IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

FMA 610 of 2026
IA No. CAN/1/2026
CAN/2/2026

Sri Anup Kumar Dutta
Vs.
The State of West Bengal & Ors.

Before:
The Hon'ble Justice Ravi Krishan Kapur.
And
The Hon'ble Justice Chaitali Chatterjee Das

For the appellant : Mr. Siddhartha Banerjee, Advocate
Mr. Dyutiman Banerjee, Advocate
Mr. Chandan Mondal, Advocate
Mr. Debjit Dutta, Advocate

For the respondent nos.5 to 7 : Mr. Falguni Majhi, Advocate

For the respondent no.13 : Mr. Probal Mukherjee, Senior Advocate
Mr. Suhrid Sur, Advocate

Heard On : 28.08.2026

Judgment On : 13.11.2026

Ravi Krishan Kapur, J.:

1. This is an appeal against an order dated 20 March 2026, allowing the writ petition and setting aside the orders passed by the Panchayat Samiti and the Sub-Divisional Officer (SDO).
2. The core dispute is as to which authority is empowered to initiate demolition proceedings of an unauthorised construction in violation of the sanction plan

(an extended cantilever on the upper floor) granted by the Panchayat Samiti under the West Bengal Panchayat Act, 1973.

3. By the impugned judgment, the Learned Judge has held that the writ petitioner/private respondent no 13 herein having been in violation of the Land Use and Development Control Plan (LUDCP) Rules, was entitled to a notice under section 52 and 53 of [the West Bengal Town and Country (Planning and Development) Act 1979]. In such circumstances, both the orders passed by the Panchayat Samiti and the Sub Divisional Officer (SDO) were set aside and fresh notices have been directed to be issued in terms of section 52 and 53 of the 1979 Act by the Burdwan Development Authority (BDA).

4. It is contended on behalf of the appellant that the BDA merely grants the development permission and has no role to play in issuance of the sanction plan. The sanction building plan is passed by the Competent Authority being the Panchayat Samiti. It is also contended that the BDA primarily acts as a restrictive authority to see whether the land has been used in conformity with the Master Plan. The sanction plan and the development plan are separate and distinct. Any violation of the sanction building plan is within the exclusive domain of the local authority and does not fall within the jurisdiction of LUDCP. The BDA only grants the development permission also described as No Objection Certificate permitting an applicant to make construction over its land. Section 114A of the West Bengal Panchayat Act 1973 stipulates that the Panchayat Samiti is the authority to grant permission and also carry out demolition if there is any violation of such permission.

5. On behalf of the writ petitioner, it is contended that pursuant to directions passed in an earlier writ petition being WP No 469 of 2023, an Enquiry Report was submitted, which was confined to the violations relating to the open space

requirement. The Enquiry Report makes a clear distinction between the requirement under the Panchayat Act/Rules and those under the LUDCP. The Enquiry Report provides that insofar as the provisions governing the Panchayat Authorities are concerned, no violation had taken place. The only deficiency pertains to the open space requirement prescribed under the LUDCP under the 1979 Act. It is contended that once the alleged violation pertains to the Town and Country Planning Laws, the statutory remedy for regularization cannot be denied. In addition, in view of the second enquiry report dated July 4, 2025, the respondent authorities cannot deprive the writ petitioner of the statutory remedy available under the 1979 Act and the Rules framed thereunder which contemplate the remedies of amnesty, regularisation or retention. The respondent authorities cannot adopt a parallel course of action under the West Bengal Panchayat Act, 1973, particularly when the violation according to the enquiry report categorically pertains to LUDCP. For such reasons, there is no infirmity with the impugned order and the appeal is liable to be dismissed.

6. On behalf of the BDA, it is submitted that in terms of the impugned judgment, notices have been issued under section 52 and 53 of the Act of 1979. Thus, all proceedings have been stalled until disposal of the present appeal.

7. At the outset, the two Acts i.e. the West Bengal Panchayat Act 1973 and the West Bengal Town and Country (Planning and Development) Act 1979 operate in separate and distinct fields. The 1973 Act is aimed to reorganize, strengthen and expand the activities of Panchayats in rural areas of West Bengal. The legislative scheme must be understood in the backdrop of democratic decentralization, local participation in governance and growth of elected rural local bodies. The Act is also to be interpreted keeping in mind Part IX of the Constitution of India which provides for the framework for Panchayat Raj Institution.

