

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

**FMA 768 of 2025
With
IA No.: CAN 1 of 2025**

**Jane Alam Shekh @ Jane Alam Sk. & Anr.
Vs.
The State of West Bengal & Ors.**

For the Appellants : Mr. Golam Mastafa, Advocate
Mr. Tarasankar Samanta, Advocate
Mr. Ashrafur Rahman, Advocate

For the State : Mr. Ashim Kumar Ganguly, Ld. AGP
Mr. Tarak Karan, Advocate

For the Respondent Nos.3A & 4: Mr. Uttam Kumar Bhattacharyya, Advocate

For the Respondent Nos.7 to 10: Mr. Dyutiman Banerjee, Advocate
Mr. Bodhisotto Halder, Advocate
Mr. Vishal Mallick, Advocate
Mr. Salil Kumar Maity, Advocate

Hearing & Judgment on : August 11, 2025

DEBANGSU BASAK, J.:-

1. Appellants are the writ petitioners.
2. Appeal is directed against an order dated March 19, 2025 passed by the learned Single Judge in WPA 5436 of 2025.
3. By the impugned order, the learned Single Judge found that, ingress and egress of the writ petitioners were not affected. The District Magistrate took

into account that, there was no encroachment on the land in question. Therefore, learned Single Judge did not find any reason to interfere with the order impugned passed by the District Magistrate.

4. Learned Advocate appearing for the appellants submits that, appellants complained of unauthorized construction to the District Magistrate. In this regard, he refers to the letter dated March 28, 2024. He submits that, the District Magistrate misdirected the enquiry and, therefore, came to an erroneous finding. He submits that, the District Magistrate proceeded on the basis that, the occupation of the private respondents in the land in question was authorized by the Zilla Parishad and that, the appellants were enjoying a right of ingress and egress to its property. He submits that, such was not the claim before the District Magistrate made by the appellants.
5. Learned Advocate appearing for the respondent nos.7 to 10 submits that, the writ petition is not maintainable since, there is a provision for appeal under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962. In this regard, he refers to Section 7 thereof.
6. Learned Advocate appearing for the respondent nos.7 to 10 refers to various documents annexed to the affidavit-in-opposition. He submits that, his clients received possession of the property from the Zilla Parishad on lease. At the time of obtaining lease, there were existing structures. His client did not make any further construction on the existing structures. His clients are not responsible to answer whether the existing structures were authorized or unauthorized.

7. State is represented.
8. It is submitted on behalf of the Zilla Parishad that, the respondent nos.7 to 10 were granted lease of the immovable property concerned. He submits that, there were existing structures on which renovations were done by the respondent nos.7 to 10.
9. We find from the records that, the appellants approached the District Magistrate with an allegation of unauthorized construction by the letter dated March 28, 2024.
10. Court is informed that, the immovable property concerned is located under a Panchayat area and is governed by the West Bengal Panchayat Act, 1973. Under the provisions of the Act of 1973, allegations of unauthorized constructions are to be considered and decided by the Sub-Divisional Officer.
11. In the facts and circumstances of the present case, since the allegation is of unauthorized construction, the same does not fall within the purview of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962. Consequently, Section 7 of the Act of 1962 is not attracted. In any event, District Magistrate misapplied the provisions of Section 1962 in returning a finding as recorded in his order dated January 20, 2025. The allegation of unauthorized construction remains unattended to till date. It is required to be decided upon by the Sub-Divisional Officer under the Act of 1973.
12. In such circumstances, the jurisdictional Sub-Divisional Officer will proceed to decide on the issue of unauthorized construction at the plots concerned

after affording a reasonable opportunity of hearing to the appellants before us as also respondent nos.7 to 10.

13. Sub-Divisional Officer is at liberty to hear the Zilla Parishad along with any other persons that he deems appropriate. He is at liberty to consider any document that he deems necessary.
14. Sub-Divisional Officer will endeavour to conclude the entire proceedings within a period of six weeks from date. He will pass a reasoned order which he will communicate to the parties forthwith thereafter.
15. Impugned order dated March 19, 2025 passed in WPA 5436 of 2025 is set aside.
16. Impugned order of the District Magistrate dated January 20, 2025 is set aside.
17. **FMA 768 of 2025** and **IA No.: CAN 1 of 2025** are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

18. I agree.

(AD)

(Prasenjit Biswas, J.)