

17.09.2025
Sl. No.436(DL)
Ct. No.42
srm

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

W.P.A. No. 13012 of 2025

M/s. Maa Tara Construction & Ors.

Versus

The State of West Bengal & Ors.

Mr. Biswaranjan Bhakat,
Mr. O.P. Tiwari

...for the Petitioners.

Mr. Biswajit Sau,
Md. Ziaur Rahaman

...for the State.

Mr. Fazlul Haque,
Mr. Diganta Bhattacharyya

...for the Respondent Nos.6 & 7.

1. By the present writ petition, the petitioners seek for quashing of the order passed by the respondent No.4, Pradhan, Chakpara Anandanagar Gram Panchayat dated 3rd April, 2025 and order dated 30th May, 2025 of the Sub-Divisional Officer, Sadar, Howrah.
2. The petitioners contend that the Pradhan has passed the order in his individual capacity which is not in accordance with Section 23 of the West Bengal Panchayat Act, 1973. Moreover, the Sub-Divisional Officer has passed order on 30th May, 2025 without giving notice to the petitioners. Being aggrieved by such action of the respondent authorities, the petitioners have preferred the present writ petition.

3. Mr. Biswaranjan Bhakat, learned Advocate for the petitioners submits that the order dated 3rd April, 2025 ought to have been passed by the local panchayat and not by the Pradhan himself. No notice of hearing has been served upon the petitioners by the Sub-Divisional Officer prior to passing of the order on 30th May, 2025. He seeks for setting aside of both the orders.
4. On the contrary, Mr. Biswajit Sau, learned Advocate for the State submits that there has been deviation in the construction undertaken by the petitioners which is depicted in the order of the Pradhan as well as of the Sub-Divisional Officer. Therefore, the unauthorised construction has to be demolished as per the existing provisions of law. The order of the Sub-Divisional Officer is in consonance with the provision of law and does not call for any interference.
5. Similar submission is also advanced on behalf of the private respondent Nos.6 and 7.
6. Upon hearing the learned advocate for the petitioners, it is found that the petitioners have raised two grounds namely, firstly, that the Pradhan of the local Gram Panchayat ought not to have passed order dated 3rd April, 2025 in his individual capacity, and secondly, that the Sub-Divisional Officer did not serve notice to the petitioners prior to passing of the order.

7. With regard to the first ground, it would be apposite to reproduce the direction of this Court passed in WPA 16966 of 2024:

*“Considering the rival contentions of the parties and considering the materials on record, the Pradhan of the concerned Panchayat, upon issuing a prior notice to the petitioners and the private respondents, is directed to cause a physical inspection of the alleged unauthorised and illegal construction and then after giving them an opportunity of hearing shall decide the said representation of the petitioners dated **May, 29, 2024**, as referred to above, by passing a reasoned order in accordance with law.*

*The entire exercise as directed above, shall be carried out and completed by the Pradhan of the concerned Panchayat positively within a period of **six weeks** from the date of communication of this order. The Pradhan then shall communicate the reasoned order to the petitioners and the private respondents positively within a further period of **two weeks** from the date of the said reasoned order to be passed.*

*It is made clear that, this Court has not gone into the merits of the rival claims of the parties. the petitioners and the private respondents shall be at liberty to urge whatever points they wish to urge by relying upon whatever points they wish to urge by relying upon before the Pradhan of the concerned Panchayat but the same shall not travel beyond the scope of the said representation dated **May 29, 2024**.*

*In the event, the reasoned order confirms the alleged unauthorised and illegal construction, the Pradhan of the concerned Panchayat positively within a period of **seven days** from the date of the communication of the said reasoned order to the parties shall transmit the same and refer the matter before the jurisdictional Sub Divisional Officer in terms of **Sub Section (5) to Section 23** of the **West Bengal Panchayat Act, 1973**.”*

8. Upon bare reading of the aforesaid order, it manifest that Pradhan of the concerned Panchayat was directed to cause physical inspection of alleged unauthorised and illegal construction and then decide the said representation of the petitioners dated 29th May, 2024 in accordance with law. Such order has not been assailed in appeal.

9. In compliance to the direction passed by the Hon’ble Court, the Pradhan of the local Gram Panchayat has passed the order on 3rd April, 2025. In such

backdrop, the submission advanced on behalf of the petitioners that the Pradhan in his individual capacity is not authorised to pass such order, is not tenable. Therefore, the order dated 3rd April, 2025 passed by Pradhan of the concerned Gram Panchayat cannot be called in question on such ground.

10. So far as the second ground is concerned, it is found that the order passed by the Sub-Divisional Officer has been challenged on the ground that no notice was served upon the petitioners giving them an opportunity of hearing prior to passing of the impugned order.

11. By order dated 4th September, 2025 direction was issued to the State to furnish report as to whether any notice was issued to the petitioners prior to passing of the impugned order dated 30th May, 2025.

12. Pursuant thereto, State has filed a report by the Sub-Divisional Officer, which is taken on record.

13. It is contended in the aforesaid report that no notice was issued either to the petitioners or respondent Nos.6 and 7 for hearing as the Pradhan of the concerned Gram Panchayat has already conducted the hearing with all interested parties and passed a reasoned order.

14. At this stage, it would be profitable to reproduce the relevant provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

“(5) Where any new structure or new building or any addition to any structure or building is being or has been erected or made, as the case may be, in contravention of the provisions of sub-section (1), 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 hearing heard, make an order directing the demolition of the building or a portion of the building, as the case may be, by the owner within such period as may be specified in order and in default, the Sub-Divisional Officer may itself effect the demolition and impose a fine as may be specified by the State Government and recover the cost thereof from the owner as a public demand.”

15. The aforesaid provision clearly manifest that Sub-Division Officer, upon reference of a matter by the permission granting authority, shall give opportunity of hearing to the owner of such building prior to passing order of demolition. In the present case, it is palpable that no notice was served either to the petitioners giving them opportunity of hearing or to the respondents. Thus the impugned order passed by the respondent No.5, Sub-Divisional Officer, Sadar, Howrah dated 30th May, 2025 is bad in law and is liable to be set aside.

16. Accordingly, the impugned order of the Sub-Divisional Officer dated 30th May, 2025 is set aside.

17. The respondent No.5, Sub-Divisional officer, Sadar, Howrah is directed to consider the matter afresh upon giving opportunity of hearing to the petitioners as well as the respondent Nos.6 and 7 and thereafter pass a reasoned order in accordance with

law within a period of six weeks from date of communication of this order.

18. Reasoned order shall be communicated to the parties within a week thereof.

19. Learned advocate for the petitioners is directed to communicate this order to respondent no.5, Sub-Divisional officer, Sadar, Howrah, for necessary compliance.

20. With the above directions, the writ petition being **WPA 13012 of 2025** is disposed

21. Interim order, if any, stands vacated.

22. All connected applications, if any, stand disposed of.

23. There shall be no order as to costs.

24. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

25. 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.)