2025:CHC-AS:1788

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

RESERVED ON: 05.08.2025
DELIVERED ON: 12.09.2025

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

WPA 308 OF 2025

ARUNA DALUI & ORS.
VERSUS
THE STATE OF WEST BENGAL & ORS.

WITH

WPA NO. 9471 of 2025

MANISH AGARWAL
VERSUS
BARANAGAR MUNICIPALITY & ORS.

Appearance:-

Mr. Aniruddha Singha Roy, Adv.
Mr. Abhik Das Sharma, Adv.

... For the Petitioners in WPA 308 of 2025.

Mr. Sakya Sen. Sr. Adv.
Mr. Dwaipayan Basu Mallick, Adv.
Mr. Sananda Ganguli, Adv.

... For the Petitioner in WPA 9471 of 2025.

Ms. Jayeeta Sinha, Adv.
Mr. Sandip Mandal, Adv.

... For the State in WPA 308 of 2025.

Mr. Meghnath Dutta, Adv.
Mr. Subhankar Chakraborthy, Adv.
Mr. Saptarshi Bhattacharjee, Adv.

... For the respondent No. 6 in WPA 308 of 2025.

Mr. Arijit Dey, Adv.

... For the Baranagar Municipality.

2025:CHC-AS:1788

JUDGMENT

Gaurang Kanth, J. :-

1. In both these writ Petitions the demolition order dated 27.11.2024 passed by the Board of Council of the Baranagar Municipality vide its Resolution No. 5(iii) qua the Premise No. 7/1/A, Vivekananda Road, Kolkata-700035 (formerly known as Premise No. 18 or 18/1, Hatem Munshi Lane, Ward No. 08, Kolkata-700035) is under consideration. In WPA 308/2025, the said demolition order dated 27.11.2024 is under challenge where as in WPA 9471/2025, the Petitioner is seeking the issuance of writ of mandamus for the implementation of the said order dated 27.11.2024. In view of the same, this Court deems it appropriate to dispose of both the Writ Petition together by this common judgment.

Facts as emerged from WPA 308/2025

2. Petitioners are the legal heirs of late Sh. Bijoy Dulai, who was the absolute owner of the premises in question, i.e., piece and parcel of a plot of land ad-measuring 3 and I/2 cottahs together with a 100 year old 2 story building with brick wall situated at 18, Hatem Munshi Lane, Post Office Alam Bazar, P.S.- Baranagar, Dist.- North 24 Parganas, Pin-700035 by inheritance. Sh. Bijoy Dulai expired on 16.03.2024 leaving behind the Petitioner No. 1 and their 2 sons (Petitioner No. 2 &3) as his only legal heirs. Hence after the demise of the Late Bijoy Dulai, the Petitioners are the absolute owners of the premises in question.

3. Respondent No. 6 (Petitioner in WPA 9471/2025) is claiming himself to be the owner of the premises in question by virtue of purchase of the property. The Respondent No. 1 mutated their name as assessee in the record of respondent No. 2 in respect of premises No. 7/1/A, Vivekananda

Road(PWD Road) which was formerly known and numbered as Premises No. 18/1, Hatem Munshi Lane, Post Office- Alam Bazar, P.S.- Baranagar, District- North 24 Parganas, Pin-700035.

4. Respondent No. 6 initiated a civil suit, being Title Suit No. 538/2024 for eviction and recovery of possession against the Petitioner No. 1 and Petitioner No. 3 before the Court of Civil Judge, Senior Division, 3rd Court at Barasat and the same is pending. In addition, many criminal cases have been initiated by the Respondent No. 6 against the Petitioners. The Petitioners also filed criminal cases against the Respondent No. 6. The Petitioners herein filed an Application for temporary injunction in the said Title suit No. 538/2024 and the same was rejected vide order dated 21.05.2024. The Petitioners preferred an Misc. Appeal No. 73/2024 before the court of Additional District Judge, Fast Track, First Court, Barrackpore and vide order dated 04.07.2024, the parties were directed to maintain the status quo of the premises in question. The Petitioners also initiated a Title suit for declaration, being Title Suit No. 151/2024 before the Court of civil Judge, Junior Division at Bidhan Nagar against the respondent No. 6 and the same is also pending adjudication.

5. In the meanwhile, the Respondent No. 6 through Respondent No. 5 filed WPA No. 19975/2023 alleging unauthorised construction at the premises in question. This Court vide order dated 16.07.2024 disposed of the said writ petition by directing the Respondent Municipality to consider the representation of the Respondent No. 6 in accordance with law within a period of 3 months.

