

08.04.2026
Court No. 12
ML 43
April 2026
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 843 of 2025
IA No : CAN 1 of 2025

Kauchar Ali Molla & Anr.
-Versus-

The State of West Bengal & Ors.

Mr. Lakshminath Bhattacharya
.....for the appellants
Mrs. Jhuma Chakraborty, Ld. Sr. Govt. Adv.,
Mr. Suddhadeb Adak, Ld. Jr. Govt. Adv.
....for the State.

- 1) The petitioners are aggrieved by an order dated March 24, 2025 passed by the learned single Judge by which, the writ petition being W.P.A. No. 4170 of 2025 was dismissed.
- 2) The writ petition was filed seeking quashing and/or setting aside the order passed by the Sub-Divisional Officer dated January 30, 2025.
- 3) The Sub-Divisional Officer came to a finding that prior permission of the Pradhan, Ramgopalpur Gram Panchayat under the amended provision of Section 23 sub-section (1) of the West Bengal Gram Panchayet Act, 1973 had not been taken and the entire construction on L.R. Plot No. 1407 of Mouza Ramgopalpur was unauthorized. The order of the Sub-Divisional Officer was passed pursuant to a direction of the Division Bench in M.A.T. 285 of 2024 dated October 7, 2024. The

ordering portion of the decision in MAT 285 of 2024 is quoted below:

“As the order impugned does not finally decide the issue, we are not inclined to interfere on such score. It is open to the appellants to demonstrate before the SDO concerned that the construction is not an unauthorised one and the said officer after giving opportunity of hearing to parties shall pass appropriate order under Section 23(5) of the West Bengal Panchayat Act within the stipulated time frame. It is also clarified mere pendency of application for sanction cannot clothe an illegal construction with validity.”

4) Learned advocate for the appellants submits that the Sub-Divisional Officer could not decide the matter until the Panchayat Authority had proceeded in accordance with law under Section 23 of the said Act. The issue of deemed sanction was not decided by the authority.

5) This argument of the learned advocate is not accepted by us because the appellants accepted the order of the Division Bench by which the entire matter was relegated to the Sub-Divisional Officer. The appellants were allowed to urge in favour of their construction before the Sub-Divisional Officer. Secondly, the issue of deemed sanction had been dealt with in detail by the learned single Judge in the order impugned.

6) On the one hand the learned senior advocate for the appellants submitted before

the learned Single Judge that the construction which was undertaken by the appellants, did not require sanction. On the other hand, it was stated that Rule 30 of the West Bengal Panchayat (Gram Panchayet Administration) Rules 2004 provided for deemed sanction.

7) The appellants allegedly filed an application for sanction in 2013 which was kept pending and as such the appellants acquired the right to raise the construction without any written sanction/permission from the Panchayat Authority. Sanction was deemed to have been granted.

8) It appears from the order of the Sub-Divisional Officer that the parties were heard and arguments were addressed. We asked the learned advocate for the appellants to show us any written representation that may have been filed before the Sub-Divisional Officer indicating that the points with regard to deemed sanction has been raised before the Sub-Divisional Officer, but the issue was not dealt with in the order.

9) The learned single Judge found that the appellants had raised contrary pleas. Reference was made to the decision of the Falguni Mukherjee Vs. The State of West Bengal & Ors., reported in 2022 SCC online Cal 3612. The learned single Judge held that pendency of an application for sanction would not be treated as a right to construct, without any permission in writing for such construction. Moreover, post facto sanction could not be granted.

10) Sub-section (1) of Section 23 provides that no person shall erect any new structure or new

building or make any addition to any structure or building having plinth area of not more than 150 square metres and height not more than 6.5 metres in any area within the jurisdiction of a Gram Panchayat, except with the previous permission in writing from the Gram Panchayat.

11) This provision of law was inserted by amendment in 2017 with effect from November 9, 2017. Whereas the provision of deemed sanction is found in the Rules of 2004, which came into effect from November 9, 2025. Rule 30 provides that if no communication is received from the panchayat authorities within the prescribed time limit, i.e., sixty days from receipt of the application for sanction, then it shall be presumed that the sanction was granted and the applicant shall commence construction upon an intimation to the gram panchayat. Such intimation was never given by the appellants to the gram panchayat. Rule 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 is quoted below:-

“30. Right of applicant if the permission or refusal is not communicated within time-limit.- If permission or refusal under sub-rule (1A) and sub-rule(5) of rule 27, rule 28 or rule 29, as the case may be, has not been communicated by the Gram Panchayat within the prescribed time limit, it shall be presumed the Gram Panchayat has accorded such permission and the applicant shall after an intimation to the Gram Panchayat can erect any structure or building conforming to the building plan and the site plan furnished by him along with the application.”

12) In the matter of ***Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.*** reported in

(2013) 5 SCC 336, the Hon'ble Apex Court held as follows:-

“24. In view of the pleadings filed before the High Court and the affidavits filed before this Court, there is no escape from the conclusion that Respondent 7 had raised construction in violation of the plan sanctioned under Section 396 of the 1980 Act and continued with that activity despite the order of the Mayor-in-Council. In the prevailing scenario, the representative of Respondent 7 might have thought that he will be able to pull strings in the power corridors and get an order for regularisation of the illegal construction but he did not know that there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand.

25. Rule 25 of the Rules, on which reliance was placed by Respondent 7 for seeking regularisation of the illegal construction, reads as under:

‘25. Deviation during execution of works. —(1) No deviation from the sanctioned plan shall be made during erection or execution of any work.

