

10.09.2025
Item No.24
Ct. No.42
ss

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

W.P.A. 13004 of 2025

**Kutubuddin Molla
-Vs-
The State of West Bengal & Ors.**

Mr. Shahan Shah
Sk. Abumusa
Md. Shajahan
... for the petitioner

Mr. Mohan Kumar Sanyal
Mr. Sajal Kumar Pandit
... for the State

Mr. Sandip Das
... for the private-respondents

1. Affidavit of service filed on behalf of the petitioner is taken on record.
2. By the present writ petition, the petitioner seeks for direction upon the respondents to take necessary action against the illegal construction undertaken by the private-respondent nos.6 to 11 in contravention of West Bengal Panchayat Act, 1973 over the R.S. Plot No. 619, L.R. Plot No.646 under Mouza Porui, J.L. No.56, Police Station Magrahat, District South 24-Parganas and for consideration of his representation dated 20th March, 2025 (Annexure P2).
3. The petitioner contends that he and the private respondent nos.6 to 11 are the co-owners in respect of the landed property-in-question. The private-

respondents all on a sudden has started construction of *pucca* building over the property-in-question without sanctioned building plan. On 20th March, 2025, a representation was made before the Pradhan, Amratala Gram Panchayat, respondent no.5 alleging of such illegal construction by private respondents. However, no steps have been taken. Hence, this writ petition.

4. Mr. Shahan Shah, learned Advocate for the petitioner submits that the private-respondents have undertaken illegal unauthorised construction without obtaining sanctioned building plan. He seeks for direction upon the respondent no.5, the Pradhan, Amratala Gram Panchayat for consideration of the representation of the petitioner dated 20th March, 2025.
5. On the contrary, Mr. Sandip Das, learned Advocate appearing on behalf of the private-respondent nos.6 to 11 submits that the petitioner has got no right, title and interest over the land-in-question. One civil suit being Title Suit No.32 of 2010 was filed by the private-respondents before the learned Additional Civil Judge (Junior Division), 1st Court, Diamond Harbour, South 24-Parganas, wherein decree has been passed by the learned Civil Judge declaring the right, title and interest in the aforesaid property-in-question in favour of the private-respondents. The father of the petitioner

challenged such decree passed in the suit by preferring an appeal being Title Appeal No.34 of 2017 before the learned District Judge, South 24-Parganas, which was transferred to the learned Additional District Judge, Fast Track Court-II, Diamond Harbour, South 24-Parganas for disposal. However, the said title appeal has been dismissed for default by order dated 20th April, 2022. Therefore, the decree passed in the title suit has reached its finality. Such being the position, the petitioner has no *locus* to raise such issue since he is a stranger to the property-in-question. The private-respondents previously filed a writ petition being WPA No.27895 of 2024 wherein direction was issued to the Pradhan, Amratala Gram Panchayat to consider the representation of the petitioner and consequently, order has been passed by the concerned Pradhan holding illegal construction by the private respondents over the plot being L.R. Dag No.657 (old 629) of Khatian No.38, J.L. No.56 at Mouza Parui under Police Station Margahat under the District of South 24-Parganas and the matter has been referred to the Sub-Divisional Officer, Diamond Harbour, South 24-Parganas for taking further steps in accordance with law. The construction has been undertaken by the private respondents on the basis of funds allocated under *Pradhan Mantri Awaas Yojana* and

as such no building permission is required as the said scheme falls under poverty alleviation scheme. He files relevant documents namely decree of the civil court, order passed in appeal etc., which are taken on record.

6. Mr. Mohan Kumar Sanyal, learned Advocate for the State submits that the matter is civil in nature. He files report furnished by the Officer-in-Charge, Magrahat Police Station dated 23rd June, 2025, which is taken on record.
7. In reply, Mr. Shah, learned Advocate for the petitioner submits that a stranger can also maintain a writ petition alleging of such illegal construction. In support of his contention he relies on the following decisions.
 - (i) *M/s. Bangbhum Realbuilders LLP –versus- Shri Biplab Das & ors. (MAT 930 of 2024) along with other batch of appeals.*
 - (ii) *Rajesh Kumar Surana –versus- The State of West Bengal & ors. (WP 7625(W) of 2018);*
 - (iii) *Jamila Khatoon & ors. –versus- The State of West Bengal & ors. (WPA 15791 of 2021)*
 - (iv) *Amarendra Nath Chanda and another – versus- Midnapur Municipality and others (WPA 5602 of 2022).*
8. At the outset, it is relevant to note that the petitioner claims to be a co-owner in respect of the property-in-question. In a civil suit filed by private

