

01
18.03.2025
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 5669 of 2025
Kazi Asif alias Kazi Asifuddin alias Kazi Asib
alias Kazi Asibuddin
-versus
The State of West Bengal & Ors.**

**Mr. Kaustav Banerjee,
Ms. Ria Kundu.
...For the Petitioner.**

**Mr. Amal Kumar Sen, AGP,
Mr. Lal Mohan Basu.
...For the State.**

**Mr. Sauradeep Dutta.,
Mr. Sk. Firoj Ali,
Mr. Himadree Ghosh.
...For the Respondent
Nos. 5 & 6.**

**Mr. Meghnad Dutta,
Mr. Abhishek Shaw.
...For the Respondent
Nos. 7 and 8.**

**Ms. Priyanka Jana.
...For the Intervenor.**

1. The petitioner is aggrieved by the order dated 28th February, 2025 passed by the Sub-Divisional Magistrate, Arambagh directing removal of the unauthorized construction and for recovery of the possession of the panchayat land inconformity with Section 25 of the West Bengal Panchayat Act, 1973.

2. According to the petitioner, the Sub-Divisional Magistrate does not have the jurisdiction to pass such an order.

3. The petitioner submits that he is the co-owner of the Dag No. 7441 which is classified as 'Bastu' in the record of rights.

4. The petitioner has been found to have encroached portion of Dag No. 7438 which is recorded in the name of the Gram Panchayat and classified as 'Path' (Pathway).

5. A complaint was lodged against such unauthorized construction and order of removal of unauthorized construction has been passed by the Sub-Divisional Magistrate.

6. Learned advocate appearing on behalf of the petitioner contends that the action is contrary to provision of Section 25 of the West Bengal Panchayat Act, 1973.

7. According to the petitioner, it is only the Gram Panchayat who can take steps in the matter and neither the Sub-Divisional Officer nor the Sub-Divisional Magistrate has any authority to take steps for removal of the unauthorized construction.

8. Prayer has been made to set aside the impugned order.

9. Learned advocate appearing on behalf of the private respondents submits that they lodged a complainant and in response to the same, proceeding for removal of unauthorized construction was initiated.

10. Learned advocate appearing on behalf of the Gram Panchayat submits that the subject land being Dag No. 7438 is recorded in the name of the Gram

Panchayat and the petitioner does not have any right to encroach the same.

11. Learned advocate appearing on behalf of the State respondents has produced a statement of the Sub-Divisional Officer, Arambagh wherefrom it appears that the designation in the order impugned is mentioned as Sub-Divisional Magistrate in place of Sub-Divisional Officer as it is the common practice in various cases taken up in the Executive Magistrate Court of the Sub-Divisional Officer. In the District of Hooghly, the Sub-Divisional Officer and the Sub-Divisional Magistrate is the same person.

12. From the documents annexed to the writ petition it appears that an order was passed by the Hon'ble Division Bench of this Court in WPA (P)/161/2024 (Kazi Parvej Ahmed & Anr. –vs- State of West Bengal & Ors.) on 18th April, 2024 wherein the Court recorded that as the complaint of unauthorized construction was acted upon by the District Magistrate and appropriate direction has been issued by the District Magistrate to the Sub-Divisional Officer to consider the representation, accordingly, steps shall be taken in accordance with law by the said respondent after issuance of notice to the petitioner and the private respondents.

13. In a contempt application along with review application in connection with the said writ petition, the Hon'ble Division Bench passed order on 21st January, 2025 clearly holding that the Sub-Divisional Magistrate does have jurisdiction to initiate necessary action in the matter. The Court directed the Sub-Divisional Officer to proceed with the enquiry and pass final order.

14. It appears that the Sub-Divisional Officer who also acts as the Sub-Divisional Magistrate heard the submission made on behalf of all the necessary parties including the petitioner and passed order on 28th February, 2025 directing the Panchayat to ensure removal of the unauthorized construction and to recover possession of the panchayat land.

15. Section 25(4) of the West Bengal Panchayat Act, 1973 clearly records that for the purpose of removal of obstruction or encroachment, the Gram Panchayat may apply to the Sub-Divisional Magistrate and the Sub-Divisional Magistrate shall, on an application, provide help as may be necessary for the removal of such obstruction or encroachment.

16. In the instant case, the Sub-Divisional Officer who also acts as the Sub-Divisional Magistrate found that the panchayat road has been encroached upon by raising construction by the petitioner and passed order for removal of the unauthorized construction. The petitioner has not been able to show any document in support of the submission that the subject land which is recorded in the name of the panchayat being Dag No. 7438, has been permitted to be used by the petitioner by raising construction thereon. The panchayat certainly has the right to remove any unauthorized encroachment/ construction made thereon.

17. In view of the above, the stand of the petitioner in trying to hold on to an unauthorized construction made over the panchayat land cannot be accepted.

18. The petitioner may voluntarily remove the unauthorized encroachment within a fortnight from

date failing which the panchayat shall take steps for removal of the unauthorized construction in accordance with the order passed by the authority on 28th February, 2025.

19. The writ petition stands dismissed.

20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Amrita Sinha, J.)