

02.05.2025
Sl.No.41(DL)
Ct. No.39
srm/Mithun

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**W.P.A. 10729 of 2024
With
CAN 1 of 2025**

**Amiya Kumar Rakshit
-Vs-
The State of West Bengal & ors.**

Mr. Balai Sahoo
Mr. Aswini Kumar Bera,
Mr. Arijit Bera.

... for the Petitioner.

Mr. Kamalendu Ghosh
Mr. Hemanta Kr. Das

... for the State-respondents.

Ms. Mekhla Sinha

... for the Howrah Zilla Parishad.

Mr. Sandipan Pal

... for the Respondent No.8/The
Pradhan of the Jhorehat Gram
Panchayat

Mr. Partha Sarathi Das,
Ms. Santa Sarkar,
Mr. Debjyoti De,
Shah Md. Umer Edue Sadhique

... for the Respondent Nos.9 to 12.

Re: CAN 1 of 2025

This is an application for recall of order dated 7th
March, 2025.

Mr. Partha Sarathi Das, learned Advocate for the
applicant submits that on 7th March, 2025 direction was
issued upon the private respondent nos.9 to 12 to
demolish the structure on the basis of an undertaking
given by the learned Advocate who appeared for the

private respondents. However, on the said date the learned Advocate who appeared on behalf of respondent Nos.9 to 12 was not authorized to make such submissions before the Court. He seeks for recall of the order dated 7th March, 2025 since such submission made on behalf of respondent Nos.9 to 12 was made without proper authority.

Learned Advocate, Mr. Arup Kumar Roy, who appeared on 7th March, 2025 on behalf of respondent nos.9 to 12 submits that on the assumption that *vakalatnama* will be handed over in course of the day, he made such submission. However, he tenders unconditional apology for the inconvenience caused to the Court.

Learned advocates for the State-respondents, respondent nos.2, 4 & 5 and respondent no.8 leave the matter to the discretion of the Court.

Under the aforesaid circumstances, the order dated 7th March, 2025 is hereby recalled.

CAN 1 of 2025 stands disposed of.

Re: WPA 10729 of 2024

This writ petition has been filed seeking direction upon respondent no.4, District Engineer, Howrah Zilla Parishad for demolition of the illegal construction over Plot No.321, J.L. No.34, Mouza South Kamrangu, Police Station Sankrail, District-Howrah undertaken by the private respondent Nos.9 to 12.

This is third round of litigation.

Previously, the petitioner being aggrieved by illegal and unauthorized construction made by the private respondents filed a writ petition being WPA 22919 of 2019. The said writ petition was disposed of with the following directions :

“In view of the above, the instant writ petition is disposed of by directing the concerned officer of the Howrah Zilla Parishad to take necessary steps to deal with the alleged illegal and unauthorized construction that is being carried out by the private respondents in the aforesaid premises, strictly in accordance with law, after giving an opportunity of hearing to the petitioner and all other necessary parties, within a period of four months from the date of communication of a copy of this order. The said respondent shall intimate the steps taken in the matter to the petitioner and all other necessary parties immediately thereafter.”

Since no order of demolition was passed by the concerned authorities, the petitioner filed a second writ petition being WPA 9848 of 2022 and the Court disposed of the writ petition with the following directions :

“Taking into account such preliminary finding, this writ petition is disposed of with a direction upon the competent authority of the Howrah Zilla Parishad to act and proceed in accordance with law on the basis of the representation filed by the petitioner, by adhering to the following procedure.

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner, the respondent nos.9 to 11 their mother and all other interested parties. An advance notice of the inspection shall be served upon the petitioner and the respondent nos.9 to 11 and interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.*
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing, the competent authority of the Howrah Zilla Parishad may take such interim measures by stopping such construction.*
- c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.*
- d) Such report shall be handed over to the parties. Right, title, possession of the parties and boundary dispute, shall not*

be decided by the competent authority of the Howrah Zilla Parishad.

