

17.03.2025
Sl. No. 3.
D/L.
Mithun
Ct.No.39.

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

WPA 8159 of 2024

**Munmun Sen
Vs.
The State of West Bengal & Ors.**

Mr. Nikhil Kr. Gupta,
Ms. Soma Chakraborty,
Mr. Subhadeep Maitra

...for the petitioner

Ms. Jhuma Chakraborty,
Mr. Suddadeb Adak

...for the State-respondents.

Affidavit of service filed on behalf of the petitioner
is taken on record.

This writ petition has been filed for cancellation
and/or rescinding and/or withdrawal of the reasoned
order passed by respondent no.6, Pradhan, Sonaijhuri
Gram Panchayat communicated vide Memo
No.05/SGP/2024 dated 8th January, 2024.

This is second round of litigation.

Previously, a writ petition was filed by private
respondent no.7 being WPA 12144 of 2023 alleging of
illegal and unauthorized construction at the behest of
the petitioner herein.

The aforesaid writ petition was disposed as
follows:-

*“The writ petition is accordingly disposed of by
directing the respondent no.5, Sonaijhuri Gram Panchayet to
consider and dispose of the representation made by the
petitioner, strictly in accordance with law, after giving an*

opportunity of hearing to all the necessary parties, including the petitioner, at the earliest, but positively within a period of three months from the date communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties, including the petitioner, immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.”

The principal contention of the petitioner is that the respondent no.6, Pradhan, Sonaijhuri Gram Panchayat has passed reasoned order observing that the construction can be demolished as per Section 23 of the West Bengal Panchayat Act, 1973 (*hereinafter referred to as the ‘Act of 1973’*) without referring the matter to Sub-Divisional Officer in accordance with law. As such, order impugned is bad in law.

Learned Advocate representing the petitioner submits that as per the Act of 1973, the Pradhan, Sonaijhuri Gram Panchayat, has to refer the matter to the Sub-Divisional Officer in terms of Section 23(5) of the Act of 1973. However, without taking recourse to the above provisions, he has passed order for demolition. Hence, the impugned order is bad in law.

On the contrary, Ms. Jhuma Chakraborty, learned Advocate representing the State-respondents submits that the impugned order of the Pradhan has been passed in compliance to the order passed by this Court in the previous writ petition being No.WPA 12144 of 2023. She also submits that the Pradhan be directed to take recourse to Section 23(5) of the Act of 1973.

Upon perusal of the impugned order of the respondent no.6, Pradhan, Sonaijhuri Gram Panchayat, it is found that upon scrutinizing of the records and conducting a spot inspection, it has been found that the construction over the plot of land being No.103, 104, 105, 107 and 108 under Mouza: Kalipur, J.L. No.43 has been undertaken by the petitioner without obtaining any permission from the Sonaijhuri Gram Panchayat. Further, it has been observed that the Sonaijhuri Gram Panchayat upon holding a General Body Meeting on 5th January, 2024, passed resolution that the construction can be demolished as per Section 23 of the Act of 1973. In the opinion of this Court, such observation cannot be said as improper.

It has been strenuously argued on behalf of the petitioner that the order is bad in law for not taking recourse to Section 23(5) of the Act of 1973.

Accordingly, the writ petition is disposed of clarifying that the respondent no.6, Pradhan, Sonaijhuri Gram Panchayat shall take recourse to Section 23(5) of the Act of 1973 in carrying out the demolition of the construction over the property-in-question.

With the aforesaid observation, the writ petition being **WPA 8159 of 2024** stands disposed of.

All connected applications, if any, stand disposed of.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

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.)