(2) Notwithstanding anything contained in sub-rule (1), if during erection or execution of work any internal alterations or external additions which do not violate the provisions of the Act or these Rules is made, the Municipal Commissioner may without prejudice to any action that may be taken against the person at whose instance such alteration or additions have been made, allow the person referred to in sub-rule (1) of Rule 4 to submit, in accordance

with the provisions of these Rules, a revised plan showing the deviation and may sanction such plan.

(3) Any departure made during the execution of any work or at any time thereafter without sanction shall be deemed to be in contravention of the provisions of the Act and these Rules and shall be dealt with accordingly.'

26. A reading of the plain language of Rule 25(1) makes it clear that a person, who erects any structure or executes any work is not entitled to deviate from the sanctioned plan. Rule 25(2) which contains a non obstante clause and provides for sanction of revised plan to be submitted by the person engaged in erection of building or execution of work lays down that if during erection or execution of work, any internal alterations or external additions which do not violate the provisions of the Act or the Rules is made, the Municipal Commissioner can, at an application made in that behalf sanction the revised plan showing the deviation. Rule 25(3) is declaratory in nature. It lays down that any departure made during the execution of any work or at any time thereafter without sanction shall be deemed to be in contravention of the Act and the Rules shall be dealt with accordingly.

27. In our view, Respondent 7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also

because the application was made after completion of the construction.

28. Before parting with the case, we consider it necessary to observe that Respondent 7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed thereunder but also of cheating those who purchased portions of unauthorised construction under a bona fide belief that Respondent 7 had constructed the building as per the sanctioned plan. With the demolition of unauthorised construction some of such persons will become shelterless. It is, therefore, necessary that Respondent 7 is directed to compensate them by refunding the cost of the flat, etc., with interest. Respondent 7 must also pay for raising construction in violation of the sanctioned plan.

29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also

impose adequate penalty on the wrongdoer.”

13) In the matter of **Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.**, reported in **(2021) 10 SCC 1**, the Hon’ble Apex Court held as follows:-

“159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions

which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.”

14) In ***Friends Colony Development Committee v. State of Orissa*** reported in **(2004) 8 SCC 733**, the Hon’ble Apex Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorised. The Apex Court held as follow:-

“24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk,

inconvenience and hardship which is posed to the occupants of the building.”

Noting that the private interest of landowners stands subordinate to the public good while enforcing building and municipal regulations, the Apex Court issued a caution against the tendency to compound violations of building regulations :

“25. ... The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

Unauthorised floors have been held to be a burden on general welfare and to be dealt with strictly.

15) In **Priyanka Estates International (P) Ltd. v. State of Assam** reported in **(2010) 2 SCC 27** the Hon'ble Apex Court, observed as follows:-

“55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

16) The Apex Court observed that if unauthorised constructions were allowed to stand or are “given a seal of approval by Court”, it was bound to affect the public at large. In **Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai** reported in **(2013) 5 SCC 357**, the Hon'ble Apex Court observed as follows:-

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in

wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

17) In the matter of **Supertech (Supra)**, the Hon’ble Apex Court discussed the duties of the civic bodies and lamented the sorry state of affairs as under:-

“167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the following observations : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC p. 363, para 1)

“1. In the last five decades, the provisions contained in various

municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise.”

168. Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularise a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC pp. 394-95, para 56)

“56. ... We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea

and concept of planned development of urban as well as rural areas.”

169. These concerns have been reiterated in the more recent decisions of this Court in Kerala State Coastal Zone Management Authority v. State of Kerala [Kerala State Coastal Zone Management Authority v. State of Kerala, (2019) 7 SCC 248] , Kerala State Coastal Zone Management Authority v. Maradu Municipality [Kerala State Coastal Zone Management Authority v. Maradu Municipality, (2021) 16 SCC 822 : 2018 SCC OnLine SC 3352] and Bikram Chatterji v. Union of India [Bikram Chatterji v. Union of India, (2019) 19 SCC 161] .”

18) In the same decision ***Supertech (Supra)***, the Hon’ble Apex Court concluded as follows:-

“**172.** For the reasons which we have indicated above, we have come to the conclusion that:

172.1. The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed.

172.2. The work of demolition shall be carried out within a period of three months from the date of this judgment.

172.3. The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of Noida. In order to ensure that the work of demolition is carried out in

a safe manner without affecting the existing buildings, Noida shall consult its own experts and experts from Central Building Research Institute Roorkee ("CBRI").

172.4. The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by Noida.

172.5. The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant.

172.6. The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment.

172.7. The appellant shall pay to the RWA costs quantified at Rs 2 crores, to be paid in one month from the receipt of this judgment."

19) Under such circumstances, the double negative used in sub-section (1) of Section 23 makes it mandatory for any person raising construction of a Panchayat area within the measurements stated in the sub-section to obtain previous permission in writing from the Gram Panchayat. This was not done and as

such the question of deemed sanction in this case does not arise. Rule 30 cannot override the statute. Moreover, Rule 30 cannot be applied in the facts of the case.

20) Accordingly, the appeal and the connected application are dismissed.

21) The scope of the appeal cannot be enlarged. The Sub-Divisional officer mentioned the number of the writ petition instead of the order of the Division Bench order.

22) The question remains whether the Sub-Divisional Officer was empowered by law to decide the matter. The Sub-Divisional Officer is empowered under Section 23(5) of the West Bengal Panchayat Act, 1973 to decide such issue of unauthorized construction and direct demolition. The Panchayat Authority found the construction to be unauthorized, it was totally without any sanction. The Division Bench of the High Court also empowered the Sub-Divisional Officer to hear out the matter and pass necessary order. The appeal and connected application are dismissed.

23) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)