- e) A hearing shall be given to the petitioner and the respondent nos.9 to 11. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority of the Howrah Zilla Parishad. All points raised by either party, will be decided.*
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in accordance with law.”*

Learned Advocate for the petitioner contends that the Howrah Zilla Parishad has not yet demolished the structures despite there being orders passed by the District Engineer, Howrah Zilla Parishad.

Ms. Mekhla Sinha, learned Advocate for the Howrah Zilla Parishad submits that the letter dated 4th December, 2023 was issued to the private respondent Nos.9 to 12 for demolition of the structure within four weeks from date of the letter, however, till date private respondents have not demolished structure.

Mr. Partha Sarathi Das, learned Advocate representing the private respondent Nos.9 to 12 submits that the structure is old one and only repairing works have been undertaken since 2002. There is no requirement of any sanctioned building plan in respect of the construction undertaken by the private respondents. He seeks to file affidavit-in-opposition.

On the contrary, learned advocate for the petitioner submits that in the year 2001, the vendors of the petitioner obtained a sanctioned building plan from Howrah Zilla Parishad and as such it cannot be said that

there is no requirement of building plan for the construction undertaken by the private respondents in the year in 2002. He files a copy of sanctioned building plan, which is taken on record.

It is found that previously with the similar allegation of unauthorized construction by the private respondents the petitioner filed a writ petition being WPA 22919 of 2019. The private respondents, despite service, did not appear in the said writ petition. In the subsequent writ petition being WPA 9848 of 2022 filed by the petitioner it is found that the private respondents were served with a notice of the writ petition, however, they chose not to appear before the Court. In WPA 9848 of 2022, the Court issued the aforementioned direction after considering the report of District Engineer and inspection held by Assistant Engineer of Howrah Zilla Parishad, which revealed that some construction has been made on Plot No.321 of Mouza-Kamrangu, J.L. No.34 without any sanction. As per directions issued by the Court in the earlier round of litigations, the order dated 31st August, 2023 has been passed by the District Engineer, Howrah Zilla Parishad.

From the order of the District Engineer, Howrah Zilla Parishad before whom the private respondents appeared no such submissions have been advanced before the authority that there is no requirement under law to have a sanctioned building plan or the work of construction pertains to repairing works only rather it

was admitted that the building has no sanction plan. The District Engineer, Howrah Zilla Parishad after hearing the parties as well as considering inspection report of the Assistant Engineer, Howrah Zilla Parishad found that the entire construction of the building of the private respondents exist without any sanctioned plan and they were directed to demolish the building that stands upon LR Plot No.321, J.L. No.34 of Mouza-Kamrangu, Distict-Howrah within eight weeks from date of receipt of the order at their own cost. Admittedly, such construction has not been demolished by the private respondents. Needless to mention that the aforesaid order of demolition passed by District Engineer, Howrah Zilla Parishad has not been challenged by the private respondents.

The copy of sanctioned building plan of the vendors of the petitioner shows that the same has been issued in the year 2001 in favour of the vendors of the petitioner by the Howrah Zilla Parishad. Therefore, the argument of the private respondents that there was no requirement of sanctioned building plan for construction undertaken in the year 2002 does not sand to reason.

Accordingly, respondent no.4, District Engineer, Howrah Zilla Parishad is directed to take appropriate steps for demolition of the structure in terms of its order dated 31st August, 2023 within a period of four weeks from date of communication of this order.

The cost of demolition shall be recovered by Howrah Zilla Parishad from the private respondent Nos.9 to 12 in accordance with law.

Petitioner is directed to communicate this order to respondent no.4, District Engineer, Howrah Zilla Parishad for necessary compliance.

With the aforesaid directions, the writ petition being **WPA 10729 of 2024** stands disposed of.

Interim order, if any, stands vacated.

All connected applications, if any, stand disposed of.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

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

(Bivas Pattanayak, J.)