

22.04.2025
Sl. No. 11
Ct No. 3
SG

WPA 7796 of 2024

**Prakash Chandra Sarma
Vs
The State of West Bengal & Ors.**

Mr. Prantick Ghosh,
Mr. Prasad Bhattacharyya,
Ms. Shravani Ghosh.
...for the petitioner

Mr. Sankha Subhra Ray.
...for the municipality

1. The petitioner has preferred the present writ petition assailing the inaction on the part of the respondent-municipality in removing the unauthorized construction, which according to the petitioner, stands on a common passage between the properties of the petitioner and that of the private respondent.

2. It is the case of the petitioner that he is the owner of a land situated at premises no. 56/3, whereas the private respondent is the owner of the premises no. 56, both situated at B.M. Banerjee Byelane, P.O. & P.S. Belghoria, Kolkata- 700056. It is stated by the learned counsel for the petitioner that the premises nos. 56 and 56/3, B.M. Banerjee Byelane is intervened by a common passage measuring about 5 feet wide. The same has been unlawfully encroached upon by the private respondent which resulted in a persistent and

substantial obstruction in the ingress and egress to the house of the petitioner. Being aggrieved by such illegal and unauthorized acts of the private respondent the petitioner has preferred a representation before the respondent-municipality. In pursuance of the said representation, the respondent authority had granted an opportunity of personal hearing to both the parties before the Chairman/Councillor of Kamarhati Municipality on 15.06.2023. After the hearing the Chairman had directed the private respondent to demolish the illegal construction on the common passage within 15 days. Despite the issuance of such directive, no substantive steps were taken by the respondent-Municipality to enforce the order and consequently, the unauthorized construction continues to remain unabated.

3. Learned Counsel for the respondent-municipality has tendered a copy of the instruction before this Court wherein it is admitted that despite lapse of long time no action has been taken and has also confirmed that the private respondent has failed to comply with the direction given by the Chairman of the municipality. Subsequently, the Municipality has issued a further notice dated 17.04.2025 to the private respondent, directing the removal of the impugned construction within 7 days from the receipt of this

notice, failing which the municipality shall proceed in accordance with law without any further delay.

4. Having considered the submissions advanced and upon perusal of the materials placed before this Court, it is evident that the respondent- Municipality had indeed arrived at a reasoned conclusion pursuant to the personal hearing and had issued a clear directive to the private respondent.

5. In view of the above, this Court directs that in the event of the failure on the part of the private respondent to comply with the notice dated 17.04.2025 within the stipulated time frame, the respondent- Municipality shall proceed to remove the unauthorized construction from the said common passage, strictly in accordance with law and at the cost of the private respondent. The concerned police station is directed to give necessary police assistance to the respondent-municipality to carry out its statutory duty.

6. With the above directions, the present writ petition is disposed of.

7. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

8. There shall be no order as to costs.

9. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)