

21.04.2026
Sl. Nos. 1 & 2(DL)
Ct. No.14
ss/srm

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

[Assigned)
W.P.A. No. 20293 of 2023
With
CAN 1 of 2023
Raghunath Karmakar
Versus
The State of West Bengal & Ors.
With
W.P.A. No. 27298 of 2022
Sabita Bhowmick
Versus
The State of West Bengal & Ors.

Mr. Srinjoy Das,
Mr. Aritra Ghosh
Ms. Jui Jana
Mr. Biswajit Sengupta
Mr. Debarpan Dutta
Ms. Sneha Das

...for the Petitioner in WPA 20293/2023 &
Respondent No.7 in WPA 27298/2022.

Mr. Tanmay Basu
Mr. Manoj Adak

...for the Petitioner in WPA 27298/2022 &
Respondent No.9 in WPA 20293/2023.

Mr. Tapas Kumar Mandal

...for the State in WPA 20293/2023.

Mr. Ashim Kumar Ganguly, AGP

Ms. Joytsna Roy Mukherjee

...for the State in WPA 27298/2022.

1. These matters are appearing in the list under the heading '*For Orders*'.
2. By writ petition WPA 27298 of 2022 (*in short WP-I*), the petitioner Sabita Bhowmick seeks for setting aside and/or quashing of Memo No. Earth Extraction/MM/2200/Singur dated 14th November,

2022 issued by the respondent No.4, Block Land & Land Reforms Officer, Singur, Hooghly.

3. By writ petition WPA 20293 of 2023 (*in short WP-II*), the petitioner Raghunath Karmakar seeks for specific direction upon the respondent No.3, Sub-Divisional Officer, Chandannagar, Hooghly to demolish the illegal construction undertaken by respondent No.9 over the landed property measuring 29 Satak, *Sali* land, R.S. Khatian Nos.36, L.R. Khatian Nos.1041, 1040, 1039, 1043; Khatian Nos.115, 608, 609, 610, 611, 999, R.S. and L.R. Dag No.582, Village & Mouza – Rajarbathan, J.L. No.24 under Boinchipota Gram Panchayat, District-Hooghly (*hereinafter referred to as the 'subject land'*).
4. In WP-I, the petitioner contends that she has purchased the subject land by dint of two registered deeds of sale executed in the year 2017 and 2018 respectively and her name has been duly mutated in the record of rights. The local Gram Panchayat has accorded permission to the petitioner for making construction over the subject land. The report of the concerned Gram Panchayat reveals that the subject land has not been used for cultivation for last 25 years. On 15th July 2022 the petitioner applied for conversion. However, without any statutory authority respondent No.4, Block Land & Land Reforms Officer, Singur has issued the Memo dated 14th November, 2022 under section 4C(5) of the West Bengal Land Reforms Act, 1955 (*in short 'WBLR Act'*). Being

aggrieved by such action of respondent no.4, the petitioner has preferred the present writ petition.

5. In WP-II, the petitioner contends that he is the recorded *bargadar* of the subject land measuring 29 Satak, *Sali* land and he has been cultivating the subject land for the last 40 years. The subject land was sold by the erstwhile owners to private respondent No.9 on 29th June, 2018. On getting knowledge of the aforesaid conveyance, the petitioner challenged such transfer before the learned Civil Judge (Junior Division) at Chandannagar, Hooghly in Title Suit No.219 of 2015. At the instance of the petitioner an order of injunction was passed by the learned Civil Judge restraining the defendant (respondent No.9) from changing the nature and character of the subject land. The respondent No.9 has raised illegal construction without necessary permission from the local Gram Panchayat and also without conversion of the nature of land from *Sali* to *Bastu*. Hence, the writ petition seeking for demolition of such illegal construction.
6. Mr. Tanmay Basu, learned Advocate for the petitioner in WP-I submits that the Block Land & Land Reforms Officer is not the appropriate authority to issue any notice under Section 4C(5) of the WBLR Act. Therefore, the impugned notice is liable to be set aside.
7. On the contrary, Ms. Jyotsna Roy Mukherjee, learned Advocate appearing for the State in WP-I submits that

since the petitioner tried to change the nature and character of the subject land such notice has been issued under Section 4C(5) of the WBLR Act. As per Section 2(4) of the WBLR Act a Collector of a district or any other officer appointed by the State Government to discharge any of the function of a Collector under this Act is the '*Collector*'. Therefore, the BL&LRO is very much authorised to issue such notice. Moreover, she indicates that the grievance of the petitioner ought to have been agitated by way of an appeal before the appropriate authority as provided under Section 54 of the WBLR Act. She seek for dismissal of the writ petition namely WP-I.