8. On the other hand, the 1979 Act is a comprehensive statutory framework for the planned development and regulation of land in rural and urban areas of West Bengal. Its aim being to ensure that planning and development take place in accordance with a legally recognized planned framework and development control legislation. The two Acts may operate in relation to the same geographical area but the territorial overlap does not make their respective powers identical.

9. The question is one of the jurisdiction to demolish an illegal construction. It is an indisputable fact that the writ petitioner has been found to have violated the sanctioned building plan and carried out illegal construction in violation thereof. There is a categorical direction to demolish the extended cantilever unauthorizedly constructed in deviation of the approved sanction plan. In default, the Pradhan, Baikunthupur Gram Panchayat-I has been directed to demolish the same.

10. The premises which is the subject matter of dispute is situated within the area of Baikunthupur-I, Gram Panchayat. The development plan has been published by the BDA whereas the sanction plan has been granted by the Panchayat Samiti. The obfuscation sought to be created between the development permission and the sanction plan is a red herring and an attempt to confuse issues. The building plan and the development plan are distinct and separate. Development permission from the BDA alone is not sufficient to erect construction. On the contrary, the sanction plan from the Panchayat Samiti is a condition precedent for any construction and is to be strictly adhered to before raising any construction. The violation is one of unauthorized construction and since the Panchayat Samiti is the sanctioning authority any violation must be dealt with in terms of the West Bengal Panchayat Act, 1973.

11. During the hearing of the writ petition, two separate Enquiry Reports dated 6 October 2023 issued by the Junior Engineer (P&RD), Burdwan II upon instructions from the Executive Officer, Burdwan II, Panchayat Samiti and 4 July 2025 issued by Sub Assistant Engineer BDA, Surveyor, BDA ,Sub Assistant Engineer(BP) Burdwan II Development Block Baraul and Junior Engineer (P&RD), Burdwan II, had been taken on record. The Reports also highlight the violations made by the writ petitioner in respect of the subject construction.

12. Section 114A and 114B of the West Bengal Panchayat Act 1973 provides as follows:

> ***114A.*** *[Development Plan in respect of any area of Panchayat Samiti. [Section 114A inserted by W.B. Act 17 of 1992.]*
> *- [(1) Without prejudice to generality of the power under section 114 and notwithstanding anything contained in sections 23, 24 and 25, the State Government may, in the public interest, declare, by notification, its intention to prepare and publish a Development Plan in respect of an area within the jurisdiction of a Panchayat Samiti in accordance with such procedure as may be prescribed or in accordance with the provisions of any other law for the time being in force and, upon the issue of such notification, no new structure or new building shall be erected or constructed or no addition to any structure or building shall be made in such area except with the permission granted by the Panchayat Samiti or any authority, person or persons as may be empowered by the Panchayat Samiti in this behalf and except in accordance with such specifications and conditions as may be prepared and published by the Panchayat Samiti, or such authority, person or persons, as the case may be.]*
> *[Proviso that where the State Government or an authority or agency under the State Government intends to set up or has set up an industrial estate or industrial park within the jurisdiction of a Gram Panchayat, permission for erection of any structure or building for setting up an industry within such industrial estate or industrial park, shall be obtained from such authority or industrial development authority or corporation as the State Government may by notification specify.] [Inserted by Act No. 8 of 2015.]*
> *(2) Upon the publication of a Development Plan under sub-section (1), [the provisions of sections 23, 24 and 25] [Words and figures substituted for the words and figures 'the provisions of section 23' by W.B. Act 18 of 1994.] shall cease to be in force in the area referred to in sub-section (1).*
> *(3) The State Government may, by order, direct the Panchayat Samiti to make such contribution and grant to one or more Gram Panchayats out of the tolls, rates and fees levied by it under section 133 as may be specified in the order.*
> *(4) The State Government may, by order, authorise any officer to render advice, technical or otherwise, to the Panchayat Samiti on the performance of its functions and discharge of its duties under this section and, on receipt of such advice, the Panchayat Samiti shall give due consideration to such advice in a meeting specially convened for the purpose within a period of two months from the date of receipt of such advice.*
> *(5) Where any new structure or new building is erected or constructed or any addition to any structure or building is made in contravention of the provisions of sub-section (1), the Panchayat Samiti may, after giving the owner of such structure or building, as the case may be, an opportunity of being heard, made an order directing the demolition of the structure or the building, as the case may be, by the owner within such period as may be specified in the order and, in default, the Panchayat Samiti may itself effect the demolition and recover the cost thereof from the owner as a public demand.*
> *(6) Without prejudice to the provisions of sub-section (5), whoever erects any new structure or constructs any new building or makes any addition to any structure or building in contravention of the provisions of sub-section (1), shall, on conviction by a Court, be punishable with fine not exceeding, in each case, one hundred rupees per square metre per month for the area comprising the unauthorised erection or construction or addition, as the case may be, for the period during which such contravention continues, subject to a maximum of two thousand rupees in each such case.*
> *[* * * * *] [[Sub-Section (7) omitted by W.B. Act 18 of 1994, which was as under:-*
> *'(7) Where the Panchayat Samiti, in exercise of its functions and powers with respect to any area under it, is required to have regard to the provisions of Development Plan before such Development Plan has become operative, the concerned Panchayat Samiti shall have regard to the provisions which, in its opinion, will be required to be included for securing the proper planning of the concerned area.'.]]*

