

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**WPA 2138 OF 2025
Rakhal Chandra Dutta @ Rakhal Dutta & Ors.
Vs.
The State of West Bengal & Ors.
With
WPA 2140 of 2025
Sukhendra Nath Banik & Anr.
Vs.
The State of West Bengal & Ors.**

For the Petitioners in WPA 2138 of 2025 and for the Respondent no. 6 in WPA 2140 of 2025 : Mr. Bikramaditya Ghosh
Mr. Ved Rai
Mr. Mayank Bhandari
Mr. Vivek Saha advocates

For the Petitioners in WPA 2140 of 2025 and Respondent Nos. 7 and 8 in WPA 2138 of 2025 : Ms. Sunandita Banik (in person)

For the State : Mr. Subir Kr. Saha, Ld. AGP
Mr. Momenur Rahaman
Mr. Hirak Barman
Mr. Sourav Sarkaradvocates

For the respondent no. 5 : Mr. Arnab Sahaadvocate

Heard on : 31.10.2025

Judgment on : 04.11.2025

Hiranmay Bhattacharyya, J.:-

1. WPA 2138 of 2025 has been filed challenging the order dated June 14, 2025 passed by the Sub-Divisional Officer, Alipurduar praying for setting aside the said order and for other consequential reliefs.
2. WPA 2140 of 2025 has been filed praying for implementation of the order dated June 14, 2025 passed by the Sub-Divisional Officer, Alipurduar.

3. Since the first writ petition was filed by a group of private parties challenging an order passed by an authority and the other writ petition has been filed by the other group of private parties praying for implementation of the aforesaid order, these writ petitions were heard analogously and are being decided by this common order.
4. Parties shall be hereinafter referred to according to their respective position in WPA 2140 of 2025 and the facts leading to the filing of the said writ petition is summarized hereinafter as follows-
5. Petitioner No. 1 claims to be the recorded raiyat in respect of L.R. Plot No. 882 within mouja-Birpara, J.L.No. 45, district Alipurduar measuring about 58 decimals of land. Petitioners state that the Civil Court has passed a decree in favour of the petitioner in respect of the said property in Title Suit No. 112 of 2010 and an execution proceeding for execution of the said decree is pending. Being aggrieved by the illegal construction raised by the private respondent on the petitioner's land, a representation was submitted before the Prodhan of the concerned Gram Panchayat. Alleging inaction on the part of the authorities of the Gram Panchayat, petitioner filed a writ petition being WPA 2508 of 2022 which was disposed of by an order dated November 03, 2022 by directing the Prodhan of the concerned Gram Panchayat to consider and take a decision on the aforesaid representation upon giving an opportunity of hearing to all interested parties. Petitioner thereafter, filed a writ petition being WPA 821 of 2025 alleging that no steps for demolition were taken. The said writ petition was disposed of by an order dated April 22, 2025 by directing the Sub-Divisional Officer to take necessary steps in accordance with law within a specified time. Petitioner alleges that inspite of expiry of the time limit fixed in the order of the Sub-Divisional Officer (for short "SDO"), the private respondents have not yet demolished the illegal construction for which the petitioner has been compelled to file WPA 2140 of 2025.
6. The case made out by the private respondents is that Rakhal Chandra Dutta alias Rakhal Dutta i.e., the father of the 6th respondent purchased 0.17 acres of land from one Jyotsna Roy in the year 1993 and thereafter 0.16 acres of

land from the petitioner no. 1 in the year 2003 and the entire quantum of land measuring 0.33 acres in the plot in question was recorded in the name of Rakhal Dutta. Private respondent states that challenging the decree passed by the Trial Court, an appeal being Title Appeal No. 14 of 2025 has been preferred which is pending. Private respondent along with Rakhal Dutta and others filed WPA 2138 of 2025 challenging the authority of the SDO to pass an order of demolition of the house constructed by them and prayed for setting aside the said order.

