

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 145 of 2025

With

IA No.: CAN 1 of 2024

Md. Shaddam Hossain & Anr.

Vs.

The State of West Bengal & Ors.

with

CPAN 346 of 2025

Angur Ali

Vs.

Md. Shaddam Hossain & Anr.

with

WPA 16584 of 2023

Md. Shaddam Hossain & Anr.

Vs.

The State of West Bengal & Ors.

with

WPA 17405 of 2024

Angur Ali

Vs.

State of West Bengal & Ors.

For the Appellants

: Mr. Sudip Deb, Ld. Sr. Advocate

Mr. Debasish Saha, Advocate

Mr. Avirup Roy Sanyal, Advocate

Ms. Ipsita Ghosh, Advocate

For the State : Mr. Swapan Banerjee, Ld. AGP
Mr. Diptendu Narayan Banerjee,
Advocate

For the petitioner in CPAN 364 of 2025 : Mr. Rwitendra Banerjee, Advocate
and respondent no.10 in FMA 145 of 2025 Mr. Shibasis Chatterjee, Advocate
Mr. Sandip Kundu, Advocate

For the State in WPA 16584 of 2023: Mr. Lalit Mohan Mahata, Ld. AGP
Mr. Rudranil De, Advocate

Heard & Judgment on : April 22, 2025

DEBANGSU BASAK, J.:-

1. Appeal and a contempt petition filed in the appeal alleging violation of the order passed in the appeal are taken up for analogous hearing.
2. It is pointed out on behalf of the appearing parties that, there is an order passed by the appeal court directing the two writ petitions to be heard and disposed of by the appeal court.
3. We are not minded to dispose of the two writ petitions in the appeal, given the facts and circumstances of the present case.
4. We are limiting ourselves to the appeal directed against the order dated December 3, 2024 passed in the two pending writ petitions as also the

contempt petition being CPAN 346 of 2025 which alleges violation of the order dated December 13, 2024 passed by us.

5. Appellants before us are the writ petitioners of WPA 16584 of 2023.
6. Appellants challenged two orders in the writ petitions and prayed for grant of sanction of a plan for construction.
7. Appellants challenged the order dated May 2, 2023 passed by the Panchayat recording a portion of the construction made by the appellants to be unauthorized and requiring demolition thereof. Appellants also assailed the order dated May 24, 2023 passed by the Sub-Divisional Officer directing demolition of the unauthorized construction noted by the Panchayat.
8. The private respondent before us filed a writ petition being WPA 17405 of 2024 seeking implementation of the order of demolition passed by the Sub-Divisional Officer dated May 24, 2023.
9. Both the writ petitions were taken up for consideration analogously by the learned Single Judge. Learned Single Judge by the order impugned dated December 3, 2024 noted that, there subsists an order of demolition dated May 2, 2023. Thereafter, the Sub-Divisional Officer passed the order dated May 24, 2023. Noting that, the order of Sub-Divisional Officer dated May 24, 2023 was not implemented for more than a year an explanation was called for by the learned Single Judge by the impugned order.

10. In the appeal, the appellants volunteered self-demolition which was recorded by the order dated December 13, 2024. However, appellants did not undertake the self-demolition as promised.
11. Private respondent before us filed a contempt petition being CPAN 346 of 2025 alleging violation of the undertaking dated December 13, 2024. During the pendency of the appeal and the contempt petition, the authorities purported to grant sanction of the construction found to be unauthorized earlier on February 10, 2025.
12. Learned Senior Advocate appearing for the appellants draws the attention of the Court to the order of the Panchayat dated May 2, 2023, the order of the Sub-Divisional Officer dated May 24, 2023 as also the application for sanction of construction dated June 27, 2023.
13. Learned Senior Advocate appearing for the appellants relies upon Section 23 of the West Bengal Panchayat Act, 1973 and **2024 INSC 866 (In Re: Direction in the matter of demolition of Structures)** for the proposition that, post-facto sanction can be granted.
14. Learned Advocate appearing for the private respondent draws the attention of the Court to Section 23 of the Act of 1973 as also Rules 17, 19 and 22 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. He contends that, post-facto sanction of an unauthorized construction cannot be granted by the authorities. He also relies upon **2022 SCC OnLine Cal 3612 (Falguni Mukherjee vs. State of West Bengal and Others)**.