(8) If it appears to the Panchayat Samiti [or the authority, person or persons empowered under sub-section (1)] [Words, figure and brackets inserted by W.B. Act 18 of 1994.] that it is expedient in the interest of the proper planning of its areas (including the interest or amenities), having regard to the Development Plan prepared, or under preparation, or to be prepared, and to any other material consideration, -

(a) that any use of land should be discontinued, or

(b) that any conditions should be imposed on the continuance thereto, or

(c)that any building or works should be altered or removed, [the Panchayat Samiti or the authority, person or persons as aforesaid may] [Words substituted for the words 'the Panchayat Samiti may' by W.B. Act 18 of 1994.] by notice served on the owner -

(i) require discontinuance of that use, or

(ii)impose such conditions as may be specified in the notice on the continuance thereof, or

(iii) require such steps, as may be specified in the notice, to be taken for the alteration or removal of any buildings or works, as the case may be, within such period, being not less than one month, as may be specified therein, after the service of the notice.

(9) Any person aggrieved by any such notice may, within the period specified in the notice, apply to the authority for the cancellation or modification of the notice.

(10) If an application is filed under sub-section (9), the authority or any officer of the authority, appointed in this behalf, may dismiss the application or accept it by quashing or varying the notice as he may think fit.

(11)If any person -

(a) who has suffered damage in consequence of the compliance with the notice, by the depreciation of any interest in the land to which he is entitled or by being disturbed in his enjoyment of the land, or

(b) who has carried out any work in compliance of the notice,

claims from the Panchayat Samiti [or the authority, person or persons empowered under sub-section (1)] [Words, figure and brackets inserted by W.B. Act 18 of 1994.] within the time and in the manner prescribed, for an amount in respect of that damage of of any expenses reasonably incurred by him for complying with the notice, the claim shall he disposed of by the Panchayat Samiti [or the authority, person or person empowered under sub-section (1)] [Words, figure and brackets inserted by W.B. Act 18 of 1994.] in the manner as prescribed.

(12) After publication of Development Plan under sub-section (1) and subject to the provisions relating to the development charge and other provisions under this section, no development, institution or change of use of any land shall be undertaken or carried out in that area without obtaining a certificate from the Panchayat Samiti or its authorised officer certifying that the development charge as leviable under this section has been paid or that no such development charge is leviable:

Provided that the State Government may, by notification, exempt any development, institution or change of use of any land from the operation of the provisions of this sub-section.

(13) Any person or body (excluding a department of the Central or the State Government or any local authority) intending to carry any development on any land shall make an application in writing to the Panchayat Samiti or an officer authorised by it for permission in such from and containing such particulars and accompanied by such documents and plans as may be prescribed.

(14) On such application having been duly made and on payment of the development charge as may be assessed, the Panchayat Samiti or the authorised officer may pass an order, -

(i) granting permission unconditionally; or

(ii) granting permission, subject to such conditions as it may think fit; or

(iii)refusing permission:

Provided that without prejudice to generality of clauses (i) to (iii) of this sub-section, the concerned authority may impose conditions -

(i) to the effect that the permission granted is only for a limited period and that after the expiry of that period, the land shall be restored to its previous condition or the use of the land permitted shall be discontinued;

(ii) for regulating the development or use of any other land under the control of the applicant or for the carrying out of works on any such land as may appear to the authority expedient for the purpose of the permitted development:

Provided further that the concerned authority in dealing with the applications for permission shall have regard to the provisions of the Development Plan prepared, under preparation or to be prepared and any other material consideration:

Provided also that when permission is granted subject to conditions or is refused, the grounds of imposing such conditions or such refusal shall be recorded in the order and the order shall be communicated to the applicant:

Provided also that in the case of a department of the Central or the State Government or any local authority intending to carry out any development, other than operational construction (which shall always be outside the purview of the Panchayat Samiti), on any land, the concerned department or authority, as the case may be, shall notify in writing to the Panchayat Samiti of its intention to do so, giving full particulars thereof and accompanied by such documents and plans as may be directed by the State Government from time to time, at least, one month prior to the undertaking of such development.