7. Petitioner No. 2 appeared in person. She submitted that the private respondent made an illegal construction without obtaining any sanction plan from the concerned panchayat. She contended that the petitioner lodged a complaint before the authorities of the panchayat and on a writ petition being filed, an order of demolition was passed. She submitted that the SDO was directed to take necessary steps by an order dated 22.04.2025 passed in WPA 821 of 2025 and thereafter the SDO passed the order dated June 14, 2025 directing the private respondent to demolish the unauthorised construction within three months and though the said time limit has expired, the private respondent has not yet demolished the illegal construction.
8. Mr. Ghosh, learned advocate appearing for the private respondent contended that any order of demolition of any building or structure could be passed only by the Gram Panchayat after affording an opportunity of hearing to the owner of the building. In support of such contention he placed reliance upon the decision of the Hon'ble Division Bench of this Court in the case of **Biswajit Naskar vs. Pradhan, Shirakol Gram Panchayat** reported at **2008 SCC Online Cal 64**. He further submitted that the SDO is not vested with the power and authority to pass an order of demolition under Section 23(6) of the West Bengal Panchayat Act, 1973 (for short the "1973 Act"). He contended that no order of demolition was passed by the Gram Panchayat. He further contended that the private respondent was asked to show cause and the private respondents duly submitted a representation before the Panchayat praying for grant of post facto sanction

of building plan. Mr. Ghosh concluded by submitting that the order of the SDO should be set aside as the same was passed by an authority without jurisdiction.

9. Mr. Saha, learned advocate appearing for the concerned Gram Panchayat disputes the submission of Mr. Ghosh. He contended that the SDO is the appropriate authority to pass an order of demolition of an illegal construction under the 1973 Act. In support of such contention, he placed reliance upon the decision of the Hon'ble Division Bench of this Court in the case of **Falguni Mukherjee vs. The State of West Bengal & Ors.** reported at **2022 (3) CLJ (Cal) 131**. He further contended that since the SDO is the appropriate authority, the Prodhan forwarded the necessary papers before the SDO for taking necessary steps.
10. Heard the learned advocates for the respective parties and perused the materials placed.
11. Private parties are litigating before the Civil Court. The subject matter of this writ petition is a complaint made by one of the private parties before the Gram Panchayat alleging unauthorized construction made by the other set of private parties within the limits of the Gram Panchayat. The Title Suit was filed on a different cause of action. Thus, mere pendency of Title Appeal and Execution proceedings before the Civil Court cannot be a bar in entertaining this writ petition.
12. The issue that falls for consideration is whether the concerned Gram Panchayat was justified in referring the matter to the SDO concerned for passing an order of demolition.
13. The provisions laid down under Section 23 of the 1973 Act was amended by way of substitution by West Bengal Panchayat (Amendment) Act, 2017 with effect from 09.11.2017.
14. For the purpose of deciding the aforesaid issue, it would be beneficial to recapitulate the provisions of Section 23 of the 1973 Act as amended by the Amendment Act of 2017 for which the same is extracted hereinafter.

“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 provision for erection or construction of a sanitary latrine of any description.

(2) Every person seeking permission under sub-section (1), shall make an application in writing to the Gram Panchayat in such form, containing such particulars and on payment of such fee to the Gram Panchayat, as may be prescribed:

Provided that no amount in whatever name or manner other than the fees prescribed by the State Government, shall be charged by the Gram Panchayat for according permission:

Provided further that there shall be no restriction of covered area on construction of kuchcha and semi-pucca residential building which shall mean a single storeyed building not having concrete roof and brick wall with setback of not less than nine-tenth metre on the road side:

Provided also that no permission under sub-section (1) shall be necessary subject to submission of a self-declaration for erection of any new thatched structure, tin shed or tile shed without brick wall covering an area not exceeding eighteen square metres where such structure or shed does not cover more than three-fourth of the total

area of the land (including appurtenant land) and there is a setback of not less than nine-tenth metre on the road-side:

Provided also that the State Government may, by order, exempt any structure or building or any class of structures or buildings from the operation of the provisions of sub-section (1) and of this sub-section:

Provided also that if the building plan contains a proposal for construction of a structure for rain water harvesting on its roof, the Gram Panchayat shall allow a rebate in paying fee for permission under sub-section (1) to the applicant at such rate as may be determined by the State Government.

