

06.03.2025  
Sl. No.1(DL)  
Ct. No.39  
srm

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

**W.P.A. No. 24261 of 2024**

**Iliyas Khan & Anr.**

**Versus**

**The State of West Bengal & Ors.**

Mr. Shyama Prasad Purkait,  
Mrs. Moumita Mondal,  
Mr. Dinesh Ch. Mondal

...for the Petitioners.

Mrs. Jyotsna Roy Mukherjee,  
Ms. Sukteya Ganguly

...for the State-respondents.

This matter is appearing in the list under the heading "*To Be Mentioned*".

On the prayer of the learned Advocate for the petitioners, leave is granted to file supplementary affidavit.

Supplementary affidavit filed by the petitioners is taken on record.

This writ petition has been filed challenging the order no.12 dated 21<sup>st</sup> August, 2024 passed by the respondent No.5, Sub-Divisional Officer, Diamond Harbour, South 24-Parganas in Misc Case No.13/ Misc/S.D.O/D.H of 2022/23 (Annexure P5).

The petitioners contend that the petitioners are the lawful owners and peaceful possessors of Plot No.691, Khatian No.508 (L.R.), J.L. No.82/53, Mouza Jaipur, measuring more or less 2.25 decimals of land. The private respondent no.8 has got no right, title,

interest over the property-in-question. Despite there being lawful right of the petitioners over the property-in-question, the respondent no.5, Sub-Divisional Officer, Diamond Harbour, South 24-Parganas has passed order for demolition. The panchayat and/or the Sub-Divisional Officer is not the appropriate authority to pass order for removal of any illegal construction over the land of the PWD. Hence the order of demolition passed by the respondent No.5, Sub-Divisional Officer is arbitrary, illegal and bad in law. Accordingly, the petitioners have preferred the present writ petition for quashing of the order dated 21<sup>st</sup> August, 2024 passed by the respondent No.5, Sub-Divisional Officer, Diamond Harbour, South 24-Parganas.

Mr. Shyama Prasad Purkait, learned Advocate appearing for the petitioners submit that the Sub-Divisional Officer has got no authority to pass orders for demolition. Therefore, the order impugned is illegal and bad in law and should be set aside. Furthermore, measurements have not been duly taken. As per the record of rights, the petitioners are the recorded owners of the plot in question, which has been classified as '*shop*'. He seeks for setting aside of the impugned order passed by respondent no.5.

Mrs. Jyotsna Roy Mukherjee, learned Advocate appearing for the State-respondents submits that in compliance to the order passed by this Court, the

impugned order has been passed by the Sub-Divisional Officer hence it should not be intervened. She files report furnished by the Sub-Divisional Officer, Diamond Harbour, South 24-Parganas, which is taken on record.

This is fourth round of litigation.

The private respondent No.8 previously filed a writ petition being WPA 9942 of 2019. The said writ petition was disposed of with the following direction:

*“The writ petition is accordingly disposed of by directing the respondent no.6 being the Pradhan of the Gram Panchayat to consider the objection that was made by the petitioner, strictly in accordance with law, within a period of eight weeks from the date of communication a copy of this order. The said respondent shall pass a reasoned order after giving an opportunity of hearing to the petitioner and all other necessary parties and communicate the same to all the parties immediately thereafter.”*

Subsequent thereto, the petitioners herein filed a writ petition being WPA 17705 of 2022 challenging the order of demolition passed by the panchayat authorities. Upon hearing, following direction was issued:

*“The direction for demolition issued by the panchayat authorities, is set aside. The other parts of the order of the gram panchayat is not interfered with as the final decision shall be taken by the Sub-Divisional Officer. Steps for demolition is to be taken by the Sub-Divisional Officer if the authority ultimately comes to a finding after hearing the parties, that reasons for demolition exist.”*

The respondent No.8 filed another writ petition being WPA 16022 of 2023 with the contention that although the Pradhan referred the matter before the Sub-Divisional Officer in terms of Section 23(5) of the West Bengal Panchayat Act, 1973, yet no further steps

have been taken by the Sub-Divisional Officer and the Court upon hearing passed the following order:

*“In view of the above, respondent No.4 is directed to take all necessary steps following the due process of law to give effect to the communication of this Pradhan dated **August 23, 2022, annexure P-7 at page 35** to the writ petition positively within a period of **eight weeks** from the date of communication of this order.”*

Bearing in mind the aforesaid, it is found that the Sub-Divisional Officer has passed the impugned order in compliance to the order of this Court. The order impugned is challenged on the ground of measurement being not duly taken. Be that as it may, it is found from the impugned order that direction has been issued upon Block Development Officer, Magrahat-II Dev. Block to take action for removal of the illegal part of construction of the building after due measurement.

Thus, from the above, since the order impugned has been passed in compliance to the order of this Court, the writ petition falls short of merit.

Accordingly, **WPA 24261 of 2024** is dismissed.

There shall be no order as to costs.

Interim order, if any, stands vacated.

All connected applications, if any, stand disposed of.

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 the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

**(Bivas Pattanayak, J.)**