

02.07.2026
SL No.18
Court No.12
(gc)

**FMA 56 of 2026
CAN 1 of 2025**

**Gita Mistry
Vs.
The State of West Bengal & Ors.**

Mr. Md. Zeeshanuz Zaman

... for the Appellant.

Mr. D.N. Ray, Ld. G.P.,
Ms. Susmita Saha Dutta, Ld. A.G.P.,
Ms. Tanusree Ghosh

... for the State.

Mr. Mrinal Kanti Ghosh,
Mr. Chandra Nath Sarkar,
Ms. Bipasha Bhattacharyya

... for the Respondent No.7.

1. Affidavit-of-service filed in Court is taken on record.
2. The appeal arises out of an order dated November 11, 2025 passed in WPA 15309 of 2025. By the order impugned, the learned Judge dismissed the writ petition thereby holding that the remedy of the appellant was before the Civil Court in which a suit for partition was already pending between the parties.
3. Mr. Ghosh, learned Advocate appears on behalf of the respondent no.7. It is submitted that the earlier temporary structure was damaged, and as such, the respondent no.7 approached a member of the gram panchayat.

The member referred the matter to the gram panchayat on October 19, 2024, prior to the grant of the order of status quo. The respondent no.7 was informed that she could repair her structure and reconstruct the same. Accordingly, she constructed a brick built structure with asbestos shed.

4. According to Mr. Zeeshanuz Zaman, learned Advocate appearing for the appellant, a construction with brick built walls, was also prohibited under the rules. Unless permission was granted by the gram panchayat, the said construction could not have been raised. It is further submitted that the prayer in the writ petition was for a direction upon the gram panchayat to dispose of the representation of the appellant. The learned Judge had misconstrued the factual aspects and had erroneously held that the relief of the appellant was before the Civil Court.
5. We are in agreement with Mr. Zaman to the extent that the allegation of unauthorized construction must be decided by the panchayat authorities. The panchayat authorities and the Sub-Divisional Officer are empowered by law to take steps, in the event any unauthorized construction is detected.

The civil suit is for partition of the property amongst co-sharers. There is a subsisting order of status quo with regard to the nature, character and possession of the property.

6. However, the Civil Court is not authorized to adjudicate the matters relating to allegations of non-compliance of the West Bengal Panchayat Act, 1973. Section 23 of the said Act provides a mechanism by which the permission has to be taken and in the event the construction is found to be unauthorized, what steps ought to be taken by the authority. However, we are in agreement with His Lordship to the extent that the status quo order might interfere with any decision that may be taken ultimately.
7. Under such circumstances, in the event the panchayat authorities come to a specific finding that there is an unauthorized construction, which is required to be demolished and the matter is referred to the Sub-Divisional Officer, the authorities will bring the decision to the notice of the learned Civil Court and the appellant may seek modification/vacation of the order of status quo for the demolition.
8. The gram panchayat will consider and dispose of the representation of the appellant dated

June 9, 2025 and while doing so, the following procedure should be adhered to:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the appellant and the respondent no.7. An advance notice of the inspection shall be served upon the appellant and the respondent no.7. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the premises.
- b) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- c) Such report shall be handed over to the parties. The question of right, title, possession, encroachment and boundary dispute, shall not be decided by the gram panchayat. The only issue to be decided will be whether there is any sanction or permission for such construction.
- d) A hearing shall be given to the appellants and the respondent no.7. The parties must also be allowed to furnish their written objection/version to the report and adduce oral and

documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.

- e) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in accordance with law, upon due compliance of Section 23(5) of The West Bengal Panchayat Act, 1973.

9. This order shall not be construed as an opinion of this Court on the correctness of the allegations made by the appellant. All the issues, will be decided by the concerned authority, in accordance with law, independently.
10. The entire exercise shall be completed within a period of four months from the date receipt of appellant's representation.
11. A copy of the writ petition will be served upon the gram panchayat.
12. Under such circumstances, the appeal and the connected application are disposed of.

13. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Smita Das De, J.)