

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 13039 of 2023

Ashok Roy Chowdhury & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Pratik Dhar, Sr. Adv.
Mr. S. Halder,
Mr. Snehal Sinha.

For the Respondents : Mr. Srinath Singha.

For the Panihati Municipality : Mr. Soumyajit Bhatta.

For the Respondent Nos. 16 & 18 : Mr. Srijib Chakraborty,
Mr. Aniruddha Singh.

Judgment reserved on : 27.08.2025

Judgment delivered on : 23.09.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging the regularization of alleged illegal construction, by the Panihati Municipality, on the basis of an impugned reasoned order vide memo no. PM/LC/2022-23/25/1 dated 14.03.2023 and order dated 13.03.2023, issued by the municipality, vide which the municipality has regularized the illegal 4th floor construction and deviation in the entire building.

2. The petitioner has further prayed for demolition of the illegal construction beyond the G+3 and prayed that constructions should be made only in accordance with rule 50 (2) (a) of the West Bengal Municipality (Building) Rules, 2007 and other reliefs.
3. In course of hearing, a report as called for on an inspection conducted on 06.02.2025, in presence of a Sub Assistant Engineer and other municipality staff of Panihati Municipality, was placed before this Court.
4. The said report shows that the previous building plan sanction was numbered 321 dated 24.03.2021 for a G+3 storied building. The said report is as follows:-

“1. Previous Sanction building plan No-321 dated 24.03.2021 for (G+3) storied.

2. Existing road width 4180mm (av).

3. A 750 mm wide land gift permitted for widening of road width at the time of sanction.

Observation :-

1. Existing building status (G+4) storied, after demolition of one floor of (G+5) storied.

2. One septic tank construction in front of building which situated in land gift portion.

3. 750 mm land gift not found now.”

5. Affidavits are on record. Parties have filed several judgments in support of their case along with written notes in course of hearing.
6. Report in the form of affidavit has been filed on behalf of Panihati Municipality. It has been stated therein that the order of **regularization as per revised sanction building plan** in respect of 4th floor construction **is pending**.
7. An exception has been filed on behalf of respondent nos. 16 and 18 to the said report. It is the contention of the said private respondents that the petitioner has filed the writ application on a mis-conceived notion that, it is a case of **regularization** and the petitioner has prayed for setting aside of the said order regularizing the illegal 4th floor construction and deviation in the entire building.
8. It is the case of the private respondents that the 4th floor and other improvements were not by way of **regularization** but was done on the basis of a **revised building plan**.
9. It is further stated that there has been no challenge to the said **revised building plan** and as there is no such case in the writ application, the writ application is liable to be dismissed.
10. It is the specific case of the private respondents that the building, G4 standing on premises No. 86, School Road, Ward No. 17, within Panihati Municipality, is neither unauthorized

nor illegal and **has been constructed in terms of the sanctioned building plan dated 24.03.2021 and Revised Building Plan which was submitted on 31.01.2022.**

11. It is further stated that the petitioner has obtained one structural stability certificate of the said building from Mr. Reetabrata Ghosh, a certified Chartered Engineer, B. Tech Civil, AMIE, empanelled structural engineer Howrah, Bally and Baranagar Municipality. In terms of the said detailed report submitted by the Mr. Reetabrata Ghosh, the chartered engineer, the building is structurally stable.
12. It is stated by the private respondents that they and the other flat owners should not be made to suffer when they have obtained a lawful revised building plan. This report as to the structural stability of the G+4 building has been annexed to the exception along with an extensive report.
13. Learned senior counsel appearing for the petitioner submits that admittedly the initial sanction was only in respect of G+3 building and the construction of the 4th floor and the community hall above the 4th floor was unauthorized and has to be demolished.
14. Written notes filed by the respondent nos. 7 to 12 and 13, the Panihati Municipality has been filed. A reasoned order dated 14.03.2023 as passed by the Chairman Panihati Municipality

has also been annexed. The said respondents have stated that the writ application is not maintainable, as an order under Section 218(1) of the West Bengal Municipal Act, 1993 is **appealable** before the appropriate Civil Court having territorial jurisdiction. It is the Court of Civil Judge, Jr. Divn. Barrackpore, who decides Municipal Appeals.

