

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 16213 of 2025

Swapan Kumar Pati & Ors.

Vs.

The State of West Bengal & Ors.

For the petitioners : Mr. K. C. Das
Mr. Sk. Sahjahan

For the State : Mr. Sk. Md. Galib, Sr. Govt. Adv.
Mr. Manish Biswas

Heard on : 04.08.2025

Judgement on : 04.08.2025

PARTHA SARATHI SEN, J.:

1. The affidavit-of-service and the supplementary affidavit as filed in Court today on behalf of the writ petitioners are taken on record.
2. By filing the instant writ petition, the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents/authorities commanding them not to demolish

the boundary wall of the property of the writ petitioners, particulars of which have been mentioned in paragraph no. 2 of the instant writ petition with a further prayer for taking appropriate steps for adequately compensating the writ petitioners for utilizing the land of the writ petitioners by initiating the process of acquisition.

3. At the time of hearing, Mr. Galib, learned senior government advocate appearing on behalf of the respondent/State and its instrumentalities raises the point of maintainability of the instant writ petition. Drawing attention to Page Nos. 71 to 75 of the instant writ petition, being a copy of the representation dated 07.07.2025 it is submitted on behalf of the State that even if, for the sake of argument it is accepted that such representation was submitted on the same very day, however, from the affidavit portion of the instant writ petition, it would reveal that that the instant writ petition was affirmed on 16.07.2025 and the same was filed on the same day.
4. Placing his reliance upon the reported decision of ***Jyotsna Makal Vs. The State of West Bengal & Ors.*** reported in

2017 SCC Online Cal 18746 as passed by a co-ordinate Bench of this Court in WP No. 28091 (W) of 2017, it is submitted by Mr. Galib that in a like situation, a said co-ordinate Bench of this Court declined to entertain the said writ petition by holding that the principles of Section 80 of the Code of Civil Procedure applies in case of a writ petition since there is a statutory provision allowing a government officer for a period of two months to take a decision from the date of receipt of a notice of demand of justice.

5. It is thus submitted by Mr. Galib that in view of such proposition of law, there cannot be any difficulty in holding that the instant writ petition is not maintainable since the same is prematured.
6. At this juncture, Mr. Galib, learned senior government advocate again draws attention of this Court to paragraph no. 13 of the instant writ petition. It is submitted by Mr. Galib that from the averments made in the instant writ petition, it would reveal that the writ petitioners approached this Court merely on the basis of their mere apprehension which does not *ipso facto* give rise to a cause of action to the

writ petitioners for approaching this Court seeking interference in the alleged action of the respondents/authorities in writ jurisdiction. In support of his contention, Mr. Galib draws attention of this Court to the reported decision of ***Union of India & Ors. Vs. Abdul Sattar & Ors.*** reported in ***1984 SCC Online Cal 91 : (1984) 1 CHN 422.***

7. Per contra, Mr. Das, learned advocate appearing on behalf of the writ petitioners submits before this Court that in the event, it is found that the apprehension of the writ petitioners is genuine, a writ court ought not to decline the relief as prayed for applying the principles of Section 80 of the Code of Civil Procedure as wrongly argued on behalf of the respondent/State.
8. It is further submitted by Mr. Das that the apprehension of the writ petitioners is not at all flimsy inasmuch as sufficient materials have been placed before this Court by way of supplementary affidavit that even during the pendency of the instant writ petition, the respondents/authorities have demolished the boundary

wall of the writ petitioners for the purpose of the construction of the road under Pradhan Mantri Gram Sadak Yojana (PMGSY) violating the constitutional right of the writ petitioners as enshrined under Article 300A of the Constitution of India.

9. On careful consideration of the entire materials as placed before this Court, this Court has got no hesitation to hold that admittedly the principles governing the Code of Civil Procedure applies in a writ proceeding but the provisions of the Code of Civil Procedure cannot be a bar for granting relief to the writ petitioners in an emergent situation if a *prima facie* case has been made out to that extent.
10. In order to appreciate as to whether the reported decision of ***Abdul Sattar & Ors. (Supra)*** is at all helpful to the respondent/State for deciding the maintainability of the instant writ petition is concerned, this Court proposes to look to the relevant portion of the said judgment which is quoted hereinbelow in verbatim:

“.....

Here in the present case, this Court has been moved merely on an apprehension – such an

apprehension is that an order of detention may have been made with law. The principle laid down by the Supreme Court is based on the basic assumption that there must be some reasonable grounds to support the alleged threat and the court can satisfy itself about the impending threat with reference to the facts constituting the grounds. That principle cannot be extended to cover a case where on a mere apprehension in the mind of a citizen, he can invoke the writ jurisdiction of this Court and obtain an anticipatory relief.”

11. The proposition of law as decided in the case of **Abdul Sattar & Ors. (Supra)** if applied to the facts and circumstances of the present case, it appears to this Court that the Hon’ble Supreme Court expressly held that in order to entertain a writ petitioner, there must be some reasonable grounds to support the alleged threat and the Court can satisfy itself about the impending threat with reference to the facts constituting the grounds as taken in the writ petition.
12. At this juncture, if I look to the pleadings as made in the instant writ petition, it appears to this Court that while

filing the instant writ petition, the writ petitioners specifically stated on oath that the respondent no. 11 gets patronage from the ruling party and as such he is not willing to leave any place for the purpose of increasing the road under PMGSY Scheme.

