

N.22Sl

WPA 3806 of 2025

151/CL

28.11.25

Sl-337

Ct.551

(S.R.)

Shri Debabrata Ghosh

v.

State of West Bengal & Ors.

Mr. Ranajit Chowdhury

Ms. Sampurna Sahu ... for the petitioner.

Ms. Shreya Chatterjee ... for the State.

Mr. Arijit Sarkar

... for the Serampore Municipality.

Mr. Biswajit Maity ... for the respondent no.10.

1. This writ petition alleges inaction on the part of the Chairman, Serampore Municipality in taking steps on the petitioner's complaint of damage being caused to the petitioner's residential property due to leaning of a coconut tree belonging to the respondent no.10 over the said property.
2. Mr. Chowdhury, learned advocate appearing for the petitioner invites the attention of this Court to the representation that has been made to the Chairman, Serampore Municipality and submits that despite the said representation whereby the fact that the coconut tree owned by the respondent no.10 has leaned upon the petitioner's residential house and is damaging the same but has been brought to the notice of the Chairman of Serampore Municipality, no action has been taken by the Chairman.

3. Mr. Chowdhury then places Section 328 of the West Bengal Municipal Act, 1993 and submits that in cases of such nature, it is the duty of the Chairman to require the owner of the tree in question to secure, lop or cut down the tree to prevent any danger therefrom. Mr. Chowdhury also invites the attention of this Court to a report filed by the Sub-inspector of Police, Serampore Police Station in the Court of the learned Special Executive Magistrate, Serampore, Hooghly and asserts that it was indicated in the said report that the tree owned by the respondent no.10 had been causing damage to the property of the petitioner.
4. Mr. Maity, learned advocate appearing for the respondent no.10 submits that he has already taken appropriate steps to secure the tree and that no damage is being caused to the petitioner's property.
5. Learned advocate appearing for the respondent forest authorities hands up to Court a copy of instructions forwarded to her by the Divisional Forest Officer, which reveals that the forest authorities have no jurisdiction to cut down any tree belonging to a person and standing on the said person's property without such person's application therefor. She has also submitted a copy of the instructions dated September 11, 2025 forwarded to her by the Inspector-in-Charge, Serampore Police

Station which reveals that by an order dated June 16, 2023 the learned Special Executive Magistrate had directed the Respondent No. 10 to take appropriate steps so that the tree does not hang dangerously into the petitioner's area. The said instructions are taken on record.

6. Learned advocate appearing for the municipal authorities invites the attention of this Court to a letter dated June 12, 2024 written by the Divisional Forest Officer to the Chief Conservator of Forests and submits that in view of the fact that the forest officers were taking stock of the situation, the municipality did not take any action.
7. Heard the learned advocates appearing for the respective parties and considered the material on record.
8. Section 328 of the West Bengal Municipal Act, 1993 reads as follows: -

Section 328. Precautions in case of dangerous trees. – (1) *If any tree or any branch of a tree or the fruit of any tree overhangs or is likely to fall and thereby endanger any person or any structure, well or tank, the Chairman may by notice require the owner of such tree to secure, lop or cut down the tree to prevent any danger therefrom.*

(2) *If immediate action in respect of any tree or any branch of a tree or the fruit of any tree referred to in Sub-section (1), is necessary, the Chairman shall, before giving such notice or before the period specified in the notice expires, secure, lop or cut down such tree or remove the fruit thereof or fence*

off a part of any street or take such other temporary measures as he may think fit to prevent danger, and the cost of so doing shall be recoverable from the owner of the tree as an arrear of tax under this Act”.

9. A meaningful reading of the said provision would reveal that once a representation is made to the Chairman bringing it to his notice that a tree is likely to cause danger to any person or structure, well or tank, the Chairman is required to issue notice to the owner of the tree calling upon the owner to secure, lop or cut down the tree to prevent any danger therefrom.
10. In the case at hand the petitioner has evidently, brought the fact of the tree leaning on to his premises to the notice of the Chairman, Serampore Municipality by way of his representation dated December 12, 2022. However, no such exercise as required under Section 328(1) of the West Bengal Municipal Act, 1993 appears to have been taken by the Chairman in the case at hand.
11. In such view of the matter, the Chairman Serampore Municipality i.e. the respondent no.4 is directed to consider the petitioner's representation dated December 12, 2022 (Annexure P-11 at pages 92 and 93 of the writ petition) and dispose of the same in accordance with the provisions of Section 328 of the West Bengal Municipal Act, 1993 upon giving an opportunity of hearing to the petitioner

and the respondent no.10 within a period of three weeks from the date of communication of this order.

12. It is made clear that this Court has not gone into the merits of the petitioner's case as regards the hanging/leaning of the tree onto the petitioner's residential premises and this order shall not be treated as a mandate, to cut down the coconut tree.
13. The Chairman shall take an informed decision in the matter strictly in accordance with law and all efforts should be taken to ensure that both the property of the petitioner as well as the coconut tree are safe, if it is found that the petitioner's case meritorious.
14. Since affidavits have not been invited, all the allegations made in the writ petition are deemed not to have been admitted.
15. WPA 3806 of 2025 stands disposed of with the above observations without any order as to costs.
16. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)