

In The High Court at Calcutta

CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

W.P.A. 10886 OF 2026

ASHAUDDIN AHAMED

VS.

THE STATE OF WEST BENGAL AND OTHERS

.....

Mr. Mustafi Rahaman, Adv.
Mr. Musharraf Alam Sk., Adv.
Sk. Sarfaraj Nawaj, Adv.

...For the Petitioner

Mr. Suryaneel Das, AGP
Ms. Suchitra Sinha Chatterjee, Adv.

...For the State

1. Affidavit-of-service filed on behalf of the petitioner is taken on record.
2. By presenting this writ petition, *inter alia*, petitioner has prayed for taking steps based on the order passed by the Executive Magistrate, Malda in a proceeding under Section 164 of Bharatiya Nagarik Suraksha Sanhita, 2023.
3. Prayer is made in this writ petition for giving direction upon the concerned police authorities for restraining opposite parties in the proceeding under Section 164 BNSS from making unauthorized and unlawful boundary wall at the property in question obstructing pathway and to demolish unauthorized construction which obstructs such pathway.
4. Grievance is expressed on behalf of the petitioner that steps are not being taken by the concerned police authorities as per the direction of the Executive Magistrate, Malda.
5. On the issue of maintainability of this writ petition seeking compliance of the order of the Executive

Magistrate passed in a proceeding under Section 164 BNSS, 2023, an order of a co-ordinate Bench dated 31st July, 2024 passed on a writ petition being WPA 18453 of 2024 is relied on by the learned advocate representing the petitioner.

6. State respondents are represented by Mr. Suryaneel Das, learned Additional Government Pleader who has made submissions.
7. Section 164 of BNSS, 2023 empowers Executive Magistrate to take steps in accordance with the procedure enshrined therein with an object to prevent breach of peace at the locale.
8. Therefore, if any unauthorized construction is made which is alleged to have obstructed ingress and egress, Executive Magistrate is empowered to pass necessary order to maintain peace at the locale and to see that no breach of peace takes place but nature of construction needs to be decided by the appropriate authority, in accordance with law.
9. Question of demolition of construction would only arise if it is determined by the concerned local authority that such construction is unauthorized.
10. In the order dated 31st July, 2024 passed by the co-ordinate Bench direction was given upon the police authorities based on the submission made on behalf of the State respondents to the extent that order of the Executive Magistrate is required to be followed and executed.
11. Situation is different so far present writ petition is concerned.

12. Executive Magistrate is at liberty to pass order in accordance with law to maintain peace and to prevent breach of peace at the locale.
13. Moreover, High Court while exercising writ jurisdiction under Article 226 of the Constitution of India is not the appropriate forum to seek implementation of the order of the Executive Magistrate passed in a proceeding under Section 164 of BNSS, 2023.
14. In aforesaid conspectus, writ petition stands dismissed.
15. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(SAUGATA BHATTACHARYYA, J.)