15. It is the further argument of the petitioner that the Municipal authorities cannot legalize unauthorized construction by way of a reasoned order.
16. Both the parties have relied upon the judgment of **Allahabad University etc. versus Geetanjali Tiwari (Pandey) and Ors., 2024 SCC OnLine SC 3776**, wherein the Supreme Court held:-

“31. The necessity for appropriate pleadings in a writ petition cannot be overemphasized, particularly when such petitions are mainly decided on affidavit evidence and not witness action.

32. Without a doubt, a court cannot in the absence of the requisite pleadings grant relief claimed by a party. We first propose to notice two decisions which arose out of pure civil proceedings and then two decisions arising out of writ proceedings.

33. In Pt. Shamboo Nath Tikoo v. S. Gian Singh, this Court held as follows:

“20. No doubt, the finding recorded by the learned third Judge (Farooqi, J.) that two rooms of Dharamshalla had been granted by Maharaja Partap Singh in favour of the Sikh community-defendants, accords with the finding of another learned Judge (Jalal-ud-Din, J.). But, that finding, in our view, becomes wholly unsustainable being altogether a new case made out for the defendants by him, in

that, such case is not in any way traceable to the pleas of defence of the defendants set out in their written statements against their ejectment from the said two rooms.”

34. *Bachhaj Nahar v. Nilima Mandal* is a decision where one finds a neat discussion on the object and purpose of pleadings. The relevant passages read as follows:

“12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such

a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.”

35. *In Rani Laxmibai Kshetriya Gramin Bank v. Chand Behari Kapoor, this Court noted the settled legal position and interfered with the impugned decision by ruling as follows:*

“8. ... It is too well settled that the petitioner who approaches the court invoking the extraordinary jurisdiction of the court under Article 226 must fully aver and establish his rights flowing from the bundle of facts thereby requiring the respondent to indicate its stand either by denial or by positive assertions. But in the absence of any averments in the writ petition or even in the rejoinder-affidavit, it is not permissible for a court to arrive at a conclusion on a factual position merely on the basis of submissions made in the course of hearing. The High Court, therefore, in our view committed serious error in coming to the conclusion that there existed vacancies in the post of Field Supervisor on the materials produced before it. In fact the respondents herein who were the petitioners in the High Court had not produced any material in support of their stand that vacancies existed and yet appointments have not been made. We are of the considered opinion that the conclusion of the High Court that there existed vacancies is unsustainable in law and is accordingly set aside.”

(emphasis supplied)

36. *The difference in pleading in respect of civil proceedings and a writ petition was succinctly noticed in Bharat Singh v. State of Haryana and expressed in the following words:*

“13. ..., when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not

entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. ...”

37. Based on the aforesaid authorities, we hold that while deciding a writ petition on the basis of affidavits, the writ court's enquiry ought to be restricted to the case pleaded by the parties and the evidence that they have placed on record as part of the writ petition or the counter/reply affidavit, as the case may be. Findings of the court have to be based on the pleadings and the evidence produced before it by the parties. It is well-nigh impermissible for the writ court to conjecture and surmise and make out a third case, not pleaded by the parties, based on arguments advanced in course of hearing.”

17. Vide the reasoned order dated 13.03.2023, the Chairman of Panihati Municipality as held as follows:-

“Dated 13/03/2023

*Perused the above records. It is found that a building plan (G+3) was sanctioned by the Municipality vide sanction no. 321 dated 24/03/2021 as per West Bengal Municipal Building Rules, 2007. Subsequently, Owner/ developer submitted a **revised building plan for further sanction of fourth floor constructions and also for regularization of deviation from Ground to third floor**. The Sub-Assistant Engineer, PWD, Panihati Municipality made enquiry in the spot and examined the said revised building plan and note, sent the file.*

It is also found from the enquiry report of the Sub-Assistant Engineer, PWD that the developer. M/s. Apace Constructions made construction on the fourth floor roof, which is totally illegal and unauthorized beyond the scope to accord approval.