(15)In accordance with the provisions of this section and the rules made thereunder and subject to such conditions [as may be laid down by the Panchayat Samiti, or the authority, person or persons empowered under sub-section (1)] [Words, figure and brackets substituted for the words, figure and brackets 'as may be laid down In the notification under sub-section (1)' by W.B. Act 18 of 1994.] a Panchayat Samiti, shall levy a charge (hereinafter called the development charge) on the carrying out of any development or change of use of land, for which permission is required under this section, in the whole or any part of the area covered by the notification under sub-section (1) at a rate not exceeding those specified in the rules in this behalf by the State Government:

Provided that the rates may be different for different parts of the area under notification under sub-section (1):
Provided further that the charge shall be leviable on any person who undertakes or carries out such development or changes any such use:
Provided also that no development charge shall be levied on development, or change of use, of any land vested in or under the control or possession of the Central Government, the State Government or any local authority:
Provided also that the State Government may, by rules, provide for the exemption from the levy of development charge of any development or change of any use of any land specified in the rules.
(16) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the permission under sub-section (1) or in contravention of any other provision of this section or the rules made thereunder, the Panchayat Samiti, or any officer authorised in this behalf by the Panchayat Samiti, may, in addition to any other action that may be taker, under this section, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:
Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as may be prescribed, a reasonable opportunity of showing cause why such order shall not be made:
Provided further that where the erection or the execution has not been completed, the Panchayat Samiti or the authorised officer may by the same order or by a separate order, whether made at the time of issue of the notice under the first proviso at any other time, direct such person to stop the erection or the execution until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred:
Provided also that any person aggrieved by such order of the Panchayat Samiti or its authorised officer may, within thirty days from the date of the order, prefer an appeal against the order to the Sub-divisional Officer having jurisdiction and when an appeal is preferred, the said Sub-divisional Officer may stay the enforcement of the order on such term as he may think fit:
Provided also that every order made by the Sub-divisional Officer on an appeal and, subject to such order, the order made by the Panchayat Samiti or its authorised officer shall be final and conclusive:
Provided also that where no appeal has been preferred against an order made by the Panchayat Samiti or its authorised officer or where an order has been confirmed on appeal, whether with or without modification, the person against whom the order has been made shall comply with the order within the period specified therein or, as the case may be, within the period, if any, fixed by the Sub-divisional Officer on appeal, and on the failure of such person to comply with the order within such period, the Panchayat Samiti, or its authorised officer may itself or himself cause the building or the work to which the order relates to be demolished and the expenses for such demolition shall be recoverable from such person as a public demand.
(17)The Panchayat Samiti or its authorised officer may, at any time before the issue of the order under sub-section (16), by order, require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.
(18)The Panchayat Samiti or its authorised officer may, at any time during the erection of any building or the execution of any work or at any time within three months after the completion thereof, by a written notice, specify any matter in respect of which such erection or execution is without or contrary to this section or is in contravention of any of the provisions of this section or the rules made thereunder and require the person at whose instance the building or the work has been commenced or is being carried on or the owner of such building or work either -
(a)to make such alterations as may be specified by the Panchayat Samiti or its authorised officer in the notice with the object of bringing the building or the work in conformity with such sanction or such provisions of this section or the rules made thereunder, or
(b)to show cause, within such period as may be stated in the notice, why such alterations should not be made:
Provided that if such person or such owner does not show any cause as aforesaid, he shall be bound to make the alteration specified in the notice:
Provided further that if such person or such owner shows the cause as aforesaid, the Panchayat Samiti or its authorised officer shall, by an order, either cancel the notice issued or confirm the same subject to such modification as he thinks fit.]