6. In pursuance of the said direction of this Court, the Executive Engineer from the office of Respondent No. 2 conducted a joint inspection of the

premises No. 7/1/A, Vivekananda Road (PWD Road) which was formerly known and numbered as Premises No. 18/1, Hatem Munshi Lane, Post Office- Alam Bazar, P.S.- Baranagar, District- North 24 Parganas, Pin-700035. It is the case of the Petitioners that eventhough they received the notice for the inspection, they did not participate in the said proceedings as their property, i.e., premises No. 18, Hatem Munshi Lane, Post Office Alam Bazar, PS Baranagar, Dist. North 24 Parganas, Pin-700035 is different. The Petitioners submitted a letter dated 18.09.2024 in this regard to the Respondent No. 3. Subsequently, a letter dated 21.11.2024 was received by the Petitioners whereby they were asked to appear before the Board of Council of Baranagar Municipality on 27.11.2024.

7. It is the case of the Petitioners that eventhough they attended the said hearing, since their legal counsel was not available, they asked for a short pass over. However, the Board of Council of the Respondent Municipality refused to grant any such pass over and concluded the hearing in a short span of 5-10 minutes. Thereafter the Petitioner's counsel appeared and requested for a hearing, however, the same was rejected. The Petitioner further submits that the copy of the representation dated 25.05.2023 submitted by the Respondent No. 6 has not been supplied to them. The Petitioner submitted a written submission on 28.11.2024. However, vide covering letter dated 20.12.2024 received by the Petitioner on 23.12.2024, the Petitioner came to know that the Board of Council of the Respondent Municipality had passed the impugned Resolution dated 27.11.2024 vide item No. 5(iii) and directed for demolition of the unauthorised construction situated at premises No. 7/1/A, Vivekananda Road (PWD Road) which was formerly known and numbered as Premises 18 and also 18/1, Hatem

Munshi Lane, Post Office Alam Bazar, PS Baranagar, Dist. North 24 Parganas, Pin-700035.

8. It is the case of the Petitioners that premises No. 18, Hatem Munshi Lane and Premises No. 18/1, Hatem Munshi Lane are two different premises and these premises have never been amalgamated. The respondent Municipality initiated proceedings against Premises No. 18/1, Hatem Munshi Lane. The structure standing on the Premises No. 18, Hatem Munshi Lane is 100 year old building. However, while passing the impugned Resolution dated 27.11.2024, the Board of Council included Premises No. 18, Hatem Munshi Lane also.

9. Hence being aggrieved by the impugned Resolution dated 27.11.2024 qua the premises No. 18, Hatem Munshi Lane, Baranagar Municipality, the Petitioner preferred the present writ Petition.

Facts as emerged from WPA 9471/2025

10. It is the case of the Petitioner that he noticed unauthorised illegal construction at premises No. 7/1/A, Vivekananda Road (PWD Road) which was formerly known and numbered as Premises No. 18/1, Hatem Munshi Lane, Post Office- Alam Bazar, P.S.- Baranagar, District- North 24 Parganas, Pin-700035 at the instances of Respondent No. 6 to 8 (Petitioners in WPA No. 308/2025).

11. The Petitioner filed representation dated 25.05.2023 to the Respondent Municipality, however, they failed to take any action against the said unauthorised construction. Hence the Petitioner preferred WPA No. 19975/2023 before this Court. This Court vide order dated 16.07.2024 disposed of the said writ petition by directing the Respondent Municipality to dispose of the said pending representation of the Petitioner dated

2025:CHC-AS:1788

25.05.2023 with in a period of 3 months. In pursuance of the direction of this Court, a joint inspection was conducted. Further affording an opportunity of hearing to the parties concerned, the Board of Council of the Respondent Municipality passed Resolution dated 27.11.2024 there by directing the demolition of the unauthorised structure standing on the premises in question. The said resolution was communicated to the parties vide forwarding letter dated 20.12.2024.

12. Despite the passing of the said resolution, no steps were taken by the Respondents for the demolition of the unauthorised structure. Hence the Petitioner filed representations dated 06.02.2025, 17.02.2025, 26.03.2025 seeking the implementation of the Resolution dated 27.11.2024.

13. In the meanwhile the Respondent Nos. 6 to 8 preferred WPA 308/2025 challenging the resolution dated 27.11.2024.

14. The Petitioner preferred the present writ Petition being aggrieved by the inaction of the Respondents in not implementing the Resolution dated 27.11.2025.

