07.10.2026
Court No. 12
Items 6 & 7
Cp

FMA 303 of 2026
With
CAN 1 of 2026

Basudeb Saha
Vs.
The State of West Bengal & Ors.

With

MAT 701 of 2026
With
CAN 1 of 2026,
CAN 2 of 2026

Prasun Kumar Saha
Vs.
The State of West Bengal & Ors.

Ms. Bina Baidya

... for the Appellant.

Mr. D.N. Roy, Ld. GP.,
Ms. Susmita Saha Dutta, Ld. AGP.,
Mr. Niladri Saha

... for the State.

Mr. Saikat Thakurata
Ms. Rushali Chatterjee

.....for the respondents.

1. Let MAT 701 of 2026 be detagged from FMA 303 of 2026.

Re: FMA 303 of 2026

2. The appellant challenges an order dated January 20, 2026, passed in WPA 21765 of 2025. By the order impugned, the learned Single Judge dismissed the writ petition on the ground that the

allegation of unauthorized construction should not be looked into by the gram panchayat as the writ petition had been filed at a belated stage, i.e., after the building was complete. According to His Lordship, principles of equity did not permit a writ court to direct enquiry into the allegations. His Lordship held that the delay amounted to acquiescence on the part of the appellant and the appellant had waived his right to challenge the subject construction, even if the same was unauthorized.

3. We are unable to accept such findings of His Lordship for the precise reason that, any construction within the jurisdiction of a gram panchayat shall be governed by Section 23 of the West Bengal Panchayat Act, 1973. If any objection is raised with regard to any construction, the gram panchayat is required to act and proceed in accordance with law, more particularly, Section 23(5) of the said Act.

4. Under such circumstances, when the appellant had raised an objection with regard to the nature of the construction and/or extent of the construction with further allegation that the construction was contrary to the rules and adequate side spaces were not kept, the said complaint of the appellant is required to be looked into by the gram panchayat.

5. Accordingly, the appeal is allowed and the order impugned is set aside.
6. The concerned gram panchayat will hold an inspection of the construction standing on Plot No. 16, Mouza – Kulpi. A report shall be prepared and handed over to the parties. The parties will be entitled to file their reply to the said report. Thereafter, a hearing shall be conducted and a reasoned decision shall be communicated to both the parties.
7. In the event, it is found that there has been any construction contrary to the rules, or without any permission, the matter shall be referred to the Sub-Divisional Officer. Thereafter, the concerned Sub-Divisional Officer shall act and proceed in accordance with law, including demolition, in the event the construction is not found to be in accordance with the Act and rules framed thereunder.
8. Accordingly, the appeal and the connected application are disposed of.
9. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)