

24.03.2025
Sl. No. 04.
D/L.
Mithun
Ct.No.39.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 4170 of 2025

Kauchar Ali Molla & Anr.
Vs.
State of West Bengal & Ors.

Mr. Mainak Bose,
Mr. Lakshminath Bhattacharya,
Mr. Arpan Kumar Bairagi

..for the petitioners

Mr. Sabyasachi Chatterjee,
Mr. Bodrul Karim,
Mr. Dipankar Das

...for the private respondent

Ms. Jhuma Chakraborty,
Mr. Suddhadev Adak

...for the State.

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

This writ petition has been filed seeking for
quashing and/or setting aside the impugned order dated
30th January, 2025 passed by respondent no.5, Sub-
Divisional Officer, Kakdwip, South 24-Parganas in terms
of order passed in WPA 1575 of 2016, and for
declaration that the construction erected is legal and
authorized and also for direction upon the respondent
authorities for grant of necessary permission for
completion of the construction.

The petitioners contend that they are the owners
and occupiers of entire landed property lying at Mouza:
Ramgopalpur, R.S.Khatian No.217, L.R. Khatian No.56,

R.S. Dag No.856, L.R. Dag No.1497 and R.S. Dag No.857, L.R. Dag No.1502 measuring more or less 1.66 acres of landed property. In the year 2012, the petitioner No.1 sold a part of his landed property measuring 43 decimals in Dag No.1497 and 17 decimals in Dag No.1502 to the predecessor-in-interest of the private respondents, namely, Sahachand Molla and his wife Morjina Bibi by registered deed of conveyance dated 3rd April, 2012. Thereafter, the petitioners undertook work of construction over his portion of land. The predecessor-in-interest of the private respondents filed a Title Suit being 19 of 2016 before the learned Civil Judge (Junior Division), Kakdwip, South 24 Parganas. against the petitioner alleging of such unauthorized construction over the property in question. The said suit has been dismissed for default by learned Civil Court. The private respondents also filed a writ petition being WPA No.1575 of 2016 which was disposed of on 16th January, 2024 directing the Prodhan, Ramgopalpur Gram Panchayat to forward the matter to Sub-Divisional Officer, Kakdwip to take a decision in respect of the disputes between the parties. Challenging the said order, an appeal has been preferred by the petitioners being MAT 285 of 2024 which has been disposed of by granting liberty to the petitioners to demonstrate all points including that the work of construction is not unauthorised one. The petitioners contend that the enquiry held by Block Land & Land Reforms Officer, Kakdwip was without serving

any notice to them. Moreover, the order is not in consonance with the directions passed in the appeal. Hence, this writ petition for setting aside of the impugned order of the respondent no.5, Sub-Divisional Officer, Kakdwip.

Mr. Mainak Bose, learned Senior Advocate for the petitioners submit that such work of construction undertaken by the petitioners does not require any permission, which aspect has not been taken into consideration by the Sub-Divisional Officer. He indicates that no notice prior to holding enquiry was served upon the petitioners. Hence, the order impugned is bad in law and liable to be set aside. Furthermore, an application for grant of permission was submitted by the petitioners in the year 2013 for construction of new building over the landed property, however, no communication was received from the Gram Panchayat. As per Rule 30 of West Bengal Panchayat (Gram Panchayet Administration) Rules, 2004, if a permission is not communicated by the Gram Panchayat within a prescribed time limit, it shall be presumed that the Gram Panchayat has accorded such permission and it shall be lawful for the applicant to erect any structure or building conforming to the building plan and site plan furnished by him along with the application. He seeks that the impugned order dated 30th January, 2025 of the Sub-Divisional Officer, Kakdwip, respondent no.5 be set aside.

On the contrary, Mr. Sabyasachi Chatterjee, learned Advocate for the private respondents submits that there cannot be *post facto* permission of the building plan. Section 23(1) of the West Bengal Gram Panchayet Act, 1973 (*hereinafter referred to as 'Act of 1973'*) specifically mentions that previous permission from the Gram Panchayat is essential for any proposed construction in the relevant area and, as such, the question of giving *post-facto* permission is not within the scope of the Act of 1973. In support of his contention, he relies on the decision of this Court passed in ***Falguni Mukherjee –versus- The State of West Bengal & Ors.*** reported in **2022 SCC online Cal 3612**.

Ms. Jhuma Chakraborty, learned Advocate for the State-respondents leaves the matter to the discretion of the Court.

This is second round of litigation.

In the earlier writ petition, filed by the private-respondents being WPA 1575 of 2016, following direction was issued on 16th January, 2024:-

“In view of aforesaid facts, the Prodhan, Ramgopalpur Gram Panchayat being respondent no.7 is directed to forward the matter to the Sub-Divisional Officer, Kakdwip being the respondent no.4 within fortnight from the date of communication of this order along with necessary documents.