Submission on behalf of the Petitioner in WPA 308/2025

15. It is the submission of the Petitioner that the impugned Resolution dated 27.11.2024 was passed without affording an opportunity of hearing.

16. The Petitioners are the owners of the Premises No. 18, Hatem Munshi Lane by way of inheritance. Respondent No. 6 is having no right or interest over the said property. The impugned resolution is passed qua a different property, i.e., premises No. 7/1/A, Vivekananda Road (PWD Road) which was formerly known and numbered as Premises No. 18/1, Hatem Munshi Lane, Post Office- Alam Bazar, P.S.- Baranagar, District- North 24 Parganas, Pin-700035. The joint inspection was conducted qua the said

2025:CHC-AS:1788

premises, the hearing was conducted for the said premises. However, in the impugned resolution, it was passed qua the petitioner's premises.

17. Learned Counsel for the Petitioner submits that the structure standing on Premises No. 18, Hatem Munshi lane is 100 years old construction and there is no new construction. The Respondent No. 6 is trying to evict the Petitioners from the said premises by illegal means.

18. Learned Counsel for the Petitioner further submits that even though Petitioner No. 3 was present on the day of hearing, despite asking for a pass over, no pass over was given to him and hence the Petitioner could not present their case before the Board of Council. The written submission filed by the Petitioner has not been considered. The Petitioner has not been provided with the original complaint filed by the respondent No. 6. The impugned Resolution passed in a haste manner and hence the same is deserves to be set aside.

Submission on behalf of the Petitioner in WPA 9471/2025

19. Learned Counsel for the Petitioner in WPA 9471/2025 submits that there is unauthorised illegal construction at the premises in question and hence based on his complaint, the Respondent Municipality conducted an inspection of the premises and passed the impugned Resolution after affording an opportunity to all the relevant parties. However, despite passing of the said impugned resolution, no steps were taken for the implementation of the same.

20. Learned Counsel further points out that Premises No. 18, Hatem Munshi Lane is same as that of premises No. 7/1/A, Vivekananda Road (PWD Road) which was formerly known and numbered as Premises No. 18/1, Hatem Munshi Lane, Post Office- Alam Bazar, P.S.- Baranagar, District-

2025:CHC-AS:1788

North 24 Parganas, Pin-700035. There is no separate property as claimed by the Petitioner.

21. Learned Counsel further argued that the premises in question is not an old construction as claimed by the Respondents, rather a new construction. Since the construction is carried out without any sanction plan, the same is unauthorised in nature and hence the Board of Council rightly passed the impugned Resolution.

Submission on behalf of the Respondent Municipality

22. Learned Counsel for the Respondent Corporation submits that premises No. 7/1/A, Vivekananda Road is in fact the same property as premises No. 18/1, Hatem Munshi Lane and premises No. 18, Hatem Munshi Lane. It is contended that the Petitioner is attempting to create unnecessary confusion by suggesting that these premises are distinct properties.

23. It is further submitted that the said premises was inspected on 13.06.2025 in the presence of the Petitioners in both matters, as well as in the presence of the Ward Councilor, Sri Gour Jana. During the course of such inspection, the Petitioner in WPA 308/2025 failed to produce any sanctioned building plan or land ownership documents. On the contrary, it was found that she has constructed a two-storied residential building on the premises without obtaining any sanctioned plan.

24. The Board of Council thereafter passed a demolition order, having afforded an opportunity of hearing to all concerned parties. However, till date no demolition action has been carried out at the site in question.

Legal Analysis

25. This Court heard the arguments advanced by the learned counsel for the parties and examined the documents

26. In the present case, what falls for consideration is the demolition order dated 27.11.2024 passed by the Board of Council of Baranagar Municipality vide Resolution No. 5(iii) in respect of Premises No. 7/1/A, Vivekananda Road, Kolkata–700035 (formerly known as Premises No. 18 or 18/1, Hatem Munshi Lane, Ward No. 08, Kolkata–700035).

27. The contention of the Petitioner in WPA 308/2025 is that the aforesaid demolition order dated 27.11.2024 was passed in respect of Premises No. 7/1/A, Vivekananda Road, whereas she is in occupation of Premises No. 18, Hatem Munshi Lane, which according to her, is a distinct and separate property.