8. Mr. Srinjoy Das, learned Advocate for the petitioner in WP-II and respondent No.7 in WP-I submits that the petitioner in WP-I has failed to produce any document showing sanction of building plan by the local Gram Panchayat or conversion of the subject land from '*Sali*' to '*Bastu*' in support of the work of construction undertaken. There is no such sanctioned building plan or conversion of the land issued to the petitioner to undertake any such construction over the subject land. Since the land has not been converted the question of sanctioning building plan would not arise in view of Rule 26 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (*hereinafter referred to as 'Rules of 2004'*). He seeks for appropriate orders.

9. Mr Tapas Kumar Mondal, learned advocate for the State in WP-II submits that the respondent no.9 has made construction without permission from the local Panchayat and the nature of land is also not converted.
10. Mr. Tanmay Basu, learned Advocate for the petitioner in WP-I and respondent no.9 in WP-II also submits that the writ petition being WP-II is not maintainable since the petitioner has also filed a application under Order 39 Rule 2A of Civil Procedure Code seeking for similar prayer for demolition of the structure being an efficacious relief available to the petitioner in the civil suit.
11. In reply to the issue of maintainability, Mr. Das, learned advocate for the petitioner in WP-II relying on the decision of the Hon'ble Division Bench of this Court passed in ***Rampuria Brothers Pvt. Ltd. versus the Kolkata Municipal Corporation & Ors.*** reported in ***AIR 1988 Cal 370*** submits that since there is violation of the provisions of the Panchayat Act the writ petition is very much maintainable despite pendency of the civil suit.
12. Upon hearing learned Advocate for the respective parties, the following issues which fall for consideration.

Firstly, whether the writ petition WP-II is maintainable or not?

Secondly, whether the impugned notice dated 14th November, 2022 under Section 4C(5) of the WBLR Act issued by the respondent No.4, Block Land &

Land Reforms Officer, Singur is short of statutory authority or not?

Thirdly, whether the work of construction undertaken by the respondent No.9 in WP-II is in accordance with the provisions of West Bengal Panchayat Act or not?

13. With regard to Issue No.1 as to whether the writ petition WP-II is maintainable or not, it has been vociferously argued on behalf of the respondent No.9 in WP-II that since the petitioner has also filed a application under Order 39 Rule 2A of Civil Procedure Code seeking for similar prayer for demolition of the structure, the writ petition being WP-II is not maintainable as efficacious relief is available in the civil suit.

14. Pursuant to a direction of this Court, learned advocate for the petitioner in WP-II produced the copy of the plaint. It appears from the copy of the plaint of the civil suit that the plaintiff sought for declaration of his right as *Bargadar*, for permanent injunction restraining the defendant from obstructing the plaintiff from carrying his agricultural activities over the subject land and other allied prayer. There is no prayer for demolition of the structure. The cause of action in the civil suit is different from the present writ petition where plea has been raised that the construction work undertaken by respondent no.9 in WP-II is in violation of statutory provisions. Although an application under Order 39 Rule 2A of CPC has

been filed by the plaintiff-petitioner in the civil suit for violation of order of injunction but that cannot be a ground for dismissing the writ petition where specific plea of violation of statutory provisions has been raised. Hence such argument advanced on behalf of the respondent No.9 does not stand to reason. This court finds substance in the submission of the Mr Das, learned advocate for the petitioner in WP-II relying on *Rampuriah Brothers Pvt. Ltd.(supra)*.

15. With regard to Issue No.2 as to whether the impugned notice dated 14th November, 2022 under Section 4C(5) of the WBLR Act issued by the respondent No.4, Block Land & Land Reforms Officer, Singur is short of statutory authority or not, it is seen that precisely the impugned notice dated 14th November, 2022 of respondent No.4 is challenged on the ground of authority of the issuing officer.
16. In order to examine the aforesaid issue it would be profitable to reproduce Section 4C(5) of the WBLR Act as hereunder:

“Section 4C(5)(a) *Without prejudice to the foregoing provisions of this section, where any plot of land has been changed or converted or altered in violation of this section, if the Collector, on his own motion or on receiving information, is of the opinion that it is necessary so to do in public interest, he may make an order directing a raiyat or a lessee for restoration of the original character of the concerned land within a specified time.*

(b) *On receipt of the order, the raiyat or the lessee shall restore the original character of the plot of land at his own cost within such time, as may be ordered by the Collector.*

(c) If the raiyat or lessee fails to comply with the order, the Collector may take action for restoring the original character of such plot of land and realise the cost for restoration from the raiyat or the lessee.

