ML.99
17.11.2026
Court. No. 12
GB

FMA 1011 of 2026
With
CAN 1 of 2026

Samir Ali Pathan
Vs.
The State of West Bengal & Ors.

Mr. Tanmay Chowdhury,
Ms. Ritoprita Ghosh,
Ms. Sulagna Sarkar

... for the Appellant.

1. Affidavit-of-service filed in Court today, is taken on record.
2. Despite service, none appears on behalf of the respondents.
3. The appellant had alleged unauthorized construction by the respondent nos.8 and 9, who have been served with copies of the appeal and application but, they are absent.
4. It appears that the learned Single Judge was misdirected with the submission made by the private parties that the building sanction had been granted in 2024 but, the specific case of the writ petitioner/appellant was that the construction was made without permission.
5. The writ petitioner has relied upon several documents, including orders passed by the learned Executive Magistrate, which record that a construction was going on and that complaints had been filed before the gram panchayat.
6. Thus, the issue before the Court was whether, even if the sanction was granted in favour of the private

parties in 2024, a post facto sanction could be allowed and the construction which was made prior to the alleged sanction could be sustained.

7. We find that the learned Single Judge was of the view that the issues involved disputed questions and as such, the civil court should be approached for redressal of the grievances of the writ petitioner. We do not agree with the finding of the learned Single Judge for the following reasons:-

    a) Her Lordship failed to appreciate that the civil court does not have any jurisdiction to decide the issue of unauthorized construction.

    b) The West Bengal Panchayat Act, 1973 does not make any provision for post facto sanction.

    c) Any construction without any permission from the panchayat authorities will be contrary to law and should be demolished in accordance with the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

    d) The gram panchayat has to decide the issue as to whether the construction was made prior to sanction or after sanction and what exactly was the nature of sanction vis-à-vis the nature of construction.

8. Under such circumstances, although the respondent nos.8 and 9 are not appearing before us, we propose to dispose of the appeal as we are not passing any order which is adverse to the interest of the respondent nos.8 and 9. We relegate the matter to the

concerned gram panchayat and the appropriate authority for necessary steps.

9. The gram panchayat will dispose of the allegations made by the appellant in the following manner:-

i) An inspection of the premises shall be held in the presence of both the parties.

ii) A report shall be prepared and supplied to the parties.

iii) The parties will be at liberty to respond to the said report.

iv) The parties shall be allowed to adduce oral and documentary evidence in respect of their individual contentions.

v) The gram panchayat will take a decision as to whether the construction has been made illegally, unauthorizedly or prior to the sanction or whether the construction was made after the sanction was granted.

vi) A reasoned order shall be passed and informed to the parties. A copy of the resolution of the gram panchayat by which the sanction was allegedly given to the respondent nos.8 and 9, shall also be provided to the parties.

vii) If it is found that the construction has been made either without any sanction or before any sanction was given by the authority, in that event, the gram panchayat will forward all documents and its decision to the Sub-Divisional Officer concerned and the Sub-

Divisional Officer concerned shall take appropriate steps in accordance with law, which shall include demolition.

viii) The entire exercise shall be completed within a period of three months from the date of communication of this order.

10. Accordingly, the appeal and the application are disposed of.

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

(Shampa Sarkar, J.)

(Partha Sarathi Chatterjee, J.)