28. The said plea is in the nature of a factual assertion. Consequently, this Court, vide order dated 16.05.2025, directed the Respondent Municipality to conduct a fresh inspection and submit a report clarifying whether Premises No. 7/1/A, Vivekananda Road, formerly known as 18/1, Hatem Munshi Lane, is distinct from the Petitioner's property at 18, Hatem Munshi Lane. Pursuant thereto, the Municipality conducted an inspection on 13.06.2025 in presence of the parties and submitted a report confirming that Premises No. 7/1/A, Vivekananda Road is in fact the same property as Premises No. 18/1, Hatem Munshi Lane and Premises No. 18, Hatem Munshi Lane.

29. It is also a matter of record that civil litigations are pending between the parties concerning the very same property. Respondent No. 6 in WPA 308/2025 instituted Title Suit No. 538/2024 before the Court of Civil Judge, Senior Division, 3rd Court, Barasat, seeking eviction and recovery of possession against the Petitioners in WPA 308/2025. The Petitioners' application for temporary injunction in the said suit was rejected by order

2025:CHC-AS:1788

dated 21.05.2024. The Petitioners preferred Misc. Appeal No. 73/2024 before the Court of Additional District Judge, Fast Track, First Court, Barrackpore, wherein by order dated 04.07.2024, the parties were directed to maintain status quo with regard to the property. The Petitioners in WPA 308/2025 have also instituted Title Suit No. 151/2024 before the Court of Civil Judge, Junior Division, Bidhannagar, seeking declaration against Respondent No. 6. All such litigations pertain to the same premises, namely Premises No. 7/1/A, Vivekananda Road/Premises No. 18/1, Hatem Munshi Lane / Premises No. 18, Hatem Munshi Lane.

30. The Respondent Corporation, upon multiple inspections, has confirmed that the property is the same and that unauthorized construction has been raised thereon by the Petitioners in WPA 308/2025. Significantly, during such inspections, the Petitioners were present but made no attempt to demonstrate that their property was different from the one covered under the demolition order. They have also failed to produce photographs or cogent evidence to substantiate their plea of distinction.

31. In view of the categorical clarification provided by the Respondent Corporation, this Court is not inclined to accept the factual objection raised by the Petitioners in WPA 308/2025.

32. The Petitioners in WPA 308/2025 have further urged that they were not afforded adequate opportunity of hearing prior to the passing of the impugned demolition order. The records, however, reveal that the Petitioners were duly served with notice of hearing. It is their case that they had appeared at the venue on the scheduled date, but sought a pass over on the ground that their learned counsel was unavailable. The Board of Council declined such request, and consequently, the Petitioners did not

advance their submissions. The impugned demolition order dated 27.11.2024 records that the Petitioners in WPA 308/2025 were absent at the hearing.

33. Be that as it may, it remains undisputed that the date and time of hearing had been duly communicated to the Petitioners well in advance. It was incumbent upon them to ensure their presence and conduct their defence. The grant of pass over is not a matter of right but one of discretion vested in the authority conducting the proceedings. The Petitioners' inability or omission to present their case owing to the absence of counsel cannot, therefore, be equated with denial of opportunity or violation of the principles of natural justice.

34. Moreover, it is evident that in compliance with the direction of this Court in WPA 19975/2023 dated 16.07.2024, the Respondent Municipality conducted a joint inspection, afforded hearing to the parties, and thereafter passed the impugned demolition order dated 27.11.2024. The Petitioners failed to produce any sanctioned building plan or documents evidencing authorization from the competent authority for the construction raised by them.

35. In view thereof, this Court finds no infirmity or illegality in the demolition order dated 27.11.2024 passed by the Board of Council. The scope of interference under Article 226 of the Constitution of India is limited to examining whether the impugned order suffers from jurisdictional error, perversity, or violation of the principles of natural justice. In the present case, it is evident that the Respondent Corporation complied with the principles of natural justice by issuing notices, affording opportunity of hearing, and conducting inspection in the presence of the Petitioners. The

mere fact that the Petitioners or their counsel did not utilize the opportunity effectively cannot render the proceedings vitiated. Since the demolition order has been passed after due consideration and upon satisfaction that unauthorized construction exists without any sanctioned plan, this Court, while exercising jurisdiction under Article 226, is not inclined to sit in appeal over such findings of fact. Accordingly, WPA 308/2025 stands dismissed.

36. As the Petitioners in WPA 308/2025 have not complied with the directions contained in the order dated 27.11.2024, the Respondent Corporation is directed to implement the said order within a period of four weeks from today. Adequate police protection shall be provided to the municipality, if prayed for.

37. WPA 9471/2025 is also disposed of with the aforesaid direction.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)