

31.07.2025
Sl. No.1.
D/L.
Mithun
Ct. No.42

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

W.P.A. No. 15461 of 2025

Brindaban Halder & Anr.

Versus

The State of West Bengal & Ors.

Ms. Aparna Banerjee,
Mr. Ramashis Mukherjee,
Mr. Suprotim Banerjee

...for the Petitioners.

Ms. Sanghamitra Nandi,
Mr. Soumyajit Ghosh

...for the State.

Mr. Pankaj Halder,
Mr. Bidish Ghosh,
Mr. Tapas Kumar Manna

...for the Respondent No.9.

This matter is appearing under the heading '*To be mentioned*'.

This writ petition is filed seeking for setting aside of the order dated 12th June, 2025 passed by respondent no.3, Sub-Divisional Officer, Diamond Harbour, South 24-Parganas for demolition of structures indicated as A2 and A4 in the said order.

Learned Advocate for the petitioner submits that the structures denoted in the said order as A2 and A4 are old structures and, therefore, the impugned order passed for demolition of said structure is in contravention of provisions of Section 23 of West

Bengal Panchayat Act, 1973, which provides for controlling building operations in respect of new structure. That apart, the new structures have been constructed under the *Pradhan Mantri Awas Yojana (in short, 'PMAY')* Scheme which does not require permission. He seeks for setting aside of the said order.

On the contrary, Mr. Pankaj Halder, learned Advocate for private respondent no.9 submits that under the PMAY Scheme, a minimum unit (house) size is of 270 sq. ft.. As per the impugned order, the construction of the house denoted as A3 is 1235 sq. ft. which is in excess of the limit under the PMAY Scheme. Therefore, the extra construction has been made without necessary permission. That apart, the consent of the co-sharers has not been taken prior to making application by the petitioners under the PMAY Scheme. He seeks that matter may be sent on remand to respondent no.3, Sub-Divisional Officer, Diamond Harbour, for considering afresh. He files a booklet of PMAY Scheme which is taken on record.

Learned Advocate for the State submits that no such permission is necessary in respect of a construction undertaken under the PMAY Scheme.

In the impugned order, the Sub-Divisional Officer, Diamond Harbour, respondent no.3 has observed that in terms of Sub-rule 1 of Rule 19 of the West Bengal Gram Panchayat Rules, 2004, no

permission of the Gram Panchayat shall be required for construction of houses under the Poverty Alleviation Programme. Be that as it may, upon perusal of the key features at page no.2 of the booklet, it is found that the PMAY provides a minimum unit (house) size of 25 sq. mt. i.e. 269.098 sq. ft. including a dedicated area of hygiene cooking. The order impugned shows that the structure denoted as A3 has an area of 1235 sq.ft. which is more than the minimum unit provided under the Scheme. The impugned order is silent with regard to the legality of the rest portion of structure A3 in excess of 269.098 sq. ft.

In view of the above, the impugned order passed by respondent no.3, Sub-Divisional Officer, Diamond Harbour is not sustainable. Accordingly, the same is set aside.

The writ petition is disposed of directing respondent no.3, Sub-Divisional Officer, Diamond Harbour, South 24-Parganas to consider the matter afresh upon notice to the interested parties including the petitioner and private respondent no.9 taking the PMAY Scheme into consideration while deciding the aspect of legality of extent of construction with regard to the structures constructed in the subject plot in question under the PMAY Scheme and pass a reasoned order in accordance with law within a period of 6 weeks from date of communication of the order. All

the points are left open to be decided by the Sub-Divisional Officer.

The reasoned order shall be communicated to the parties within a week of passing of the same.

Parties are at liberty to produce all relevant record before the respondent no.3, Sub-Divisional Officer, Diamond Harbour during hearing.

Learned advocate for the petitioners is directed to communicate this order to respondent no.3, Sub-Divisional Officer, Diamond Harbour for necessary compliance.

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.)