

10.06.2026
Court No. 12
Item No. 05
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
M.A.T. 909 of 2026
I.A. No : CAN 1 of 2026
CAN 2 of 2026

Khokan Sk. @ Rafikul Hasan & Ors.
Vs.
The State of West Bengal & Ors.

Md. Salahuddin,
Md. Raziuddin
.....for the appellants.
Ms. Susmita Saha Dutta, Ld. APP,
Mr. Madhu Jana, Jr. Govt. Adv.,
Ms. Tanushree Ghosh
....for the State.
Md. Jalaluddin
....for the private respondent no. 8.

Re : CAN 2 of 2026

- 1) CAN 2 of 2026 is an application for condonation of delay in filing the appeal from the judgment and order dated December 4, 2025.
- 2) The delay is of 138 days.
- 3) The explanation given for condonation is acceptable to us. It has been stated that the appellants were in financial difficulty and did not have adequate funds to approach a learned advocate and prefer the appeal.
- 4) The delay is condoned.
- 5) Accordingly, CAN 2 of 2026 is allowed and disposed of.
- 6) The appeal is regularized.

Re : MAT 909 of 2026

- 7) This appeal arises out of an order dated December 4, 2025 passed in W.P.A. 18332 of 2024.

8) By the order impugned, the learned single Judge dismissed the writ petition which was filed challenging the decision and order of the Block Development Officer, Nabagram, Murshidabad dated May 7, 2024 and May 24, 2024.

9) The Block Development Officer had carried out an inspection of the plot in question namely Plot No. 4633 of Mouza Panchgram, Nabagram Block, pursuant to a direction of the High Court, in order to ascertain whether the construction of the appellants was on a Panchayat road or not.

10) The inspection was conducted in the presence of the parties and the report indicated that originally the land belonged to Maharaja of Karimbazar. It had been classified as a 'Nala'. Subsequently, the land was classified as 'Dahar' conferring easementary right for public use, as a pathway. Thus, according to the report the appellants did not have any ownership over the plot and the land was deemed to have vested in the State upon promulgation of the West Bengal Estate Acquisition Act, 1953. Based on the enquiry report, the Block Development Officer asked the panchayat authority to act in accordance with Section 25(2) of the West Bengal Panchayat Act, 1973.

11) This finding was challenged before the writ Court on the ground that the appellants had been in possession of the said plot since long and could not be evicted. His Lordship did not find any merit in such submission and had found that the land had been recorded as a public pathway in the C.S. record. This finding of a fact is not under challenge and has not

been disputed. The only contention of the appellants is that, in view of the long term possession over the concerned land and the fact that the construction did not cause any obstacle to the local villagers, the demolition should not be effected.

12) Section 25(2) of the West Bengal Panchayat Act, 1973 clarifies that a Gram Panchayat may by a notice in writing require a person who has caused obstruction or encroachment or damage to any public street or drain or the property under the control and management of the Gram Panchayat, to remove such construction or encroachment or to repair the damage that may have been caused. Sub-section (3) provides that if such obstruction or encroachment is not removed, the Gram Panchayat may cause such construction or encroachment to be removed or cause repair of the damage and recover the expenses from the person responsible for such encroachment or such obstruction.

13) This matter has undergone two rounds of writ proceedings and two rounds of appeal. The respondent no. 8 had initially filed a writ petition alleging inaction on the part of the panchayat authorities in removing the unauthorized construction on the pathway. An order was passed by a learned single Judge directing the panchayat authority to act and proceed in accordance with law. The appellants preferred an appeal, which was dismissed. Thereafter, the Pradhan issued a certificate that, the appellants had been in possession of the said land since for the past 40 years. Again, a writ petition was filed by the respondent no. 8 and a direction was passed upon the Block

Development Officer to make an inspection on the basis of the complaint of the respondent no. 8 and pass necessary order.

14) The Block Development Officer passed an order which was challenged in the writ petition. The order indicated that the impugned construction was an encroachment on a public pathway and that the appellants did not have any right or ownership in respect of the land in question.

15) Under such circumstances, His Lordship did not interfere with such finding and directed that steps should be taken in accordance with Section 25(2) of the West Bengal Panchayat Act, 1973.

16) Land belonging to the government, which is now a public pathway under the control of the Panchayat Authority, cannot be encroached. Unless a right is violated, a writ Court cannot pass any protective order.

17) The appellants do not have any ownership over the pathway.

18) Under such circumstances, the appeal and the connected application are dismissed.

19) The panchayat authority has issued a notice of demolition, but has kept such demolition in abeyance due to pendency of this appeal.

20) The authority can proceed in accordance with law, in view of the dismissal of the appeal.

21) 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.)