

Dd 12 11.03.2025

FMA/375/2025
With
IA NO: CAN/1/2025

SK. ASIKUR HOSSAIN AND ORS.
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Lotful Haque,
Mr. Gari Faruque Hossain,
Ms. Varsha Roy, Advocates
... .. For the Appellants

Ms. Munmun Tewary,
Ms. Sanchayita De, Advocates
... .. For the State

Mr. Md. Basar Bulbul,
Mr. Samirul Sardar, Advocates
... ..For the respondent Nos. 8 & 9

1. Appeal is directed against an order dated January 16, 2025 passed in WPA 29669 of 2024. Appeal is at the behest of the writ petitioners.
2. Writ petitioners complain of unauthorised construction as against the private respondents.
3. Writ petition of the appellants was dismissed on the ground that there is statutory alternative remedy available to the writ petitioners/appellants under the provisions of the Wakf Act, 1995.
4. State and the private respondents are represented.
5. Learned advocate appearing for the State submits that, inquiry into the allegations of unauthorised construction were undertaken both at the level of the Pradhan of the Gram Panchayat as also of the concerned Block Land and Land Reforms Officer. Both are of the unanimous finding in their respective reports that there exists unauthorised

construction without any sanctioned plan. Report submitted in Court on behalf of the State be taken on record.

6. In response to a query of the Court, learned advocate appearing for the private respondents is unable to draw the attention of the Court to any provisions of the Act of 1995, which allows unauthorised construction to be dealt with.
7. Immovable property is within the jurisdiction of a Gram Panchayat.
8. Issue of unauthorised construction requires a decision. Materials placed on record suggest that the nature of construction is such that, the concerned Sub-Divisional officer is the authority to decide the validity and legality of such unauthorised construction.
9. In such circumstances, the concerned Sub-Divisional officer will decide the issue of unauthorised construction as alleged by the appellants as against the private respondents in respect of the immovable property concerned. Such Sub-Divisional officer will afford an opportunity of hearing both to the appellants and to the private respondents. Such Sub-Divisional officer is at liberty to hear such other party and consult such documents that it may deem appropriate. Sub-Divisional officer will endeavour to conclude the proceedings within six weeks from the date of communication of this order. Needless to say that the Sub-Divisional officer will pass a reasoned order.
10. We also clarify that we did not pronounce finally as to whether or not there exists unauthorised construction at the local. It is for the Sub-Divisional officer to decide such issue. All points raised by the

parties with regard to the construction are kept open.

11. FMA/375/2025 along with the connected applications are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

(Smita Das De, J.)