.)