

11.03.2026
SL No.10
Court No.12
(gc)

**FMA 310 of 2026
CAN 1 of 2026**

**Sk Salauddin @ Sk Salauddin Ali
Vs.
The State of West Bengal & Ors.**

Mr. Sk. Rejaul Alam

.....for the Appellant.

Mr. Diptendu Narayan Banerjee,
Mr. Dwaipayan Sanyal

...for the State.

Mr. Sabir Ahmed,
Mr. Quazi Ezaz Ahmed

...for the Respondent No.6.

Mr. Abhinaba Dan

...for the Respondent No.8.

1. Affidavit-of-service is taken on record.
2. The appellant/petitioner is aggrieved by an order dated February 4, 2026 passed by a learned Single Judge. The petitioner had challenged a notice issued by the Panchayat authority dated January 30, 2026, intimating the appellant that the demolition of unauthorized construction would take place in terms of the reasoned order dated January 16, 2026.
3. The respondent no.8 filed WPA 19674 of 2019 before a learned Single Judge alleging unauthorized construction by the appellant. The said writ petition was disposed of by the learned Single Judge on this Court on October 3, 2023 directing Tilkhoja Gram Panchayat to consider and dispose of the representation made by the respondent no.8, strictly in accordance

with law, after giving an opportunity of hearing to all the necessary parties, including the respondent no.8 within a period of three months from the date of communication of the order. The concerned Gram Panchayat was directed to pass a reasoned order and communicate the same to the necessary parties. An inspection was also directed to be held prior to the decision, to ascertain the exact nature and extent of unauthorized construction. Her Lordship specifically recorded that in the event the aforesaid respondent was of the considered opinion that the construction had been made either in violation of the plan or devoid of the sanction plan, **then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.** The Court recorded, that it had not entered into the merits of the issues involved and had left it open to the concerned Gram Panchayat to dispose of the matter. Alleging inaction on the non-compliance of the order, the respondent no.8 filed a contempt application which was registered as WPCRC 159 of 2025. The Panchayat authorities passed a reasoned order.

4. Upon accepting the affidavit of compliance, the learned Single Judge, who had disposed of WPA 19674 of 2019 found that the permission was granted by the Gram Panchayat to raise the construction on a water body

without any conversion of the land to 'Bastu'. Further, the reasoned order passed by the Panchayat also indicated that the ground floor structure was constructed without any permission.

5. Under such circumstances and upon noticing that there was no sanction of the ground floor, Her Lordship recorded that steps taken by the Panchayat to deal with the unauthorized construction shall be placed before the Court on the adjourned date. Her Lordship had taken judicial notice of the fact that a permission was granted by the Gram Panchayat for construction on a plot which had been classified as 'Jal'. Thus, the contempt proceeding against the Panchayat authority may proceed on the allegations made in the contempt application, which are separate and distinct from the steps that the Panchayat authority can take, upon detection of an unauthorized construction. Her Lordship did not ever direct that the Pradhan must demolish the structure.
6. Thus, the dismissal of the writ petition on the ground that the contempt is pending, was erroneous. Once there is detection of unauthorized construction by the Gram Panchayat, the only duty of the Gram Panchayat at that stage, as the permission granting authority, would be to refer the matter to the Sub-Divisional Officer concerned, to deal with the issue and make an

order directing demolition of the building or a portion of the building, as the case may be, within such period as may be specified in the order and in default, the Sub-Divisional Officer may himself/herself 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. Section 23(5) of the West Bengal Panchayat Act, 1973, which was brought in by the amendment with effect from November 9, 2017 is quoted below:-

“S. 23(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 the 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.”*

7. Under such circumstances, the order impugned is set aside. The order passed by the Panchayat authority conferring unto themselves, the right to demolish is also set aside.

8. The concerned Gram Panchayat is directed to transmit all the records to the Sub-Divisional Officer within a period of 10 days from date and the Sub-Divisional Officer shall exercise jurisdiction in accordance with law and as per the provisions of Section 23(5). The Panchayat authority will also inform the appropriate Officer under the West Bengal Land Reforms Act with regard to the unauthorized conversion of the land classified as 'Jal' and consequences will follow.
9. The appeal is entertained and disposed of only on the ground that the Panchayat authority had not followed the appropriate procedure prescribed by the statute and not on the merits of the finding.
10. Accordingly, the appeal and the connected application are disposed of.
11. There shall be no order as to costs.
12. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)