

19.08.2025
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W. P. A. 6763 of 2024

[Malati Pal Mondal & Anr. Vs- State of West Bengal & Ors.]

Mr. Prosenjit Mukherjee
Mr. Raia Roy
Ms. Bobita Pramanik
...for the petitioners

Mr. Jayanta Samanta
Mr. Deepnath Roy Choudhury
Mr. Parikshit Goswami
...for the State

Mr. Samrat Banerjee
...for respondent nos. 9 & 11

1. This writ petition is filed for setting aside and/or withdrawal of the minutes dated 21st November 2023 of respondent no.5, Sub-Divisional Officer, Rampurhat, Birbhum.
2. The petitioners contend as follows.
 - (i) The petitioner no. 1 is the owner of LR plot no. 631 under Mouza-Buinha, JL no. 75 under Mayureswar-I Block under police station Mollarpur. The plots of land being plot no. 641, 642 and 643 has been approved for PCC road from Palash Mondal's house to Mihir's house, which is the only way to ingress and egress of the petitioners' residential house from the main panchayet road. All adjacent land owners of LR plot no. 641, 642 and 643 have left minimum

open space for the purpose of ingress and egress. The private respondents have undertaken unauthorized construction of a cowshed (Khatal) without obtaining sanctioned plan and encroaching the PCC road. The petitioners made a complaint before the Pradhan on 20th June 2022. On the basis of such complaint, notices were issued to the private respondents and a resolution was passed by the Jhikadda Gram Panchayet on 20th July, 2022 holding the construction undertaken by the private respondents as illegal and unauthorized. Notices were issued to the private respondents on 22nd August 2022 for demolition of such illegal structure.

(ii) By dint of an order passed by the Executive Magistrate Rampurhat, the Pradhan was directed by the Block Development Officer Mayureswar-I Block to suspend removal of illegal construction over the property in question and refer the matter to the Sub-Divisional Officer concerned in terms of sub-section (5) of section 23 of the West Bengal Panchayet Act, 1973 (*hereinafter referred to as the 'Act of 1973'*). Pursuant thereto, the Pradhan referred the matter to the Sub-Divisional Officer, Rampurhat, Birbhum. The Sub-Divisional Officer on 21st November, 2023 after considering the enquiry

report dated 20th September, 2023 of Deputy Secretary (PS) remanded the matter to the Pradhan, Jhikadda Gram Panchayet to consider the matter afresh upon hearing all concerned.

(iii) Challenging such action of the Sub-Divisional Officer, Rampurhat, Birbhum, the petitioners have preferred the present writ petition.

3. Mr. Prosenjit Mukherjee, learned advocate for the petitioners submits that the petitioners were never notified of the hearing conducted by the Sub-Divisional Officer. In the impugned order, the Sub-Divisional Officer, Rampurhat, Birbhum has proceeded on some other aspects which are irrelevant, not connected to the context and dispute between the parties. The findings of the Jhikadda Gram Panchayet of illegal construction undertaken by the private respondents in the resolution has not been dealt with in the impugned order. Therefore, there is palpable illegality in the said impugned order. He seeks for setting aside of the impugned order with a direction to consider the matter afresh and with a liberty to the petitioners to place their case before respondent no.5, Sub-Divisional Officer, Rampurhat, Birbhum. To buttress his contention, he relies on the following decisions of this Hon'ble Court:

- (i) ***Biswajit Naskar versus The State of West Bengal & Ors. in WPA 12536 of 2021***
- (ii) ***Biswajit Pramanik versus The State of West Bengal & Ors. in W.P.A. No. 4993 of 2022***
- (iii) ***Falguni Mukherjee versus The State of West Bengal & Ors. in MAT 1025 of 2022***

4. On the contrary, Mr. Samrat Banerjee, learned advocate for the private respondent nos. 9 & 11 submit that they have filed a Title Suit before the Civil Judge (Junior Division), 2nd Court, Rampurhat, Birbhum being Title Suit No. 131 of 2024 against the Pradhan of Jhikadda Gram Panchayet wherein an order of injunction has been passed not to dispossess the plaintiff from the suit property without due process of law. No steps have been taken by the Pradhan under section 44 of the Gram Panchayet Act for constructing concrete slab for covering the open drain. He submits that over the dispute, the private respondents were attacked and an FIR has been lodged at the instance of Suvojit Mondal, son of one Mihir Mondal. He seeks for dismissal of the writ petition.