114B. *"Control of building operation other than 114A.-(1)* ***No person shall erect any new structure or new building or make any addition to any structure or building having plinth area of more than 150 square metres but upto 300 square metres and height up to 6.5 metres in any area, other than an area of an industrial estate or industrial park or an area in respect of which the State Government has, in the public interest, by notification, declared a Development Plan or its intention to prepare and publish a Development Plan within the jurisdiction of any Gram Panchayat under the area of a Panchayat Samiti as mentioned in section 114A, except with the previous permission in writing of the Panchayat Samiti:***
Provided that such erection of new structure or new building or such addition to any structure or building or such permission of the Panchayat Samiti shall be subject to such rules as may be made by the State Government in this behalf:
Provided further that a Panchayat Samiti shall not accord permission for erection of a new structure or construction of a new building, if the proposal for such erection or construction—
(a) has any provision for erection or construction of any dry latrine, by whatever name called, and

(b) does not have any provision for erection or construction of a sanitary latrine of any description.
(2) Every person seeking permission under sub-section (1) shall make an application in writing to the Panchayat Samiti in such form, containing such particulars and on payment of such fee to the Panchayat Samiti, as may be prescribed:
Provided that no amount in whatever name or manner other than the fees prescribed by the State Government, shall be charged by the Panchayat Samiti for according permission:
Provided further that the State Government may, by order, exempt any structure or building or any class of structures or buildings from the operation of the provisions of sub-section (1) and of this sub-section:
Provided also that if the building plan contains any proposal for construction of a structure for rain water harvesting on its roof, the Panchayat Samiti shall allow a rebate in paying fee for permission under sub-section (1) to the applicant at such rate as may be determined by the State Government.
(3) On receipt of such application, the Panchayat Samiti, after making such enquiry and examination of the building plan as it considers necessary and in accordance with such rules as may be made by the State Government in this behalf, shall, by order in writing, either grant the permission or refuse it, recording in the case of refusal the reasons therefor.
(4) Any person aggrieved by an order of the Panchayat Samiti refusing permission or non-receipt of any intimation in this regard within the stipulated time as may be prescribed may prefer an appeal to such appellate authority as may be prescribed:
Provided that any person aggrieved by an order of the authority may also prefer an appeal before the reviewing authority as may be prescribed:
Provided further that no appeal shall lie against the order of the reviewing authority.
(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 Panchayat Samiti 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 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.".

(emphasis added)

13. In a situation where demolition is sought specifically on the ground that a construction is contrary to the sanctioned building plan, the power to order demolition is traceable to the statute and should be exercised by the Authority upon whom the statute confers jurisdiction. In this case, the authority is the Panchayat Samiti under the West Bengal Panchayat Act, 1973. An authority having merely a supervisory or development-control role i.e. the BDA cannot assume the powers insofar as demolition is concerned. This is not the statutory mandate. Although section 53 of the 1979 Act, empowers the BDA to demolish, alter, regularise illegal constructions or even revoke permission, nevertheless the subsequent amendments made to the section 114A and 114B of West Bengal Panchayat Act specially, provides for the right of demolition with the sanctioning authority i.e. the Panchayat Samiti. (Unreported decision dated 14 May 2025 passed by the Hon'ble Division Bench of the High Court at Calcutta in *Binoy Majunder vs. The Durgapur Ex Servicemen's Co-operative Housing Society Ltd.* in *FMA 769 of 2025).*

14. The BDA, having not sanctioned the building plan cannot merely on the basis of its NOC/development permission, assume jurisdiction to regularize an unauthorized construction which has been constructed in violation of the The West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 and the West Bengal Panchayat Act 1973. The Authority legally competent to sanction the building plan is the Panchayat Samiti. The West Bengal Panchayat Act, 1973 categorically provides for powers to be exercised in case of demolition. This is a special enactment expressly conferring powers upon a designated authority i.e. the Panchayat Samiti.

15. The issuance of the notice dated 6 May 2026 by the BDA in terms of the impugned judgment also does not prejudice the right of the appellant. As a proposition, implementation of an order does not deprive a party of the right to appeal. In view of the grievance raised in the writ petition, the overriding effect under section 137 of the 1979 Act cannot be stretched to emasculate and usurp jurisdiction under the West Bengal Panchayat Act 1973.

16. In such circumstances, the only authority to deal with such violation is the concerned Panchayat Samiti under section 114A of the 1973 Act after following the procedure prescribed therein. The BDA has no jurisdiction to exercise under the 1979 Act in a case of demolition of an unauthorized construction merely because the property lies within its planning area and moreso when the plan has been sanctioned by the Panchayat Samiti. In such circumstances, the provisions of the 1979 Act cannot be pressed into consideration to circumvent the demolition proceedings.

17. In view of the above, the impugned order dated 20 March 2026 is unsustainable and set aside. The orders passed by the Panchayat Samiti and the Sub-Divisional Officer (SDO) dated 6 October 2023 and 15 October 2025 respectively

are restored. Interim orders, if any, stand vacated. FMA 610 of 2026 stands allowed.

(Ravi Krishan Kapur, J.)

I agree.

(Chaitali Chatterjee Das, J.)