

17.03.2026  
SL No.20  
Court No.12  
(gc)

**FMA 208 of 2026  
CAN 1 of 2026**

**Mohanta Ghosh  
Vs.  
State of West Bengal & Ors.**

Mr. Syamal Kumar Das,  
Ms. Smita Pal

.....for the Appellant.

Mr. Saumyen Datta,  
Mr. Tapas Singha Roy

...for the Respondent Nos. 7 & 8.

Ms. Sabnam De Bardhan, J.G.A.  
Ms. Kakali Naskar

...for the State.

1. The appeal arises out of an order dated January 8, 2026 passed by the learned Single Judge in WPA 29616 of 2024. By the order impugned, the learned Judge dismissed the writ petition on the ground that, when a civil suit was pending for partition of the property by metes and bounds, the petitioner could not continue with the parallel writ proceeding with the pleadings and prayers contained therein.
2. In our considered view, the learned Judge failed to appreciate that the suit was filed for partition. In the writ petition, it was alleged that the respondents Nos. 7 and 8 were raising an unauthorized construction over an undivided property. The challenge in the writ petition was restricted to the aspect of unauthorized construction and the failure of the Panchayat

authorities to act on the basis of the representation made by the appellant.

3. We find from the writ petition that a representation was made on November 27, 2024 with specific reference to an earlier representation dated November 11, 2024, alleging that the respondent nos.7 and 8 were raising unauthorized construction on an undivided property.
4. The jurisdiction of the Civil Court in a suit for partition and the statutory duty of the Panchayat authorities to ensure that no unauthorized construction should be permitted, are distinct and separate. Thus, the learned Judge erred in dismissing the writ petition on the ground that the writ petition should not be entertained in view of the pendency of the civil suit.
5. The records reveal that the suit was filed after the writ petition was filed.
6. Under such circumstances, the order impugned is set aside.
7. If the petitioner files a comprehensive application before the Panchayat authority, the same shall be disposed of in accordance with law.
8. The submission of the learned Advocate for the respondent nos.7 and 8 that the construction was made longtime back and a sanction was granted by the Panchayat authorities can be raised before the

authority. He also submits that no new construction had been raised.

9. When the Panchayat authorities decide the issue of unauthorized construction, all parties will be given adequate opportunities to produce their respective documents and make their respective submissions.
10. Any decision that is taken must be pursuant to proper inspection of the premises in the presence of the parties.
11. We do not make any observations on the merits of the claim of the appellant.
12. The Panchayat authorities shall act and proceed in accordance with Section 23(5) of the West Bengal Panchayat Act, 1973, in the event unauthorized construction is detected. The suit will proceed on its own merits.
13. Accordingly, the appeal and the connected application are disposed of.
14. There shall be no order as to costs.
15. Parties are to act on the server copy of this order.

**(Shampa Sarkar, J.)**

**(Ajay Kumar Gupta, J.)**