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28.11.2025
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Ct.3.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26827 of 2025
With
CAN 1 of 2025

Jansab Ali Khan @ Shah Jahan Khan
Versus
The State of West Bengal & Ors.

Mr. Manas Ajay Sonkar
Ms. Paramita Mondal
Ms. Suprava Jana
Ms. Manisa Saha
... For the petitioner.

Mr. Amand Farmania
Ms. Amrita Tiwari
... For the State.

Mr. S. S. Arefin
... For the applicant in CAN 1 of 2025.

1. Affidavit of service filed in Court is taken on record.

2. Having heard the learned advocates appearing for the respective parties, I find that the primary dispute in this matter is with regard to a building for which permission had been accorded by the concerned Gram Panchayat to construct the same in respect of plot nos. 531 and 538, Mouza-Mominpur, J. L. No.2, P. S.-Arambagh, District – Hooghly. It appears that an adjoining plot no. 537 has been encroached to the extent of 138 sq. ft. I find from the order dated 4th November, 2025 which is impugned in the present writ petition, the Sub-Divisional Officer Arambagh, has come to a finding

that the plinth area of the construction is 69.65 sq. meter and the height of the building does not exceed 4.792 meter. Having regard thereto and noting the amended provisions of Section 23 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the “said Act”) which provides that no person shall erect any new structure or new building or make any addition to any structure or building having plinth area of not more than 150 square meters and height not more than 6.5 meters in any area within the jurisdiction of a Gram Panchayat except with the previous permission in writing from the Gram Panchayat and according to the order since the constructed plinth area is 69.65 sq. meter. Ordinarily therefore, construction could have been made only in compliance of Section 23 of the said Act. Admittedly, in this case, the Gram Panchayat had accorded permission, though the learned advocate for the private respondent/applicant would contend that such sanction is irregular since the parties are enjoying undivided interest therein. Be that as it may, there is no challenge to the order by the private respondent. The order impugned further records that the petitioner had transgressed to the extent of 138 sq. ft. on plot no. 537 without the permission of the Gram Panchayat. It is also noted by the Sub-Divisional Officer that 100 sq. ft. has already been removed. The offending portion therefor comes down to 38 sq. ft., which has been constructed on a plot where the petitioner does not enjoy exclusive ownership but is a co-

owner with the private respondent. The petitioner also does not enjoy the consent of the private respondent. Noting from the picture of the offending building as placed before this Court, it appears that the petitioner would be required to remove a pillar supporting the roof. Having regard thereto, I am of the view that some more time should be provided to the petitioner to remove the offending portion, if necessary, by reconstructing an additional pillar.

3. In view thereof, in the event, the petitioner applies before the concerned Gram Panchayat seeking appropriate permission to reconstruct the aforesaid portion, such permission shall be granted for which no further fees shall be taken from the petitioner.

4. The entire process of removal of the offending portion as reflected in the report prepared by the Pradhan, Tirol Gram Panchayat, as placed before this Court and is taken on record, should be completed within the end of May, 2026. The above direction is, however, subject to a structural engineer's report.

5. There shall be an unconditional interim order of stay of the order dated 19th August, 2025 till 9th December, 2025 or until further order whichever is earlier.

6. The petitioner is directed to file an undertaking before the learned Registrar General of this Court, with a copy to the learned advocates representing the parties, that the offending portion shall be demolished within May, 2026.

Upon filing of such undertaking by 9th December, 2025 the interim order of stay shall continue till the end of May 2026.

7. In default, the benefit of the aforesaid order shall not enure to the petitioner and the writ petition shall stand automatically dismissed and the appropriate authority shall be at liberty to act in accordance with law. However, before proceeding further, the authorities shall ensure that the structural integrity of the entire building is not compromised while demolishing, the offending portion of the structure to the extent of 38 sq. ft.

8. With the above observations and direction the writ petition stands disposed of along with the connected application, being CAN 1 of 2025.

Urgent photostat certified copy of this order, if applied for be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)