

01.07.2026
M/L No.137
Court No.12
(gc)

**FMA 395 of 2026
CAN 1 of 2026**

**Subhajit Sarkar
Vs.
The State of West Bengal & Ors.**

Mr. Lalratan Mandal,
Mr. Sk. Kiran

... for the Appellant.

Ms. Susmita Saha Dutta, Ld. A.G.P.,
Ms. Tanusree Ghosh

... for the State.

1. Affidavit-of-service filed in Court today is taken on record. None appears for the private respondent nos.9 and 10.
2. We are inclined to interfere with the order of His Lordship. The order impugned is set aside. The allegation of unauthorized construction without conversion of the land should be looked into by the Panchayat authorities. The issue of right, title and interest can be adjudicated by the civil court. However, the civil court does not have any jurisdiction to either initiate proceeding for unauthorized construction or reach the said proceeding to its logical conclusion under the provisions of Section 23 of the West Bengal Panchayat Act, 1973. Thus, the appellant is granted permission to file a comprehensive

representation before the Panchayat authorities with regard to the allegation of unauthorized construction thereby indicating the nature of the unauthorized construction and the nature of the allegation. The claim of ownership of the appellant in respect of the land on which the construction was allegedly being raised, is neither a part of the proceeding, nor will it be a part of the proceeding to be initiated by the concerned Gram Panchayat. His Lordship found that the dispute was civil in nature and the appellants made allegation before the concerned Gram Panchayat long after the construction has been raised. In our view, the law requires permission for construction. The law empowers the Gram Panchayat to look into such allegations and take appropriate steps. The law also prohibits construction on any other land, apart from homestead land.

3. The representation shall be served upon the private parties, i.e., upon the respondent nos.9 and 10 and the concerned Gram Panchayat will act and proceed in accordance with law.

4. While doing so, the following procedure should be adhered to:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the appellant and the respondent nos.9 and 10. An advance notice of the inspection shall be served upon the appellant and the respondent nos.9 and 10. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the premises.
- b) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- c) Such report shall be handed over to the parties. The question of right, title, possession, encroachment and boundary dispute, shall not be decided by the Gram Panchayat. The issues to be decided will be whether there has been conversion in accordance with law and whether there has been any sanction or permission for such construction.

- d) A hearing shall be given to the appellant and the respondent nos.9 and 10. The parties must also be allowed to furnish their written objection/version to the report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.
 - e) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in accordance with law, upon due compliance of Section 23(5) of The West Bengal Panchayat Act, 1973.
5. This order shall not be construed as an opinion of this Court on the correctness of the allegations made by the appellant. All the issues, will be decided by the concerned authority, in accordance with law, independently.
6. The entire exercise shall be completed within a period of four months from the date receipt of appellant's representation.

7. Under such circumstances, the appeal and the connected application are disposed of.
8. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Smita Das De, J.)