

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 30270 of 2016

Ananda Gopal Saha

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Kamalesh Chakraborty,
Ms. Anita Bhattacharjee,
Mr. Dilip Kumar Maiti.

For the State : Mr. Sudipta Panda,
Ms. Ananya Neogi.

For the Opposite Party : Mr. A. Patra,
Mr. Partha Sarathi Das,
Ms. Shanta Sarkar.

Hearing concluded on : 09.06.2025

Judgment on : 18.06.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ petition has been preferred praying for direction upon the respondent no. 6, the Pradhan Mira 1 Gram Panchayat P.O. Plassey, District: Nadia, to withdraw and/or cancel and or set aside and quash the approval of the building Plan for commercial purpose sanctioned on 05.01.2015 and to demolish the illegal construction for commercial purpose at Mouza Mira, J.L. NO. 8. P.S. Kaliganj, District: Nadia, West

Bengal PIN No. 741156 comprising to **L.R. Dag No. 798**, Khatian no. 909/1, 1628/5 and 715/1 measuring about 4.875 decimal by the respondent no. 7 and 8. The petitioner has further prayed for direction upon the respondent authority to dispose of his representation.

- 2.** The petitioner's case is that the petitioner and the respondents no. 7 & 8 are adjacent neighbours.
- 3.** That the said respondents in connivance with the respondent no. 6, the Pradhan Mira I Gram Panchayat who has no power to grant permission, have allegedly made illegal construction by building a commercial property by encroaching the petitioner's ingress and egress pathway and violating the rules and laws and without following due process of law.
- 4.** The petitioner has filed a Title Suit being 195 of 2015 and the private respondents along with other co-sharers have filed a partition suit being Title Suit No. 40 of 2015, which also includes a dispute regarding boundary wall.
- 5.** The petitioner relying on the provision of Rule 31 of the West Bengal Panchayat (Gram Panchayat Administration) Rules 2004 Chapter IV has stated that the Pradhan has no power to give permission for constructions of commercial building and or sanctions and plans.

6. The private respondent's case in their opposition is that the construction made by them is part commercial (4 small one storied shop room) and the rest is for residential purpose. It is further stated that the petitioner's pathway has in no way been encroached by them.
7. In reply the petitioner has denied the private respondents case.
8. As directed, the respondent no. 4/BDO, Kaliganj, Nadia on due inspection in his report in the form of affidavit has stated as follows:-

"5a. that the said Paresh Nath Saha has constructed commercial building on the land i.e. Khatian No 1628/5, 909/1, Plot No RS-594, LR798, Mouza Name-Mira-08, PS-Kaliganj. Dist.-Nadia obtaining sanctioned plan from Mira-1 Gram Panchayat.

5b. As per layout of Plan proposed Triple storied commercial building having height of the proposed building is $2.20+0.90+2.20+0.90+2.20+0.90+.125+.125+.125=9.675$ meters which should have been vetted by Zilla Parishad before the concerned Gram Panchayat could grant permission, as per provision stated under chapter IV, sec 17 of the West Bengal Panchayat (Gram Panchayat administration) Rules, 2004 as amended in 2006.

Relevant Documents are annexed herewith and collectively marked with Annexure-"R-1" with this report.

5c. After all, Paresh Nath Saha & Swadhinlata Saha's application form and ROR shows that the classification of said land is "Aush", and the Gram Panchayat i.e. Mira-1 approved the commercial building plan on the "Aush" Category which is against the law, as per provision stated under chapter IV, sec 22 (1) (d) of the West Bengal Panchayat (Gram Panchayat administration) Rules, 2004 as amended in 2006. As per Rule-26 of the West Bengal (Gram

Panchayat Administration) Rule, 2004 as amended in 2006, no permission and sanction will be accorded for structure or building is proposed to be erected or constructed on any land recorded otherwise than as homestead land, the Gram Panchayat shall withheld the permission for such erection or construction until the applicant produces an order allowing change of classification of the said land by the competent authority. The schedule land is agricultural land in nature and classified as "AUSH" till to date as per Banglarbhum portal run by the Govt. of West Bengal. Action of the Mira Gram Panchayat regarding issuance of sanction or permission to erect structure or building in favour of the Paresh Nath Saha & Swadhinlata Saha dated 05.01.2015 contravenes with the provisions of Section-23 of the West Bengal Panchayat Act' 1973 and Rule-26 of the West Bengal (Gram Panchayat Administration) Rules, 2004 as amended in 2006.

5d. in respect of granting approval to commercial building plans, Mira-1 Gram Panchayat has not maintained the proper Rules, as per provisions stated under Section 31 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 as amended in 2006.

5e. the plan which was approved by the Gram Panchayat against Paresh Nath Saha & Swadhinlata Saha, at that time, was not governed by the Rules applicable for construction of a building.

5f. in respect of granting commercial building plan approval, Mira-1 Gram Panchayat has not maintained the proper rule, as per provision stated under rules 31, rules 22 (1)(d), rules 26 & rules 17 of the West Bengal Panchayat (Gram Panchayat administration) Rules, 2004 as amended in 2006 and as such it can be concluded that the plan which was approved by the Gram Panchayat against Paresh Nath Saha & Swadhinlata Saha, at that relevant time, was not governed by the Rules applicable for construction of a building.

9. It appears from Annexure R-2, Record of Rights which relates to
Dag No. 798, Mouza Mira that the Khatians relating to the

private respondent is classified as 'Aush'. Whereas the Khatian of the petitioner in the **same dag** is classified as 'Viti'.