(3) On receipt of such application the Gram Panchayat, after making such enquiry and examination of the building plan as it considers necessary and in accordance with such rules as may be made by the State Government in this behalf, shall, by order in writing, either grant the permission or refuse it, recording in the case of refusal the reasons therefor.

(4) Any person aggrieved by an order of the Gram Panchayat under sub-section (3) refusing permission or non-receipt of any intimation in this regard within the stipulated time as may be prescribed, may prefer an appeal to such appellate authority as may be prescribed:

Provided that any person aggrieved by an order of the authority may prefer an appeal before the reviewing authority as may be prescribed:

Provided further that no appeal shall lie against the order of the reviewing authority.

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 subsection (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.”

15. Section 23(1) starts with a negative command. A bare reading of the said provision implies that it mandates a person to obtain previous permission in writing from the Gram Panchayat before erection of any new structure or new building or making any addition thereto having plinth area of not more than 150 sq. meters and height not more than 6.5 meters in any area within the jurisdiction of a Gram Panchayat.
16. The word “permission” used in Section 23(1) is qualified by the word “previous”. Thus, it is evident that Section 23(1) contemplates erection of new building or new structure or addition thereto only after obtaining permission in writing. There is no provision in the 1973 Act for grant of post facto sanction.
17. It is well settled that an authority under a statute can do only such acts what the statute permits such authority to do or perform. This Court, accordingly, holds that grant of post facto sanction to the building plan is not contemplated under the 1973 Act. A contrary interpretation would also frustrate the object of Section 23 which is to control building operations within the jurisdiction of the Gram Panchayat as it would encourage person(s) to first construct building or structures or make any additions thereto as per his/their own desire and then apply for regularisation under the guise of post facto sanction.
18. Sub-section (2) of Section 23 states that an application seeking permission to erect has to be made in writing to the Gram Panchayat in such form, containing such particulars and on payment of such fee to the Gram Panchayat as may be prescribed.
19. Sub-section (3) provides for making an enquiry and examination of the building plan and thereafter, by an order in writing either grant the permission or refuse it and in case of refusal, reasons therefor are to be stated.
20. Sub-section (4) provides that any person aggrieved by an order of the Gram Panchayat refusing permission or non-receipt of any intimation in that

regard within the stipulated time may prefer an appeal to such appellate authority as may be prescribed.

21. Sub-section (5) of Section 23 has been substituted by the West Bengal Panchayat (Amendment) Act 2017 which came into force with effect from November 9, 2017. Sub-section (5) provides that when a new structure or a new building or any addition to any structure or building is being or has been erected or made 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 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 may impose a fine as may be specified by the state government and recover the cost thereof from the owner as a public demand.
22. Chapter IV of the West Bengal (Gram Panchayat Administration) Rules, 2004 (for short the “2004 Rules”) prescribes the procedural law for control of building operations.
23. Rule 17 provides for submission of application in Form 4 to the Gram Panchayat for obtaining prior permission in writing of the concerned Gram Panchayat for the purpose of erection of any new structure or a new building or for making any addition thereto.
24. Rule 27 empowers the Prodhan or the Upa Prodhan or any other member authorised by the Gram Panchayat to examine the right, title and interest of the applicant in respect to the land on which the structure or the building is proposed to be erected along with the building plan and the site plan and after such enquiry to place it before the Gram Panchayat for granting or refusing permission. The power of the Prodhan is only to examine the right, title and interest of the applicant in respect of the land in question.
25. Upon a conjoint reading of subsections (1), (2) and (3) of Section 23 and the relevant rules, this Court is of the considered view that the Gram Panchayat

is the authority to grant or refuse permission to construct a new structure or new building or make any additions thereto in an area falling within the jurisdiction of the concerned Gram Panchayat.

