

02.02.2026
(M/L-11)
Ct.-15
(NMD)

**IN THE HIGH COURT AT CLACUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 27173 of 2025

Santosh Kolay

-Vs-

The State of West Bengal & Ors.

Mr. Pappu Adhikari

.... For the Petitioner

Mr. Marttanda Pratap Chakraborty,

Mr. Subhayan Das,

.... For the State

The learned Advocate for the petitioner seeks initiation of demolition proceedings in respect of an alleged unauthorised construction undertaken by his brother, Samir Koley, respondent no. 8.

There is no dispute that the petitioner and the respondents are co-sharers in respect of the property situated at L.R. Dag No. 397, Mouza-Kumarchak, Amta, Howrah.

The learned Advocate appearing for the petitioner submits that respondent no. 8 has raised construction without obtaining any permission from the Panchayat Authority and that, despite representations made by the petitioner before the said authority, no steps have been taken by the Panchayat.

It is submitted that the petitioner has already instituted Title Suit No. 144 of 2019 before the Court of the Civil Judge (Junior Division), Amta, Howrah, seeking partition of the property, wherein an order of status quo in respect of the suit property was passed on August 20, 2019.

The learned Advocate for the petitioner further contends that, in violation of the said order of status quo, respondent no. 8 has undertaken construction on the suit premises.

The learned Advocate appearing for the petitioner places reliance on the judgment of the Supreme Court reported at **(2024) 12 S.C.R. 1320 (Rajendra Kumar Barjatya v. U.P. Avas Evam Vikas Parishad)**, contending that the illegality of unauthorised construction cannot be perpetuated. It is argued that any construction made in contravention of the Act and the Rules is illegal and liable to demolition, and that such construction cannot be legitimised or protected. Administrative failure, regulatory inefficiency, the cost of construction or investment, as well as negligence or laxity on the part of the authorities in discharging their statutory obligations, cannot be relied upon as a defence to shield illegal or unauthorised construction. Specific reliance has been placed on paragraph 20 of the said judgment.

This Court, however, is not inclined to entertain the writ petition at the instance of the petitioner.

There can be no quarrel with the law laid down by the Supreme Court in ***Rajendra Kumar Barjatya (supra)***. At the same time, it must be borne in mind that a judgment cannot be read as a statute. Judicial pronouncements are rendered in the specific factual matrix of each case and ought not to be read in isolation from the context in which they are delivered.

The facts involved in ***Rajendra Kumar Barjatya (supra)*** arose in an entirely different factual setting. As is evident from paragraph 5 of the said judgment, the unauthorised construction therein was undertaken in violation of a notice issued by the competent authority, pursuant to which an order of demolition was passed. The authority, however, could not execute the demolition order owing to a lack of cooperation from the local and police authorities.

The factual circumstances of the present case are clearly distinguishable from those involved in the said decision.

In this case, it is not in dispute that the alleged unauthorised construction has been in

existence much prior to the filing of the present writ petition.

The State has filed a report which reflects the factual context of the present case. The relevant portion of which is extracted below:

“During enquiry it revealed that a previous long standing land related dispute has been going on over the said issue. Samir Koley (Respondent no. 8), Prabir Koley and the petitioner are the brothers in relation. They are the joint owners of the landed property vide Dag No. 397, under Mouza Kumarchak, PS Amta Howrah. In the year 1998 after the demise of the father of the petitioner the piece of parcel of the property has not been demarcated. From 20 years Petitioner has been residing at Kadamtala Howrah. For this reason, said Samir Koley (Respondent no. 8) constructed his residence and enjoyed it from years.

Furthermore, further enquiry was conducted and it is seen that presently no construction work is going on over the said landed property and said Samir Koley (Respondent no.8) is enjoying the possession of inherence property which is not still demarcated among the inestors. along with his family.”

Having consciously permitted the construction to continue and having approached this Court only after completion of the structure, the petitioner cannot now contend that the construction was carried out without a sanctioned plan. Such conduct squarely attracts the well-established principles of delay, acquiescence, and lack of bona fides. A Writ Court, applying settled principles of equity, would ordinarily decline relief in favour of a litigant who consciously allows a structure to be

raised and thereafter seeks its demolition. The writ jurisdiction under Article 226 of the Constitution, being discretionary and rooted in equitable considerations, cannot be invoked to resurrect an equitable right that the petitioner has clearly forfeited.

The petitioner, having already availed of the remedy before the Civil Court for redressal of his grievances, cannot be permitted to impart a public law character to a dispute that is essentially civil in nature, particularly at such a belated stage. The writ court cannot be utilised as an alternative forum to secure indirectly what could not be obtained directly in civil proceedings. The allegation regarding the absence of a sanctioned plan is inextricably intertwined with the underlying civil dispute and appears to have been raised merely to lend a semblance of public law colour to what is fundamentally a private conflict.

Accordingly, **WPA 27173 of 2025** stands dismissed.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Kausik Chanda, J.)