

24.10.2025
Item No. 05
Ct. No. 42
AN

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

WPA 13242 of 2025

**Rathin Kumar Samaddar
vs.
State of West Bengal & ors.**

Mr. Dhananjay Banerjee
Mr. Pralay Hazra

... for the petitioner

Mr. Ranjit Kumar Roy

... for respondent 7 & 8

Mr. Amal Kr. Sen, Id. AAG
Ms. Ashima Das (Sil)

... for the State

1. Affidavit of service filed on behalf of the petitioner is taken on record.
2. By the present writ petition, the petitioner seeks for setting aside of the order dated 4th June, 2025 passed by respondent no.5, Pradhan, Nasratpur Gram Panchayet.
3. The petitioner contends that the work of construction of the ground floor has been undertaken in terms of permission granted by the local Gram Panchayet on 14th December, 2021. Subsequent thereto, on 28th December, 2024, permission was granted in favour of the petitioner to construct the first floor. There is no such deviation from the sanctioned building plan. The Pradhan, Nasratpur Gram Panchayet, by the impugned

order has directed for demolition of structures without considering the fact that building plans were sanctioned in favour of the petitioner by the local Gram Panchayat itself.

4. Being aggrieved by and dissatisfied with the impugned order, the petitioner has preferred the present writ petition.
5. Mr. Dhananjay Banerjee, learned counsel appearing for the petitioner submits that the impugned order is palpably illegal on the ground of non-consideration of the building plan sanctioned in favour of the petitioner subsequently by the local Gram Panchayet in respect of the first floor. No such specific measurement has been undertaken to ascertain the deviation, if any, in the construction undertaken by the petitioner. In such backdrop, he seeks for setting aside of the impugned order of demolition passed by respondent no.5, Pradhan of the concerned Gram Panchayat.
6. On the contrary, Mr. Ranjit Kr. Roy, learned counsel appearing for the respondent nos. 7 and 8 submits that the private respondents have filed civil suit being Title Suit No.285 of 2022 before learned Civil Judge (Junior Division), Kalna in which the learned Court after considering the Commissioner's Report came to the finding that requisite side space of three feet has not been left out by the petitioner. Moreover, upon notice to the parties, enquiry was made by the local Gram

Panchayet wherein it is found that there has been deviation from the sanctioned building plan as regards the construction by the petitioner. Therefore, the Pradhan by the impugned order has rightly directed for demolition. He files copy of order passed in WPCRC No.57 of 2025, amended plaint of Title Suit No.285 of 2022, Order No.61 dated 8th April, 2025 passed in Title Suit No.285 of 2022, order passed in WPA 16120 of 2022, impugned order of Pradhan, which is taken on record.

7. Mr. Amal Kumar Sen, learned Additional Advocate General representing the State submits that by the previous order passed in WPA 16120 of 2022, the Pradhan was directed to consider whether there is deviation of the sanctioned plan and then take necessary steps. The Pradhan has found that the construction is illegal. Therefore, as per Section 23(5) of the West Bengal Panchayat Act, 1973, the matter shall be referred to the Sub-Divisional Officer for further course of action.
8. This is the second round of litigation.
9. In the earlier writ petition filed by the private respondent nos. 7 and 8 being WPA 16120 of 2022, following direction was issued on 22nd August, 2022:

“The writ petition is accordingly disposed of by directing the respondent no. 6, Pradhan, Nasratpur Gram Panchayet to consider and dispose of the representation made by the petitioners, strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties, including the

petitioners, at the earliest, but positively within a period of three months from the date of 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 petitioners, 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 sanctioned plan, then necessary steps shall be taken to deal with such unauthorised construction, in accordance with law.”

10. Since the order was not complied with, the private respondents filed a contempt application in which Rule was issued being WPCRC 57 of 2025. Thereafter, the impugned order has been passed by the Pradhan of local Gram Panchayet.

11. Mr. Banerjee, learned advocate for the petitioner contends that the Pradhan of local Gram Panchayat has failed to consider the subsequent plan sanctioned in respect of the first floor. Needless to mention at the time when the order was passed in the earlier writ petition, only the sanctioned plan dated 14th December, 2021 was in existence. It was directed in the earlier writ petition that in the event the Pradhan is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanctioned plan, then necessary steps shall be taken to deal with such unauthorised construction, in accordance with law. Therefore, Pradhan has to consider the legality of the construction in the backdrop of the plan in existence dated 14th December, 2021.

12. It is found from the impugned order of the Pradhan that the notice was served to both the sides for causing enquiry and an “Amin” was appointed to cause measurements. It is observed in the impugned order that the construction work undertaken by the petitioner is not in accordance with the sanctioned building plan. Further the order of the Civil Court dated 8th April, 2025 in Title Suit No. 285 of 2022 placed before this Court by Mr. Roy, learned advocate for the private respondents also records that construction has been undertaken by the petitioner (defendant no.1) without leaving side space of three feet.

13. Section 23(5) of the West Bengal Panchayat Act, 1973 provides as hereunder:

“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 being heard, make an order directing the demolition of the building or a portion of the building, as the case may, 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 .”

14. In view of the aforesaid provisions, although the finding in the impugned order that the construction work undertaken by the petitioner is not in accordance with the sanctioned building plan is sustainable, yet the direction issued by the Pradhan for demolition is not sustainable.

- 15.** As per the above provisions, in the event permission granting authority i.e. the local Gram Panchayet finds that there has been contravention in the making of the building, the permission granting authority shall refer the matter to the Sub-Divisional Officer for taking further action as per Section 23(5) of the West Bengal Gram Panchayat Act, 1973.
- 16.** Accordingly, respondent no.4, Nasratpur Gram Panchayat is directed to refer the matter within a period of two weeks from the date of communication of this order to Jurisdictional Sub-Divisional Officer, who shall take steps as per Section 23(5) of the West Bengal Gram Panchayat Act, 1973.
- 17.** Learned advocate for the petitioner is directed to communicate this order to respondent no.4, Nasratpur Gram Panchayat.
- 18.** With the above directions, the writ petition being no. **WPA 13242 of 2025** stands disposed of.
- 19.** Consequently, all connected applications, if any, also stand disposed of.
- 20.** All parties to act on the server copy of this order duly downloaded from the official website of this Hon'ble Court
- 21.** Interim orders, if any, stand vacated.
- 22.** There will be no order as to costs.

23. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Bivas Pattanayak, J.)