

Item No.36

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

Present:

**THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

WPA(P) 522 OF 2025

**SAGAR GHOSH
VS
THE STATE OF WEST BENGAL & ORS.**

Appearance:-

For the Petitioner	:	Mr. Siddhartha Sarkar, Adv. Mr. Sourav Gupta, Adv.
For the Respondent/State	:	Mr. Swapan Kumar Dutta, Ld. GP Mr. Nilotpal Chatterjee, Adv. Mr. Debdoot Dutta, Adv.
For the Respondent 10-11	:	Mr. Amit Ranjan Pati, Adv. Mr. Anish Goswami, Adv. Mr. Avijit Chatterjee, Adv.
For the Respondent 12-13	:	Mrs. Pampa Dey (Dhabal), Adv. Ms. Sarbani Dutta, Adv.

Heard on : 17.12.2025

Delivered on : 17.12.2025

Judgment (oral)

Per, Partha Sarathi Sen, J.:-

1. We have heard the learned counsels for the respective parties.

2. By filing this instant writ petition, which is in the nature of Public Interest Litigation, the petitioner has prayed for issuance of appropriate writ or writs commanding the respondent nos.12 and 13 to remove illegal encroachment allegedly raised by them over plot no.1616 in Mouza-Kishorekona, J.L. No.115, PS-Indus, District-Bankura along with other ancillary reliefs including a relief in the nature of mandamus commanding the respondent nos.10 and 11 to initiate appropriate action under the West Bengal Panchayat Act, 1973 as against the private respondent nos.12 and 13.
3. At the time of hearing, learned counsel appearing on behalf of the writ petitioner at the very outset draws attention of ours to a print out of live data in respect of plot no.1616. Attention of ours is also drawn to copies of various representations as submitted by the writ petitioner with the respondent authorities.
4. It is submitted on behalf of the writ petitioner that despite submission of the representations alleging encroachment of public road by way of unauthorized construction at the instance of the private respondent nos.12 and 13 over the said plot of land, no action has been taken by the respondents authorities and, thus, the writ petitioner, being a public spirited person having no personal interest over the said plot of land, approached this Court for appropriate reliefs.

5. It is further submitted that pendency of Title Suit No.197 of 2025 as filed by the private respondents against some other persons cannot stand in the way in granting the relief as prayed for.
6. Mr. Chatterjee, learned counsel appearing on behalf of the respondent/State in his usual fairness submits before this Court that the jurisdictional BLLRO, being the respondent no.8 authority, may be directed to make a demarcation and to forward the demarcation report to the respondent no.6 authority and the respondent no.6 authority may be directed to remove the encroachment, if the same is reflected in the demarcation report of the jurisdictional BLLRO (respondent no.8).
7. Mr. Pati, learned counsel appearing for the respondent nos.10 and 11 has submitted a bunch of papers. It is submitted that by issuing the memo dated 10.03.2025 the Panchayat Authority communicated the private respondent no.12 that his house building application stood cancelled since the same is found to be inconsistent.
8. Learned counsel for the private respondents submits that from the copy of the plaint as filed in Title Suit No. 197 of 2025 before the jurisdictional Civil Court, as has been annexed at page nos.33-35 of the writ petition, it would reveal that the private respondents have sought for declaration of their title in respect of selfsame property and in such suit permanent injunction was sought for. She further submits that the instant writ

petition has been filed solely with a purpose to frustrate the prayers as made in the said suit.

9. We have carefully gone through the entire materials as placed before us. We have also perused the provisions of Section 23 of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the said "Act"). For effective adjudication of the instant lis, we propose to look to Section 23 of the said Act which is reproduced hereinbelow in verbatim.

***"23. Control of building operations.-** (1) 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 metres and height not more than 6.5 metres in any area within the jurisdiction of a Gram Panchayat except with the previous permission in writing from the Gram Panchayat:*

Provided that where the State Government or an authority or agency under the State Government intends to set up or has set up an industrial estate or industrial park within the jurisdiction of a Gram Panchayat, permission for erection of any structure or building or any addition to the structure or building for setting up an industry within such industrial estate or industrial park, shall be obtained from such authority or industrial development authority or corporation as the State Government may, by notification, specify:

Provided further that such erection of a new structure or a new building or such addition to any structure or building or such permission from the Gram Panchayat shall be subject to

such rules as may be made by the State Government in this behalf:

Provided also that a Gram Panchayat shall not accord permission for erection of a new structure or construction of a new building, if the proposal for such erection or construction, as the case may be,-

a)has any provision for erection or construction of any dry latrine, by whatever name called, and

b)does not have any provisions for erection or construction of a sanitary latrine of any description.]

[(2).....]

[(3).....]

[(4).....]

[(5) 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 provisions of sub-section (1), the permission granting authority shall refer the matter to the Sub-Divisional Officer concerned who may after giving the owner of such building an opportunity of being heard, make an order directing the 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, the Sub-Divisional Officer may itself effect the demolition and impose a fine as may be specified by the State Government and recover the cost thereof from the owner as a public demand.]

(6) 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 provisions of sub-section (1), the authority may, after giving the owner of such building an opportunity of being heard, make an order directing the demolition of the building by the owner within

such period as may be specified in the order and in default the authority may itself effect the demolition and recover the cost thereof from the owner as a public demand.

10. On careful perusal of the aforementioned provision of the said Act it appears to this Court that the legislatures in their own wisdom permitted the jurisdictional Sub-Divisional Officer to cause an illegal structure to be demolished firstly at the instance of the owner of such illegal construction and in case of default, by himself. The said section further empowers the Sub-Divisional Officer to recover the cost of demolition from the person responsible that is from the owner.
11. Keeping in mind the aforementioned provision of law and after considering the factual aspects of the instant case, it appears that the local Panchayat by communication dated 10.03.2025 intimated the private respondent no.12 that his application for construction of house has been cancelled since the same is found to be inconsistent.
12. In view of such, we while disposing of the instant writ petition direct the respondent no.8 to cause an inspection at the plot no.1616 after giving due notice all the stakeholders to ascertain as to whether any encroachment in plot no.1616 has been done or not and thereafter shall make a demarcation report and shall forward the same to the respondent no. 6 forthwith.

13. The respondent no. 6 authority on receipt of such demarcation report shall consider the representation as sent on 19.11.2025 (Annexure P/5) in accordance with law in the light of the demarcation report as would be submitted by respondent no. 8 and after giving due chance of hearing to all stakeholder shall pass a reasoned order and shall communicate the same to all the stakeholders forthwith.
14. It is further made clear that in the event the respondent no.6 while passing reasoned order finds encroachment as alleged, he is directed to ask the alleged encroachers to remove the illegal encroachment in plot no.1616, if there be any, and in the event the said encroachment is not removed he is directed to take appropriate steps in terms of Sections 23 of the West Bengal Panchayat Act.
15. Before parting with, it is further made clear that the respondent no.6 authority is empowered to relegate this matter to the competent authority for taking appropriate steps for removing encroachment, if there be any, in terms of provisions of Section 160A of the West Bengal Panchayat Act, 1973.
16. With the aforementioned observations, the instant writ petition is disposed of.

17. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

I agree.

(SUJOY PAUL, ACJ.)

(PARTHA SARATHI SEN, J.)

RP (AR. CT.)