

Item No.7  
08.04.2026  
Court. No. 12  
GB

FMA 234 of 2026  
With  
CAN 1 of 2026

Rajarshi Ray  
Vs.  
The State of West Bengal & Ors.

*Mr. Pritam Chowdhury,  
Mr. Debaki Nandan Maiti,  
Mr. A. Santra*

*...for the Appellant.*

1. Affidavit-of-service filed in Court today, is taken on record.
2. Despite service, none appears on behalf of the respondents.
3. The appeal arises out of an order dated January 6, 2026, passed in WPA No.26270 of 2025. We find that the order suffers from patent illegality. The appellant had raised an objection with regard to an unauthorized construction of the respondent no.5, who happens to be a co-sharer in respect of the plot of land along with the appellant.
4. The learned court rejected the writ petition on the ground that the fertilizer factory of the respondent no.5 had been constructed long ago and a civil suit for partition was pending.
5. We are of the view that the gram panchayat is the permission granting authority and has the exclusive jurisdiction to ascertain as to whether any construction is authorized or unauthorized. If the construction is unauthorized, it is within the domain

of the panchayat authorities to act and proceed in accordance with Section 23(5) of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act').

6. Under such circumstances, relegating the parties to the civil court was improper. Secondly, during pendency of a civil suit also, the co-sharer could not have raised any construction in the absence of any permission. The civil court does not have the authority to decide on such issue. Moreover, in this case, the specific allegation is that conversion had not been effected but a fertilizer factory had been erected on an agricultural land. This is another violation.
7. Under such circumstances, the appeal is allowed. The order impugned is set aside. The appellant is directed to file a comprehensive representation before the concerned gram panchayat. The gram panchayat will cause an inspection of the premises in question to ascertain whether the alleged construction of respondent no.5 was in accordance with law or not. If it is found that the said construction is unauthorized, steps shall be taken in terms of Section 23(5) of the said Act.
8. Needless to mention that at the time of inspection the parties will be allowed to participate. A report shall be prepared at the spot, indicating the nature and extent of the construction and also delineating whether any construction has been made without

sanction or in contravention to the plan. Parties shall be heard. The report shall be supplied to the parties and a reasoned order shall be passed. Thereafter, the entire record shall be sent to the concerned Sub-Divisional Officer for necessary steps.

9. If it is found by the Panchayat authorities that the extent of the construction is such that the permission granting authority would be either the panchayat samiti or the Zilla Parishad, in that event the panchayat authority will make their observations in the report and transmit the records to the appropriate permission granting authority and the concerned authority will take necessary steps in accordance with law upon compliance of the principles of natural justice, and upon following the legal process.
10. The entire exercise shall be completed within a period of eight weeks from the date of communication of this order.
11. Accordingly, the appeal and the connected application are disposed of.
12. Parties are directed to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**

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