26. The Hon'ble Division Bench in **Biswajit Naskar** (supra) after considering the relevant provisions of the Act more particularly Section 23 as it stood prior to the coming into force of the West Bengal Panchayat (Amendment) Act, 2017 and the relevant rules held that any order of demolition of any building or structure could be passed by the Gram Panchayat itself by convening a meeting and by hearing the owner of the building. It was further held therein that the Prodhan is not legally entitled to pass any decision of demolition of any building.
27. In **Biswajit Naskar** (supra), the interpretation of Section 23(5) after its substitution by the Amendment Act of 2017 did not fall for consideration. In view thereof, the aforesaid decision cannot come to the aid of the private respondent.
28. However, in view of substitution of Sub-section (5) Section 23 by the Amendment Act of 2017 it is evident that in case of erection of new structure or new building in contravention of Sub-section (1), the permission granting authority is under a statutory obligation to refer the matter to the Sub-Divisional Officer concerned.
29. Contravention of the provisions of Sub-section (1) of Section 23 would imply erection of a new structure or a new building or making any addition thereto without the previous permission in writing from the Gram Panchayat. The permission granting authority is the Gram Panchayat. Thus, in view of the provisions laid down under Sub-section (5) of Section 23 after its substitution by the Amendment Act of 2017, the Gram Panchayat is obliged to refer the matter to the Sub-Divisional Officer in case of contravention of Section 23(1).
30. In **Falguni Mukherjee** (supra), the Hon'ble Division Bench refused to interfere with the order passed by the Hon'ble Single Bench refusing to interfere with the demolition order of the concerned SDO.

31. In view of the aforesaid discussion, this Court holds that in case of erection of any new structure or new building or any addition thereto made without obtaining prior permission of the Gram Panchayat, the concerned Gram Panchayat shall refer the matter to the SDO concerned who may after giving the owner of the building an opportunity of being heard pass an order directing demolition of the building or any portion thereof.
32. Now, tuning back to the facts of the case on hand, this Court finds that the petitioner has lodged a complaint before the concerned Gram Panchayat alleging illegal construction without any sanction plan. The co-ordinate bench directed consideration of such representation.
33. Record reveals that a meeting was convened by the concerned Gram Panchayat to consider the complaint dated June 2, 2022 lodged by the petitioners and an opportunity of hearing was afforded to the owner of the building/impugned construction. In course of hearing before the Gram Panchayat, on 10.12.2024 the documents produced were examined and a specific finding was recorded that the construction of the building was made without obtaining any sanction building plan and the construction is an illegal one.
34. After arriving at such conclusion, a decision to issue a show cause notice to the private respondent was taken.
35. Private respondent grabbed such opportunity and filed a representation before the concerned Gram Panchayat praying for post facto sanction of the building plan and the Prodhan forwarded the show cause notice and the reply thereto before the concerned SDO for taking necessary steps.
36. Record reveals that the SDO concerned heard the respective parties extensively and examined the relevant documents. A field enquiry was conducted in the presence of the Block Land and Land Reforms Officer concerned, Prodhan of the concerned Gram Panchayat, the complainant as well as the owner of the building and other interested parties. The SDO concerned in his order dated June 14, 2025 noted that the building was constructed without obtaining prior sanction plan from the Gram Panchayat

as required under Section 23(1) of the 1973 Act. The SDO concerned in exercise of power conferred under Section 23(5) of the 1973 Act directed the owners of the building to demolish the unauthorized construction at their own cost within three months from the receipt of the said order failing which the Prodhan of the concerned Gram Panchayat shall effect the demolition order and impose fine and recover cost from the owner.

