

18.05.2026
Item No.11
Court No.12
Cp

FMA 497 of 2026
With
CAN 1 of 2026

Sadek Khalipa
Vs.
The State of West Bengal & Ors.

Mr. Soumik Ganguli
Ms. Priti Burman

... for the Appellant.

1. Despite service, none appears on behalf of any of the respondents, including the respondent no. 7.
2. The grievance of the appellant is that, the respondent no. 7 had constructed a residential building on Dag No.248, J.L. No.265, Mouza-Kalindi, Coastal Police Station, Purba Medinipur, without any permission from the concerned panchayat authorities. The appellant also claims title over the plot in question.
3. We are of the view that, the question of title cannot be gone into by us. Moreover, even the panchayat authorities cannot decide who is the actual title holder in respect of the land on which the construction has been made.
4. However, if there is an allegation of unauthorized construction, it is the duty of the panchayat authorities to consider such complaint and decide the matter in accordance with law, upon observing the principles of

natural justice. Section 23 of the West Bengal Panchayat Act, 1973, clearly provides for situations which would require permission from the concerned gram panchayat.

5. We find that, on the allegations as above, a writ petition was filed. The writ petition was dismissed on the ground that the petitioner had approached the writ court belatedly and substantial amount of construction had been made. It also appears to this court that, the learned court had erred in holding that the jurisdiction of the writ court under Article 226 of the Constitution was discretionary and grounded on the principles of equity.
6. Thus, the claim of the writ petitioner/appellant was found to be inadmissible on the ground that the writ petitioner had forfeited such claim by sheer inaction.
7. The order suffers from serious irregularities. His Lordship failed to take into consideration that, the allegation of the writ petitioner was against the gram panchayat which is a statutory body. The gram panchayat failed to act on the basis of the complaint of unauthorized construction. In the event, unauthorized constructions are detected, the gram panchayat is required by law to discharge its functions and ensure that such unauthorized construction is demolished,

upon following Section 23(5) of the West Bengal Panchayat Act, 1973.

8. The matter is relegated to the gram panchayat who will consider the representation of the appellant in accordance with law, upon giving adequate hearing to the respondent no. 7.
9. We are not expressing any views on the correctness of the allegations of the appellant. The panchayat authorities will cause an inspection in order to ascertain the extent and the nature of unauthorized construction. A report shall be prepared at the spot and handed over to the parties. If any of the parties refuse to sign the inspection report or refuse to attend the inspection, then the inspection shall continue in accordance with the direction of this court. Thereafter, a hearing will be held and the parties will be allowed to make their submissions. In the event, unauthorized construction is detected, the panchayat authorities will take a decision and hand over a copy of such decision to the parties.
10. Thereafter, the entire records shall be transmitted to the concerned Sub-Divisional Officer by the gram panchayat, for necessary action under Section 23(5) of the said Act. The concerned Sub-Divisional Officer will then proceed in accordance with law, upon granting adequate hearing to the parties. In the event

unauthorized construction is detected, the construction shall be demolished.

11. The entire exercise shall be completed within a period of eight weeks from the date of communication of this order.

12. It is made clear that, a copy of the writ petition which contains the representation made by the appellant, shall be forwarded to the concerned gram panchayat as also the pradhan for necessary action.

13. Under such circumstances, the appeal and the connected application are disposed of.

14. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)