

18.09.2025
Item No. 01
Ct. No. 42
AN

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

WPA 21811 of 2024

**Samseer Nahar Bibi & ors.
vs.
State of West Bengal & ors.**

Ms. Suman Sehanabis (Mondal)
Mr. Abishek Verma
Ms. Atulya Verma
Mr. Swaraj Naskar
Ms. Aparna Sarkar
Ms. Brihanwita Debnath

... for the petitioners

Ms. Nandini Sharma
Ms. Barnali Deb
Mr. A. Karmakar

... for respondent no. 2

Mr. Rabindra Jaiswal

... for respondent no. 7

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 and/or quashing of the order dated 15th September, 2023 passed by the Additional District Magistrate (Panchayet), North 24 Parganas and Additional Executive Officer, North 24 Parganas Zilla Parishad and order dated 14th March, 2024 passed by the Sub-Divisional Officer, Barasat Sadar, North 24 Parganas.
3. The petitioner contends that the impugned order is bad on the face of it. The Additional District Magistrate (Panchayet), North 24 Parganas has passed the

impugned order directing the Sub-Divisional Officer, Barasat Sadar, North 24 Parganas for demolition which is not in accordance with the provisions of the West Bengal Panchayet Act, 1973 (*hereinafter referred to as 'Act of 1973'*). The Sub-Divisional Officer, Barasat Sadar, North 24 Parganas upon such reference has to take decision on its own upon notice to all the parties. However, the order of the Sub-Divisional Officer, Barasat Sadar, North 24 Parganas for demolition has been passed observing that as per the direction issued by the Additional District Magistrate (Panchayet), North 24 Parganas such order is passed. There is no independent finding of the Sub-Divisional Officer, Barasat Sadar, North 24 Parganas in its order dated 14th March, 2024.

4. Being aggrieved by and dissatisfied with the aforesaid orders, the petitioner has filed the present writ petition.
5. Ms. Suman Sehanabis (Mondal), learned advocate appearing for the petitioner referring to Section 114(A)(5) of the Act of 1973, submits that if any construction is made in contravention of the provisions of the Act, the matter has to be referred to the Sub-Divisional Officer, who after giving opportunity of hearing to the parties, shall make an order directing demolition of a building or portion of the building, as the case may be. However, in the present case, the procedure adopted is not in

consonance with the provisions of law and seeks for setting aside of the impugned orders passed by the respondents authorities.

6. Mr. Rabindra Jaiswal, learned advocate appearing for the respondent no. 7 also submits that the matter be remanded to the authorities for re-consideration in accordance. He places a copy of report of Executive Engineer (in-Charge), North 24 Parganas Zilla Parishad, which is taken on record.
7. Ms. Nandini Sharma, learned advocate representing the State also submits that the matter may be relegated to Zilla Parishad to take steps in accordance with law.
8. In the earlier round of litigation being WPA 13056 of 2019 by the order dated 20th January, 2023, following directions were issued:

“If the panchayat authorities, upon inspection of construction come to the conclusion that the height and the plinth area of the building would require a permission/vetting from the zilla parishad, then the entire issue with the preliminary finding shall be sent to the concerned zilla parishad, which would be permission granting authority. Thereafter, the permission granting authority shall take necessary steps in accordance with law.

In either case, the permission granting authority, be it the panchayat or the Zilla Parishad, shall decide the issue by adhering to the following procedure:-

a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos.7(a) to 7(f) and 8 to 10, with 48 hours advance notice to the petitioners and the respondent Nos.7(a) to 7(f) and 8 to 10.

b) A report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.

c) Such report shall be handed over to the petitioner as also the respondent Nos.7(a) to 7(f) and 8 to 10.

d) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing, the authorities may take interim measures by stopping such construction.

e) A hearing shall be given to all the parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority.

f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the 5 proceedings shall be reached to its logical conclusion, in accordance with law."

9. Upon going through the aforesaid order, it is found that it has been observed by the Hon'ble Court that in either case the permission granting authority be it the Panchayet or the Zilla Parishad shall decide the issue by adhering to the procedures as depicted in the said order. The report of the Executive Engineer dated 26th April, 2023 placed by learned advocate for respondent no.7 records that after careful checking of the official records it was found that the plan for G+4 storied residential-cum-commercial building was approved by the Zilla Parishad vide approval order no.642/NZP dated 14th October, 2020. Thus it is undisputed that the Zilla Parishad is the permission granting authority.
10. At this stage, it will be apposite to reproduce Section 160(A)(6) of the West Bengal Panchayet Act, 1973 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 provision of sub-section (1), the matter shall be heard by a hearing officer who shall preferably be a retired senior Government Officer with the experience of having worked as a Magistrate and shall be appointed in the Zilla Parishad by the State Government. The hearing officer shall, after giving the owner of such building an opportunity of being heard, submit his recommendation to the Executive Officer of the Zilla Parishad. The Executive Officer of Zilla Parishad shall take decision for 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, issue direction to the Sub-Divisional Officer concerned to effect the demolition and to recover the cost thereof from the owner as a public demand. In case of any difference of opinion between the Executive Officer of the Zilla Parishad and the hearing officer, the matter shall be referred to the Additional Chief Secretary or the Principal Secretary or the Secretary of the State Government for final disposal.”

11. The aforesaid provision manifests that in case of contravention of Sub-Section 1 of Section 160A, the matter shall be heard by a Hearing Officer who shall preferably be a retired senior Government Officer with the experience of having worked as a Magistrate and shall be appointed in the Zilla Parishad by the State Government. In the present case at hand, the order of demolition at the first instance has been passed by the Additional District Magistrate (Panchayet), North 24 Parganas and the Additional Executive Officer, North 24 Parganas Zilla Parishad. No such order of appointing of any Hearing Officer as required under Section 160A of the said Act is placed before this Court. The impugned order also does not record of appointment of Hearing Officer.

12. Such being the position, the order passed by the Additional District Magistrate (Panchayet), North 24 Parganas dated 15th September, 2023 is not sustainable for the reasons of it lacking in authority as provided under the Act. Consequently, the order dated 14th March, 2024 passed by the Sub-Divisional Officer, Barasat Sadar, North 24 Parganas also cannot be sustained.
13. Accordingly, both the aforesaid orders are set aside.
14. The North 24-Parganas Zilla Parishad is directed to decide the matter in dispute between the parties following the procedures as laid down in the order dated 20th January, 2023 passed WPA 13050 of 2019 upon appointment of a Hearing Officer in terms of Section 160A of West Bengal Panchayat Act, 1973 and take the matter to its logical conclusion in accordance with law within a period of six weeks from the date of communication of this order.
15. Learned advocate for the petitioner is directed to communicate this order to North 24-Parganas Zilla Parishad for necessary compliance.
16. With the above directions, the writ petition being no. **WPA 21811 of 2024** stands disposed of.
17. Consequently, connected applications, if any, also stand disposed of.
18. Interim orders, if any, stand vacated.
19. There will be no order as to costs.

20. 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.)