respondent no.6 and others being Title Suit No. 32 of 2010 before the learned Additional Civil Judge (Junior Division), 1st Court, Diamond Harbour, South 24-Parganas, a decree has been passed in favour of the plaintiffs, namely, the private-respondents herein declaring their right, title and interest over C.S. Plot No. 619 (corresponding to L.R. Plot No. 646). Though such decree was challenged in appeal being Title Appeal No.34 of 2017 before the appellate court, but subsequently the said appeal has been dismissed for default by order dated 20th April, 2022. Nothing is placed on record by the petitioner showing setting aside of the decree passed in the civil suit. Therefore, as per the decree passed in the title suit, the right, title and interest of the private-respondents have been declared by the jurisdictional civil court in respect of the property-in-question. Although the petitioner claims title to property on the basis of record of rights, however, it is settled proposition of law that record-of-rights does not create a title to the property.

9. In ***Ayaaubkhan Noorkhan Pathan -versus- State of Maharashtra and others***, reported in **2013(4) SCC 465** the Hon'ble Supreme Court observed as follows:

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from

legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta (1951 SCC 1024 AIR 1952 SC 12), Saghir Ahmad v. State of U.P. (AIR 1954 SC 728), Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. (AIR 1962 SC 1044), Rajendra Singh v. State of M.P. (1996) 5 SCC 460 AIR 1996 SC 2736] and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar (2009) 2 SCC 784].

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved does not include a person who suffers from a psychological or an imaginary injury, a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Canji v. Home Insurance Co. of New York [(1974) 2 SCC 387 AIR 1974 SC 1719] and State of Rajasthan v. Union of India (1977) 3 SCC 592 AIR 1977 SC 1361].)

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16. In Ghulam Qadir v. Special Tribunal [(2002) 1 SCC 33], this Court considered a similar issue and observed as under: (SCC p. 54, para 38)

"38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. ... In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury.

Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others."Upon going through the aforesaid decision it has been laid down that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others."

10. Upon going through the aforesaid decision, it manifest that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others. There cannot be any quarrel that no right, title and interest in the property-in-question has been declared by the civil court in favour of the petitioner. Therefore, a person having no interest in the property cannot be allowed to meddle with right of other parties in the said property.
11. Before parting let me deal with the decision cited on behalf of the petitioners as follows.

In *M/s. Bangbhum Realbuilders LLP (supra)*, the petitioner intended to purchase a flat at the concerned commercial-cum-residential complex and that, in furtherance of such intention, he had undertaken a due diligence whereupon he has come to learn that, the concerned commercial-cum-residential complex is unauthorised as the concerned municipality could not have granted a sanction for building the same and in such backdrop, the Hon'ble Division Bench held that the

writ petitioner cannot be classified as a stranger or a busybody having no interest in the subject matter of the writ petition. The fact is distinguishable from the case at hand.

In *Rajesh Kumar Surana (supra)*, the writ petitioner claimed to be a citizen of India and being a resident of Salt Lake, Kolkata and engaged in different social activities, he complained of certain unauthorised construction in the subject premises. The facts are distinctly different from the case at hand.

In *Amarendra Nath Chanda (supra)*, the grievance of the writ petitioner was that the respondent no.4 had obtained a sanction plan for construction from the Midnapur Municipality (Paschim Medinipore) in contravention of law, which fact is also distinguishable from the case at hand.

In *Jamila Khatoon (supra)*, the petitioners had interest in a portion of the property where the alleged construction has been made and it was held that they have a right to compel the Corporation to perform its duty imposed by the statute, which is also distinct from the case at hand.

In the aforesaid backdrop, the aforesaid decisions do not apply to the facts and circumstances of this case.

12. In view of the above, the writ petition falls short of merit.

13. Accordingly, the writ petition being no. **WPA 13004 of 2025** stands dismissed.
14. Interim order, if any, stands vacated.
15. All connected applications, if any, stand dismissed.
16. There shall be no order as to costs.
17. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
18. 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.)