

11.03.2026
Item No.08
PG/
Ct. No.1

M.A.T. 1462 of 2025
Asita Sardar Roy
Versus
The State of West Bengal & ors.

Mr. Syed Arif Ahmed.....for the appellant

Mr. Subhendu Banerjeefor the
Respondent no. 17

PER, PARTHA SARATHI SEN, J.:

1. Parties are represented through their respective learned counsels.
2. The affidavit of service, as filed today on behalf of the appellant is taken on record.
3. The subject-matter of challenge in the instant appeal is the order dated 31.07.2025, as passed by the learned Single Bench in W.P.A. 16577 of 2025.
4. At the time of hearing, learned advocate appearing on behalf of the writ petitioner/appellant submits before this Court that the impugned order has been passed by the learned trial Court by observing that since no change of circumstances occurred after passing of the earlier order dated 20.03.2025 in W.P.A. 8358 of 2023, no interference is required

and with that observation, the said writ petition was disposed of.

5. In order to substantiate his contention, learned advocate for the writ petitioner/appellant draws our attention to page nos. 68 to 70 of the stay application being I.A. No. CAN 1 of 2025, being a copy of order dated 20.03.2025, as passed by the learned Single Bench in W.P.A. 8358 of 2023. It is submitted that in the earlier round of litigation, the learned Single Bench, while disposing W.P.A. 8358 of 2023 directed the Joynagar Police Station to oversee that no illegal construction is being pursued and/or being made out without approval of the appropriate authorities i.e the Panchayat authorities concerned with a further direction to the investigating officer of the Joynagar Police Station P.S. Case No. 315 of 2022 to submit his final report before the jurisdictional magistrate.
6. It is submitted that while passing the impugned order, learned Single Bench has failed to visualise that the earlier order dated

20.03.2025 has not been complied with and rather the same has been flouted. It is, thus, submitted that the learned Single Bench has miserably failed to consider the subsequent event, as has been placed before the learned Single Bench by filing W.P.A. 16577 of 2025.

7. It is, thus, submitted on behalf of the writ petitioner/appellant that it is a fit case for allowing the instant appeal by setting aside the impugned order dated 31.07.2025.

8. It is further submitted that appropriate relief/reliefs may be granted to the writ petitioner/appellant in terms of the prayers of the writ petition.

9. *Per contra*, learned advocate appearing on behalf of the respondent no. 17 in course of his submission, placed before us a copy of Final Report No. 397/25 dated 15.05.2025, as submitted before the learned ACJM, Baruipur, South 24-Parganas in connection with Joynagar P.S. Case No. 315 of 2022 dated 02.05.2022.

10. It is submitted that from the said final report, it would reveal that after passing of the earlier order dated 20.03.2025 in W.P.A. 8358 of 2023, investigation has been completed by the concerned I.O. and it has been indicated in such final report that the construction work, as has been initiated in the plot in question was immediately halted and it has remained suspended till date in compliance with the direction of the Hon'ble Court.

11. It is thus, submitted that in view of such completion of investigation and in view of submission of the final report by the I.O. in connection with the aforementioned P.S. case, the learned Single Bench is perfectly justified in not entertaining the subsequent writ petition being W.P.A. 16577 of 2025.

12. We have meticulously gone through the entire materials, as placed before us. We have also given due consideration over the submissions of the learned advocates for the contending parties.

13. For effective adjudication of the instant appeal, we think it proper to look to the final report, as submitted by the concerned I.O. in connection with Joynagar P.S. Case No. 315 of 2022 dated 02.05.2022 and the relevant portion of which is quoted hereinbelow in *verbatim* :

“During investigation, it was observed that construction work had been initiated at the disputed site. However, upon intervention by Joynagar PS, the construction activity was immediately halted, and it has remained suspended till date, in compliance with the direction of the Hon’ble Court.

After conducting a thorough investigation, examining all relevant documents, and interacting with the parties involved, it is found that no malafide intention can be attributed to the accused persons. They are in possession of valid registered deeds supporting their claims, and the mutation was carried out by the BL&LRO, Joynagar-I, only after verifying the documents submitted by them.

If any procedural irregularities or errors were committed by the BL&LRO, the same are already under review by the competent higher authority, i.e, the SDL&LRO, Baruipur, as part of the appellate process.

In view of the above, and upon scrutiny of all facts, records, and stakeholder statements, it is my considered opinion that the matter does not disclose any cognizable criminal offence and is essentially civil in nature, arising out of a property/mutation-related dispute.

Therefore, after evaluating the merit of the case in consultation with superior officers, I hereby submit the Final Report as ‘Civil in Nature’ vide Joynagar PS FR No.397/25 dated 15.05.25, with a prayer that all FIR-named accused persons may be discharged from the case.

The complainant has been duly informed about the outcome of the investigation by issuance of Notice under Section 173(2)(ii) Cr.P.C.”

14. On careful perusal of the aforementioned final report, as submitted by the I.O. of the aforementioned P.S. case, it reveals that the I.O. has indicated in his report that all construction activity on the disputed plot has been immediately halted after passing of the earlier order by the learned Single Bench. It has also been noticed in the said report that the I.O. opined that the subject-matter of investigation does not disclose any cognizable offence and the same is purely civil in nature and with that finding, the I.O. has prayed for to discharge all the accused persons.

15. In considered view of us, in the event the writ petitioner is aggrieved with the result of investigation, the remedy is otherwise but not before a High Court under Article 226 of the Constitution of India.

16. Such view was taken by the Hon'ble Supreme Court in the case of ***Sudhir Bhaskar Rao Tambe vs. Hemant Yashwant Dhage & Ors.***

reported in **(2016) 6 SCC 277** wherein the following has been held:

“This Court has held in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409], that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) Cr.P.C. We have said this in Sakiri Vasu case because what we have found in this country is that the High courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation”

17. Similar such view was taken in the case of

Lalita Kumari vs. Government of U.P.

reported in **(2014) 2 SCC 1** and also in the

case of ***Aleque Padamsee v. Union of India***

reported in **(2007) 6 SCC 171**.

18. In view of the discussions made hereinabove,

we, thus, find that the instant appeal lacks any

merit and accordingly, the instant appeal is

dismissed.

19. With the dismissal of the instant appeal, all pending interlocutory applications are also disposed of.

20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)