15. Learned Senior Advocate appearing for the appellants, in reply, submits that, **Falguni Mukherjee** (supra) proceeds on the basis of the entire construction being unauthorized. According to him, in the facts of the present case, a portion of the structure erected by the appellants was authorized. The subsequent structure erected may or may not be classified as unauthorized. Therefore, according to him, the ratio of **Falguni Mukherjee** (supra) is not attracted. Rather, according to him, the parties are governed by the ratio of **In Re: Direction in the matter of demolition of Structures** (supra).
16. We considered the rival contentions of the parties.
17. Appeal is directed against an interim order which required the State to submit a report as to the steps taken for the purpose of implementation of the order of the Sub-Divisional Officer dated May 24, 2023.
18. **Falguni Mukherjee** (supra) rendered by the Coordinate Bench and is in the context of the Act of 1973. Provisions of Section 23 were considered by **Falguni Mukherjee** (supra).
19. **Falguni Mukherjee** (supra) is of the following view:

“43. Section 23 is a regulatory provision. It makes it mandatory for a person to obtain prior permission from the panchayat concerned before he can construct a building beyond a certain dimension. Two of the important objects of a statutory provision regulating construction of buildings or addition/alteration to

buildings are to ensure optimal utilization of land which is a scarce commodity and also planned development of a particular locality. In my understanding, keeping those objects in mind, the State Legislature has included Section 23 in the 1973 statute, making it obligatory for a person to obtain previous permission of the panchayat concerned before putting up a building beyond the dimension mentioned in the said section. The entire object and rationale behind Section 23 would be defeated if a person is permitted to construct a building without having a building plan sanctioned by the panchayat, as per his own whims, and then apply for post facto permission for regularizing the unauthorized construction.

44. In my considered opinion, Section 23 of the 1973 Act does not envisage grant of post facto sanction of a building plan after construction of the building is completed. The language of Section 23 (1) is plain and clear. There is no ambiguity, no scope for confusion. The language is not capable of more than one interpretation. No canons of construction of a statute are required to be pressed into service for ascertaining the true scope, effect and meaning of Section 23 (1) of the 1973 Act.”

20. ***In Re: Direction in the matter of demolition of Structures*** (supra) issued certain directions under Article 142 of the Constitution of India. While issuing such directions, the Hon’ble Supreme Court noted that, the designated authority who is required to pass a final order, *inter alia*, should find whether the unauthorized construction was compoundable or not.

21. In view of **Falguni Mukherjee** (supra), we are not in a position to arrive at a finding that, the sanction purported to be granted on February 10, 2025 to the unauthorized construction is permissible in law. Our attention was not drawn to any provisions of the Act of 1973 which allows regularization of unauthorized construction. Rather both the provisions of the Act of 1973 as also the Rules of 2004 speak of prior sanction for erection of a construction.
22. In such circumstances, we do not find any ground to interfere with the order impugned.
23. **FMA 145 of 2025** along with all connected applications are disposed of accordingly.
24. So far as the contempt petition is concerned, since, the appellants claim that, the authorities granted a post-facto sanction on February 10, 2025, we deem it appropriate not to invoke our jurisdiction under Article 215 of the Constitution of India or under the provisions of the Contempt of Courts Act, 1971. This restraint of ours to invoke the contempt jurisdiction should not be construed to mean that, we accepted the grant of sanction dated February 10, 2025 as valid or rendered any finding that, the order dated May 24, 2023 passed by the Sub-Divisional Officer or the order dated May 2, 2023 of the Panchayat are unenforceable or not to be implemented. We keep such issues open to be decided by the learned Trial Judge in the two pending writ petitions.

25. **CPAN 346 of 2025** is disposed of accordingly.
26. **WPA 16584 of 2023** and **WPA 17405 of 2024** are released from the list.

(Debangsu Basak, J.)

27. I agree.

(Md. Shabbar Rashidi, J.)

(AD)