13. Such apprehension is found to be genuine from the materials placed before this Court by way of supplementary affidavit on behalf of the writ petitioners.
14. In view of such discussion made hereinabove, this Court thus finds that the instant writ petition is very much maintainable.
15. At this stage, this Court proposes to look to the instant writ petition and in doing so, this Court shall have to come to a finding as to whether the writ petitioners are successful in making out a case for obtaining the reliefs as prayed for in exercise of the plenary power under Article 226 of the Constitution of India.
16. On careful consideration of the entire materials as placed before this Court, it reveals that it is the specific case of the writ petitioners supported by documents that the writ

petitioners are the owners of the 17 decimals of lands in L.R. Plot No. 377 in Mouza – Khayranda under P.S. Ramnagar, Purba Medinipur.

17. From the materials as placed before this Court, it reveals that the said portion of the plot of land was recorded in the name of the writ petitioners.
18. At this juncture, if I look to the supplementary affidavit as filed today on behalf of the writ petitioners, it reveals that sufficient materials have been placed before this Court to substantiate that the entire boundary wall of the writ petitioners was demolished for the purpose of construction of a new road under the Scheme of PMGSY despite the fact that the writ petitioners' representation dated 07.07.2025 has not been disposed of by the respondents/authorities.
19. On perusal of the report dated 24.07.2025 as submitted by the jurisdictional BDO, it reveals from Page No. 11 thereof that the Junior Engineer (WRDD), Ramnagar-I Block had practically made an attempt to address the grievance of the writ petitioners after having a talk with one Atashi Pati, the writ petitioner no. 3 herein as well as with the interaction of

the local villagers. On perusal of Page No. 3 of such report, it reveals that the said jurisdictional BDO directed the Pradhan, Haldia-I, Gram Panchayat, Ramnagar to make a local enquiry.

20. In considered view of this Court, the actions of the respondent no. 6/authority as well as the said JE (WRDD), Ramnagar-I Block are really surprising since the said two authorities have not at all followed the established procedure for addressing the grievance of the writ petitioners.
21. No effort was made by the respondents/authorities to take assistance from the respondent no. 7/authority to prepare a demarcation report on the basis of the field enquiry by a Revenue Inspector of the office of the jurisdictional BL & LRO.
22. In view of the facts and circumstances as discussed hereinabove, this Court thus finds sufficient merits in the instant writ petition.
23. Consequently, this Court issues a writ of prohibition against the respondents/authorities, more specifically,

against the respondent no. 11/authority to conduct any work whatsoever under the Scheme of PMGSY from Purusottampur to Hirapur via Khayranda till the disposal of the representation dated 07.07.2025 by the respondent no. 4/authority.

24. Before parting with this Court directs the respondent no. 7/authority to conduct a field verification after securing prior service of notice upon the writ petitioners and the respondent no. 11/authority. On the conclusion of such field enquiry, the respondent no. 7/authority shall submit a demarcation report and/or field verification report with the respondent no. 4/authority within 30 working days from the date of communication of the server copy of this order. The copies of such demarcation report are also to be provided to the writ petitioners and the respondent no. 11.
25. On receipt of such demarcation report and/or field verification report from the respondent no. 7/authority, the respondent no. 4/authority shall cause service of notice upon the writ petitioners as well as to the respondent no. 11 and after giving opportunity of hearing both to the writ

petitioners and the respondent no. 11/authority and/or their authorized representatives shall pass a reasoned order and shall forthwith communicate the same to the writ petitioners preferably by mail, if the mail details of the writ petitioners are provided to him at the time of hearing.

26. It is further made clear that in the event while passing the reasoned order, the respondent no. 4 finds sufficient merit in the representation of the writ petitioners and further, in the event, he finds that the boundary wall of the writ petitioners' property has been demolished during the aforesaid work, he shall direct the respondent no. 11 to reconstruct of such boundary wall including painting thereof at the cost of the respondent no. 11 within 15 working days from the day of passing of the reasoned order.
27. In the event, the respondent no. 11 does not reconstruct such boundary wall within the time limit as fixed by this Court, the respondent no. 4/authority shall reconstruct such boundary wall and the cost of such reconstruction shall have to be realized from the respondent no. 11 soon thereafter by initiating a certificate proceeding.

28. It is further made clear that in the event, the respondent no. 4 finds that the respondent no. 11 has demolished the boundary wall of the writ petitioners without any lawful authority, he shall direct the respondent no. 11/authority to pay Rs. 10 lakhs to the writ petitioners as and by way of compensation.
29. In the event, such amount is not paid by the respondent no. 11, liberty is given to the writ petitioners to approach this Court within seven days thereafter in contempt.
30. Liberty is given to the learned advocate on record for the writ petitioners to communicate the server copy of this order to the respondent nos. 4, 7 and 11.
31. The respondent nos. 4 and 7 are directed to act on the basis of the server copy of this order.
32. The time limits as fixed by this Court are mandatory and peremptory.
33. With the aforementioned observations, the instant writ petition being **WPA 16213 of 2025** is disposed of.

34. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)

**Sourav
A.R. (Court)**