37. After going through the provisions of Section 23(5) this Court finds that the Sub-Divisional Officer after giving the owner of the building an opportunity of being heard may make an order directing demolition of the building or a portion of the building by the owner within such period as may be specified in the order and in default the SDO may itself effect the demolition and impose of fine as may be specified by the State Government and recover the cost thereof from the owner as a public demand.
38. It is the allegation of the petitioner that the period specified in the order dated June 14, 2025 directing demolition of the unauthorized construction by the petitioners in WPA 2138 of 2025, has already expired but they have not yet demolished the unauthorized construction.
39. It appears from the order dated June 14, 2025 that the SDO directed the Prodhan of the concerned Gram Panchayat to effect the demolition order and impose fine and recover costs from the owner as a public demand in case the owner fails to demolish the same within the time limit specified in the said order.
40. The direction upon the Prodhan of the concerned Gram Panchayat to effect demolition and impose fine and recover the cost thereof from the owner by the order dated June 14, 2025 passed by the Sub-Divisional Officer concerned is contrary to the mandate of Section 23(5) of the 1973 Act which provides that 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.
41. The word “itself” appearing in the default clause after the words “Sub-Divisional Officer may” in Section 23(5) implies that if the owner fails to

comply with the direction to demolish, the demolition is to be effected by the SDO and not by the Prodhan of the concerned Gram Panchayat as directed by the SDO in the order dated 14.06.2025.

42. For the reasons as aforesaid, this Court is inclined to modify the order dated 14.06.2025 to a limited extent.
43. It is the case of the private respondent that construction has been made on the portion of the plot of land owned by them. The Gram Panchayat after affording any opportunity of hearing to the owner of the building arrived at a specific factual finding that the said construction was made without obtaining any previous permission in writing from the Gram Panchayat. Such factual finding could not be controverted by Mr. Ghosh, learned advocate for the private respondent in course of hearing of these writ petitions.
44. In view of the undisputed fact that erection of building was made without obtaining previous permission from the Gram Panchayat in writing, to the mind of this Court, there has been contravention of the provisions of Section 23(1). Sub-section (5) of Section 23 makes it mandatory for the permission granting authority to refer the matter to the SDO concerned for passing demolition order in the manner as provided therein.
45. In the case on hand, the Gram Panchayat after arriving at a finding that there has been contravention of the provisions of Section 23(1) referred the matter to the SDO concerned. This Court holds that the Gram Panchayat concerned was justified in referring the matter to the SDO.
46. The issue is accordingly answered.
47. In reply to the show cause notice, the private respondent/petitioner in WPA 2138 of 2025 has prayed for post facto sanction of the building plan. Parties were heard on such issue and a decision of the Hon'ble Division Bench in **Falguni Mukherjee** (supra) was relied upon in course of hearing.
48. This Court has already observed that there is no provision in the statute for grant of post facto sanction to the building plan. In **Falguni Mukherjee**

(supra) it has been categorically held that Section 23(6) cannot be interpreted in a manner so as to infer that the authority has the power to grant post facto sanction to a building plan where the building has been constructed without having any sanction from the concerned authority.

49. Mr. Ghosh would contend that though the petitioner in the reply to the show cause notice prayed for grant of post facto sanction to the building plan, such issue was not considered by the SDO concerned.
50. Section 23(5) of the 1973 Act does not empower the SDO to grant post facto sanction to a building plan where a building has been constructed without obtaining previous permission in writing from the Gram Panchayat.
51. This Court accordingly holds that the order of the SDO does not suffer from any infirmity.
52. For all the reasons as aforesaid, WPA 2138 of 2025 stands dismissed. WPA 2140 of 2025 stands allowed by directing the Sub-Divisional Officer, Alipurduar being the 3rd respondent to effect demolition of the unauthorized construction of the building in question as expeditiously as possible but positively within a period of eight weeks from the date of receipt of a server copy of this order and impose a fine as may be specified by the State Government and recover the cost thereof from the owner as a public demand. The order dated June 14, 2025 passed by the Sub-Divisional Officer is modified only to the extent as indicated hereinbefore.
53. There shall be, however, no order as to costs.
54. Urgent Photostat certified copy of this order, be supplied to the parties if applied for, after compliance of all the formalities.

(HIRANMAY BHATTACHARYYA, J.)