5. Mr. Jayanta Samanta, learned advocate representing the State submits that the petitioners have no right of audience as per provision of West Bengal Panchyat Act, however,

the matter may be relegated to the Sub-Divisional Officer, Rampurhat, Birbhum for fresh consideration.

6. Before delving into the merits of the writ petition, it would be apposite to deal with provisions of Section 23(5) of the Act of 1973.
7. Section 23(5) of the Act of 1973 provides that when any new structure or new building or any addition to any structure or building is being or had been erected or made, as the case may be, in contravention of the provisions of sub-Section (1) meaning thereby that such construction has been made without any permission, the permission granting authority shall refer the matter to the Sub-Divisional Officer concerned, who may after giving the owner of such building an opportunity of being heard, make an order directing demolition of the building or a portion of the building within a specified time. The Sub-Divisional Officer has also been empowered to effect the demolition and impose a fine, as may be specified by the State Government, and thereafter recover the cost thereof from the owner as a public demand. Section 23(5) was incorporated by an amendment in 2017, despite there being a provision under sub-section (6) of Section 23 of the said Act, empowering the authority to order demolition and take steps for

such demolition. The legislature in its wisdom incorporated a mandatory provision to refer such matters to the Sub-Divisional Officer before an order of demolition is passed. Such order affects the right to property of a citizen and results in demolition of his property. The incorporation of sub-section (5) to the provisions of law in spite of the existing provision under Section 23(6) is a clear indication of the intention of the legislature to provide a double safeguard before such demolition takes place. [See *Biswajit Pramanik (supra)*]

8. Admittedly, prior to the issuance of the demolition notice the Jhikadda Gram Panchayet passed a resolution holding the construction undertaken by the private respondents is illegal and unauthorized. The concerned Pradhan issued notice of demolition on 22nd August 2022 to the private respondents.
9. As per section 23 (5) of the Act of 1973, the permission granting authority has to refer the matter to the Sub-Divisional Officer whenever there is contravention of provisions of section 23 (1). At the first instance, the matter was not referred to the concerned authority under the Act but thereafter upon a direction by the Block Development Officer, the matter was referred to the Sub-Divisional Officer, Rampurhat, Birbhum

in terms of section 23(5) of the West Bengal Panchayet Act.

10. There are no materials to show that the petitioners were notified after the matter was referred. The impugned order is also silent as to whether any notice of hearing was sent to the petitioners or not. Although sub-section (5) of section 23 provides that the owner of the building is to be heard, however, principles of natural justice requires that the petitioners ought to have been notified of such hearing.
11. Furthermore, the impugned order records that the gram panchayet has not taken a resolution in its general body meeting of the said unauthorised construction. It is pertinent to note that the Sub-Divisional Officer failed to appreciate that the letter of reference dated 10th February 2023 of the Pradhan clearly records that the panchayet has passed a resolution to the effect that the construction in question is illegal and unauthorized. It is relevant to place on record that the findings of the resolution of such illegal construction has not been taken into consideration and dealt in the impugned order of the Sub-Divisional Officer.
12. The decision in *Falguni Mukherjee (supra)* deals with the aspect whether post facto sanction can be granted under Section 23(1) & (6) of the

Panchayat Act, 1973 in respect of a construction which has already been completed. Thus, the decision is factually distinguishable from the case at hand.

13. The decision in *Biswajit Naskar (supra)* is also factually distinguishable from the case at hand.

14. In light of the above, the impugned order dated 21st November 2023 passed by the respondent no. 5 the Sub-Divisional Officer, Rampurhat, Birbhum is set aside.

15. The present writ petition being no. **W.P.A. 6763 of 2024** is disposed of directing the respondent no. 5, the Sub-Divisional Officer, Rampurhat, Birbhum to consider the matter afresh upon hearing the petitioners as well as the private respondents and all necessary parties and also taking into consideration the resolution of the Jhikadda Gram Panchayet dated 20th July, 2022 and pass a reasoned order in accordance with law within a period of four weeks from the date of communication of this order.

16. Reasoned order shall be communicated to the parties including the petitioners and the private respondents within a week thereof.

17. Learned advocate for the petitioners is directed to communicate this order to the respondent no. 5 the Sub-divisional Officer, Rampurhat, Birbhum for necessary compliance.

18. Since no affidavits have been called for, the allegations made in the writ petition are deemed to be not admitted.
19. Interim order, if any, stands vacated.
20. All connected applications, if any, stand disposed of.
21. There shall be no order as to costs.
22. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this court.
23. 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.)