(d) If the raiyat or lessee fails to pay the cost of restoration, the Collector may realise the cost as a public demand in accordance with the provision of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

17. Upon bare reading of the aforesaid provision, it manifest that where any plot of land has been changed or converted or altered in violation of the provision of the section, the Collector, on his own motion or on receiving information, is of the opinion that it is necessary so to do in public interest, he may make an order directing a *raiyat* or a lessee for restoration of the original character of the concerned land within a specified time. Admittedly, the impugned notice under section 4C(5) of WBLR Act has been issued by the Block Land & Land Reforms Officer, Singur. Section 2(4) of the WBLR Act defines that a '*Collector*' means the Collector of a district or any other officer appointed by the State Government to discharge any of the function of a Collector under the Act. Therefore, the word '*Collector*' in the section is not limited to the Collector only and it extends to any other officer appointed by the State Government to discharge such function. Nothing has been demonstrated by the petitioner in WP-I that the BL& LRO was not appointed to take such measure under section 4C(5) of the WBLR Act. Such being the

position, the argument advanced on behalf of the petitioner in WP-I does not hold good and accordingly the prayer in the writ petition WP-I falls short of merit.

18. It has been pressed into service on behalf of the State in WP-I that the prayer in the writ petition seeking for setting aside/quashing of the impugned order dated 14th November 2022 issued by Block Land and Land Reforms Officer Singur Hooghly ought to have been challenged by way of an appeal under Section 54 of the WPLR Act. Be that as it may, it is relevant to note that the petitioner in WP-I has challenged on the ground of lack of authority of the officer concerned in issuing such notice. Article 226 of the Constitution of India confers power on all High Courts to issue prerogative writs, directions or orders for enforcing fundamental rights or for other purposes. The existence of alternative remedy is not an absolute bar to the granting of a writ under Article 226 of the Constitution. An alternative remedy does not operate as a bar to the exercise of writ court's jurisdiction of judicial review in cases (i) seeking enforcement of a fundamental right; (ii) where there is failure of natural justice; and (iii) where the impugned orders or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged. [***See M.P State Agro Industries Development Corpn Ltd versus Jahan Khan*** reported in **(2007) 10 SCC 88**]. Therefore, such argument advanced on behalf of the State is not

sustainable in facts and circumstances of the challenge.

19. With regard to Issue No.3 as to whether the work of construction undertaken by the respondent No.9 in WP-II is in accordance with the provisions of West Bengal Panchayat Act or not, it is found that the petitioner in the writ petition WP-II challenges the legality of work of construction undertaken by the respondent No.9, on the ground that neither the nature of land has been converted nor any sanctioned building plan has been obtained by the respondent No.9 prior to making his construction.
20. Needless to mention that respondent No.9 has failed to produce any document showing conversion of land and issuance of sanctioned building plan in her favour by the local Gram Panchayat. Further Rule 26 of Rules of 2004 provides that if any structure or building is proposed to be erected or constructed on any land recorded otherwise than as homestead land, the Gram Panchayat shall withhold permission for such erection or construction until the applicant produces an order allowing change of classification of the said land by the Collector or any other competent authority having jurisdiction under any law for the time being in force.
21. In view of the above, respondent no.6, Pradhan, Baichipota/Boinchipota Gram Panchayat is directed to consider and dispose of the representation of the

petitioner dated 12th May, 2023 (Annexure P-5 in WP-II) by adopting the following procedure:

- (i) Cause an inspection on the property-in-question upon notice to the petitioner as well as private respondent No.9. A report of such inspection along with sketch map be prepared, which shall be handed over to the parties.
- (ii) Thereafter the parties shall be heard upon notice and representation of the petitioner dated 12th May, 2023 shall be disposed of by a reasoned order which shall be communicated to the parties within a week of passing of such orders. Parties are granted liberty to produce all relevant records and documents before the Pradhan at the time of hearing.
- (iii) On the basis of materials transpiring during inspection and hearing, the proceedings shall be taken to its logical conclusion in terms of provisions of Section 23 of West Bengal Panchayat Act.
- (iv) The entire exercise shall be completed within a period of two months from date of communication of this order.

22. The learned Advocate for the petitioner in WP-II is directed to communicate this order to respondent no.6, Pradhan, Baichipota/Boinchipota Gram Panchayat along with copy of the representation dated 12th May, 2023.

23. In view of discussion made in the foregoing paragraph, the writ petition being **W.P.A. No.27298 of 2022 (WP-I)** stands dismissed.
24. With the above directions, the writ petition being **W.P.A. No.20293 of 2023 (WP-II)** stands disposed of.
25. Interim order, if any, stands vacated.
26. All connected applications, if any, stand disposed of.
27. There shall be no order as to costs.
28. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
29. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)