*Accordingly it is ordered that **the revised building plan in respect of the fourth floor constructions and also the portion of deviation in respect of Ground Floor to third floor, in Premises No. 86, School Road, Ward No.17 within Panihati Municipality, P.S. Khardah, Kolkata-700110 may be accorded and/or regularized subject to payment of necessary charges and fines and the developer and/or owners in respect of Premises No. 86. School Road, Ward No.17 within Panihati Municipality, P.S. Khardah, Kolkata-700110 are directed to demolish the constructions as made on the fourth floor roof as evident from the report of the Sub-Assistant Engineer, PWD, Panihati Municipality immediately within 3 weeks, failing which necessary steps will be taken to demolish the said unauthorized constructions in premises No. 86, School Road, Ward No.17 within Panihati Municipality, P.S. Khardah, Kolkata-700110.***

Hence, the above matter is thus disposed of.

**Sd/-
Chairman,
Panihati Municipality”**

18. So this case is not a case of regularization of alleged construction but that of making construction on obtaining sanction of a revised building plan.

19. The West Bengal Municipal Building Rules, 2007, defines Rules:-

a. Rule 2(1)(2)- "addition to a building" means addition to the cubic content or to the floor area of a building.

b. Rule 2(1)(6)- "alteration" means change from one occupancy to another, or a structural change, such as an addition to the area or height, or the removal of part of a building, or any change to the structure, such as, the construction of, cutting into or removal of any wall, partition, column, beam, joist, floor or other support, or a change to the fixture or equipment.

c. Rule 2(1)(13)- "building plan" means a plan accompanying a notice for sanction, or provisional sanction for erection, or re-erection, or addition to, or alteration of, a building.

d. Rule B 11- provides for submission of Building Plan where an application to the Board of Councillors with a building plan for permission; to erect a new building or to make addition or alteration to a building.

- e. **Rule 21 & 22** provides for sanction of Building and permission to execute work and Building permit (sanction for building construction plan).
 - f. **Rule 32** provides for demolition of unauthorised construction.
 - g. Chapter XIV, of the West Bengal Municipal Act, 1993 provides for matters relating to Buildings.
- 20.** The power to permit construction as per rules (sanction) and the power to demolish unauthorised construction (without permission or sanction both lies with the authorities under the Act.
- 21. Section 203** provides for approval of building sites and sanction of plan for erection of buildings.
- 22. Section 207** provides for sanction of building plan and permission to execute.
- 23. Section 208** sanction to be deemed to have been granted if the Board of Councillors defaults in according sanction.
- 24. In the present case** the Board of Councillors led by the Chairman of Panihati Municipality have accorded sanction of revised building plan and also regularization of certain portion of the building as per their rules vide their reasoned order cum resolution dated 13.03.2023, on an inspection/spot inquiry and

examination of the revised plan etc made by the Sub-Assistant Engineer, PWD, Panihati Municipality.

25. As such all rules and regulations were followed by the authorities as stated in report.
26. The power to sanction revised building plan and regularize certain portions lies, with the Municipality and such acts are provided by the legislature, which empowers the authorities to act in accordance with law.
27. Herein, the authorities themselves have stated that the revised building plan was duly submitted, scrutinized and sanctioned as per law along with regularization of certain additions/alteration made to the initial building plan also duly sanctioned.
28. **The authorities were within their power to do so and such acts at this stage cannot be questioned as this is not a case of construction without sanction.**
29. Some portion of the building has also been demolished on the interference of this Court, which was done without sanction and the authority had then turned a blind eye.
30. **But the present construction is by way of a valid sanction and thus prima facie authorized.**
31. **Accordingly, the writ petition at this stage, having no merit stands dismissed.**

- 32.** Connected application, if any, stands disposed of.
- 33.** Interim order, if any, stands vacated.
- 34.** Urgent Photostat certified copy of this Judgment, if applied for, be given to the learned counsel for the parties on usual undertakings.

[Shampa Dutt (Paul), J.]