The respondent no.4 on receipt of documents from the respondent no.7 is directed to take decision in accordance with law after granting opportunity of hearing to the petitioners and the respondent nos.9 to 11 or their representatives within a period of twelve weeks thereafter.”

Such order was assailed in appeal in MAT 285 of 2024 and Hon'ble Division Bench passed the following order:-

“As the order impugned does not finally decide the issue, we are not inclined to interfere on such score. It is open to the appellants to demonstrate before the SDO concerned that the construction is not an unauthorised one and the said officer after giving opportunity of hearing to parties shall pass appropriate order under Section 23(5) of the West Bengal Panchayat Act within the stipulated time frame. It is also clarified mere pendency of application for sanction cannot clothe an illegal construction with validity.”

It is found that the order of the learned Single Judge was not interfered with since the order impugned did not finally decide the issue. The Hon’ble Division Bench also clarified that pendency of application for sanction cannot clothe an illegal construction with validity. The order impugned has been passed by the Sub-Divisional Officer in compliance to the order passed in WPA 1575 of 2016.

Learned Advocate contends that no permission is required for carrying out such construction. Such argument has also been pressed into service before the Hon’ble Division in appeal, which after due consideration did not interfere with the order of the learned Single Judge and left it open to the petitioners (appellant therein) to demonstrate before the Sub-Divisional Officer that the construction is not an unauthorised one. From the order impugned, it is found that the building in question has been undertaken by the petitioners over Plot No. 1407 without taking any prior permission from the Pradhan as mandated under Section 23 Sub-Section (1) of the Act of 1973. Moreover, such argument advanced on behalf of the petitioners run contradictory to the prayer seeking direction upon

the respondent nos.9 and 10 to grant permission to complete construction.

Learned Advocate appearing for the petitioner also referring to Rule 30 of West Bengal Panchayat (Gram Panchayet Administration) Rules, 2004 submits that if the permission is not communicated within a stipulated period, then it will be presumed that the permission has been accorded. It is placed on record that such contention was never argued before the Appellate Court.

From the aforesaid contentions, it manifest that the petitioner raised self-contradictory grounds. In appeal, ground is taken that no permission is required. In the present writ petition, submission is advanced that there is presumption of permission. If that be so, there would not occasion to pray for direction for grant of permission by the authority.

In *Falguni Mukherjee (supra)*, the Hon'ble Court in paragraph 23 observes as follows:-

“23. If we peruse the provisions of Section 23(1) of the Act of 1973, we shall find that it contains not only the word ‘permission’, but it is qualified by the word ‘previous’. In fact, by adding ‘previous’ with the word ‘permission’, the Legislature in this regard has made it amply clear that requirement of ‘prior permission’ or ‘previous permission’ is sine-qua-non in respect of any proposed construction in the area of Gram Panchayat under Section 23(1) of the Act of 1973. Had Section 23(1) of the act 1973 contained the word ‘permission’ only, instead of words ‘previous permission’, there would have been a scope for interpretation that the word ‘permission’ includes prior or subsequent permission but as the said section specifically mentions that previous permission from the gram panchayat is essential for any proposed construction in the relevant area, there is no scope either for the learned advocates or for the court to interpret that the legislature intends that previous permission also includes subsequent permission or the competent authority can grant Ex Post facto sanction after construction was over. Therefore, by inserting the word ‘previous permission’ in Section 23(1) of the Act of 1973, the legislature has clearly and unambiguously specified the criteria of ‘previous permission’ in writing from Gram Panchayat for any proposed

construction in the relevant area under Section 23(1) of the said Act, and not the subsequent permission, is one of the essential requirements.”

Bearing in mind the proposition laid down in the above decision, there cannot be any *post-facto* sanction after the construction has been undertaken.

It is contended that despite submission of application for sanction of building plan on 7th February, 2013, no sanction has been accorded. It is relevant to note that the petitioners neither did disclose such fact before the learned Single Bench in WPA 1575 of 2016 nor in appeal for the reasons better known to them. Rather in the writ petition, it was argued that the petitioners have not carried out any construction and in appeal it was argued that there is no requirement for permission. Moreso, no steps were taken at the earliest for redressal of their grievances as above and the petitioners have chosen to proceed with the work of construction without sanctioned building plan.

In the light of the above discussions, this Court finds that there is no merit in the writ petition.

Accordingly, the writ petition being **WPA 4170 of 2025** stands dismissed.

All connected applications, if any, stand disposed of.

There will be, however, 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 this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bivas Pattanayak, J.)