10. In their exception to the report filed by the BDO, the private respondents have stated that the rule and notification dated 11.06.2015 regarding vetting by Zilla Parisad relates to structures made for industry related purpose, where as the petitioner's prayer and construction is part residential and part commercial.
11. **Document as page 8 of the exception** is a copy of the application dated 05.01.2015 filed by the private respondent praying for permission for conversion of classification of their land.
12. **At page 17 and 18 are orders in Conversion Case No. 76 and 77 of 2014 issued in favour of the private respondents,** where in the Block Land and Land Reforms Officer vide memo no. CON/628/Kali/5 and CON/629/Kalic-15, both dated 03.07.2015 allowed their prayer (private respondents) for conversion of classification of land from 'Aush' to "Viti".
13. **The said documents thus show that the report of the BDO filed before the Court is not on the basis of official records.**
14. **The Pradhan of Mira I Gram Panchayat in her report has stated as follow:-**

"In the instant case after having received the application with requisite papers (Title Deed, Mutation as well as

Conversion Certificate, upto date tax payment receipt) an enquiry was held. After being satisfied about the right, title and interest and other documents permission was issued to the private respondent herein. That finally the land of the petitioner as well as private respondents was demarcated in presence of the villagers and respectable person of the locality, Surveyor and Engineer Commissioner. That land demarcation sheet was prepared in presence of both the petitioners and private respondents. **Rule 31 of West Bengal (Panchayat Administration) Rule 2004 reflects that Panchayat generally can not issue any permission in respect of structure or construction of a building for commercial or institutional purposes or for establishing factory or workshop or warehouse or godown.**

(a) in a predominantly residential area.

(b) on a road or an approach passage having a width measuring less than five metres.

It is submitted that the rule itself says that the area which is not predominantly residential area Pradhan or Panchayat has a power to permit the construction of residential as well as commercial building. **It is submitted that the permission of construction of a commercial building which is sought for by the private respondent is within the zone of market area called as "MIRA NABIN MARKET"** and stand just by the side of 34 No. National Highway. Therefore the rule permits the Panchayat as well as Pradhan to permit such type of building. In this respect, **the concerned B.D.O., issued a certificate which reflect that the area where permission is given for erection of a building that is commercial area.** That the building which is erected upon only 3 decimal of land therefore. The private respondent though has taken permission of commercial building but he made the Provision of shop room in front part of the building and the back part of it and 1st floor has been using as residential purpose only."

- 15. The addresses of the petitioner and the private respondent is at Nabin Market, Mira Bazar (designated as a commercial area).**
- 16.** The certificate issued by the BDO dated 14.02.2017 at page 7 of the respondent no. 6's report shows that the area is a commercial area.
- 17.** Learned counsel for the petitioner has relied upon Rule 26 and 31 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 which are as follows:-

“26. Classification of land for construction. - If any structure or building is proposed to be erected or constructed on any land recorded otherwise than as homestead land, the Gram Panchayat shall withhold permission for such erection or construction until the applicant produces an order allowing change of classification of the said land by the Collector or any other competent authority having jurisdiction under any law for the time being in force.

31. Permission for construction of building for commercial or institutional purposes. -

(1) The Gram Panchayat shall not accord permission for erection of a structure or construction of a building for commercial or institutional purposes or for establishing a factory or workshop or warehouse or godown, – (a) in a predominantly residential area, or (b) on a road or an approach passage having a width measuring less than five metres.

(2) There shall be a front setback of not less than one and one-fifth metre for a structure or building referred to in sub-rule (1). (3) The maximum building coverage of a structure or building referred to in subrule (1) shall be three-fifth of the total plot area.

(4) In the case of a proposed building on a total land measuring between four thousand square metres, and twenty-five thousand square metres, the Gram Panchayat shall be handed over management and

control of not less than one sixteenth of the total land accommodating public facilities like power sub-station, public transport terminal, garbage vat and such other facilities; for plots measuring more than twenty five thousand square metres, the Gram Panchayat shall be handed over one-tenth of the total land for such purposes.

(5) Subject to the provision of this rule, erection or construction of a building for commercial or institutional purposes, shall be governed by the rules applicable for construction of a building for residential purposes.”

18. Herein the private respondents have produced valid documents showing conversion of classification of land in this case.

19. In the present case, the respondent no. 6, the Pradhan has clarified that the conditions required to be fulfilled in the present case were duly complied with and on such enquiry and satisfaction on the basis of documents which includes a certificate issued by the BDO concerned that the area is a ‘commercial area’ the permission was accorded in favour of the private respondent.

20. The petitioner herein being a subsequent purchaser in the area, with his high handedness on being an ex defence personnel has proceeded to initiate the present case, on prima facie false accusations.

21. It also appears from the sketch map provided along with the report filed by the respondent no. 6, that the petitioner’s pathway of ingress and egress is over the land of the private

respondents, on which there has been no encroachment, which was claimed by the petitioner.

22. The petitioner has relied upon the following judgment:-

- i. *Dipak Kumar Mukherjee vs Kolkata Municipal Corporation and Ors., (2013) 5 SCC 336.*
- ii. *Kali Prasad Shaw vs The Board of Councillors of Baranagar Municipality & Anr., in C.O. 1964 of 2022, Calcutta High Court.*

23. The judgments relied upon are not applicable to the facts and circumstances of the present case.

24. Thus the private respondents have made construction on the land which was duly constructed and permission accorded to them for the said construction is not in violation of Rule 31 of the Rules of 2004 and thus in accordance with law.

25. The dispute between the parties is also subjudice before the Civil Court in two suits.

26. The writ petition having no merit stands dismissed.

27. Pending applications, if any, stands disposed of.

28. Interim order, if any, stands vacated.

29. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties, upon usual undertakings.

[Shampa Dutt (Paul), J.]