

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

**WPA 15098 of 2005
With
CAN 2 of 2007 (CAN 8079 of 2007)
CAN 3 of 2007 (CAN 9378 of 2007)**

Smt. Joyshree Dutta & Ors.

-Vs.-

The State of West Bengal & Ors.

For the Petitioners : Mr. Ashoke Banerjee, Sr. Adv.,
Mr. Soumyajyoti Sen,
Ms. Indrani Nandi.

For Special Officer : Mr. S. R. Kundu.

For Bankura Municipality : Mr. Samiran Mandal,
Mr. Abhinaba Dan.

For private respondents : Mr. Ashok Biswas,
Mr. Sibasis Ghosh,
Mr. Dwarika Nath Mukherjee.

Heard on : 13.02.2025

Judgment on : 19.03.2025

Partha Sarathi Chatterjee, J.:-

Prelude:

1. A legal wrangle within a family over the enjoyment of and construction on a building inherited from their predecessor-in-interest has entered the writ jurisdiction of this Court through this writ petition initially filed by Mira Dutta, the mother of the private respondents. During the pendency of the writ petition, Mira Dutta passed away. Her married daughters then stepped into their mother's shoes to continue espousing the cause against the private respondents and Municipal authorities. The primary contention raised in this writ petition is that the Municipal authority acted illegally by granting sanction to a building plan based on an application submitted by the private respondents that did not contain the signature of Mira Dutta, one of the co-sharers of the building.

Facts:

2. Before addressing the contentious issue, it would be appropriate to outline the key facts, as set forth in the pleadings of the parties, which are as follows:
 - i) Mr. Bimalendu Dutta, since deceased, husband of the original petitioner, Mira Dutta, and father of the private respondents and substituted petitioners, by virtue of a registered deed of gift *vide* no. 11765 executed in 1972, conveyed a piece of land comprising an area of 11 Cottah 5 Chitak and 19 sq. ft. (hereinafter referred to as 'the land') in favour of Mira Dutta and the private respondents, namely Debabrata and Satyabrata.

- ii) Subsequently, a one-story building with commercial space and shop rooms was constructed on the land, and tenants were inducted into the shop rooms to run their respective businesses, paying rent to Mira Dutta and the private respondents.
- iii) It was alleged in the writ petition that, after the execution of the deed, the private respondents jointly began subjecting their parents, Mr. Dutta and Mrs. Dutta, to mental torture. Mr. Dutta passed away in 2000. Following his death, the level of torture inflicted upon Mira Dutta escalated and eventually reached to the point of physical abuse. The private respondents also forced Mira Dutta to leave her residence. Faced with this situation, Mira Dutta was compelled to seek shelter at her daughter's residence in Bankura in April 2001. The private respondents also stopped paying her share of the rent collected from the tenants of the building.
- iv) By a communication dated 19.11.2001 addressed to Respondent No. 3, Mira Dutta informed the municipal authority that she held a 1/3rd share in the commercial building and, with the intention of paying her 1/3rd share of the municipal taxes, requested details of the arrears. However, her letter received no response. Consequently, she reiterated her request in another communication dated 18.02.2003 addressed to the Chairman of the Municipality, and undertook to pay her share of the tax, but to no avail. She renewed her requests through similar communications dated 4.4.2003 and 7.7.2003, but these communications received the same treatment as the previous communications.

- v) In 2005, Mira Dutta learned that illegal construction was taking place on the first floor of the building without her consent. Upon discovering this, she immediately wrote a letter dated 11.03.2005 to Respondent No. 3, informing them of the situation and inquiring how the plan had been sanctioned to allow the elevation of the building without her consent. The municipal authority received the letter on 14.03.2005. However, they did not respond to it, nor did they take any effective steps to stop the construction. These events prompted Mrs. Dutta to file this writ petition, seeking a writ of mandamus for the demolition of the elevated portion of the building, which she deemed illegal, upon completion of an inquiry and proper inspection by the municipal authority.
- vi) During the pendency of this writ petition, Mira Dutta passed away on 24.10.2006. Her three daughters were substituted in her place and continued to pursue the legal battle. Thus, the three sons and three daughters of Mr. and Mrs. Dutta are now locked in a legal dispute over the elevated portion of the building on the ground floor.
- vii) The record reveals that two supplementary affidavits were filed on behalf of the substituted petitioners. One supplementary affidavit was filed to bring the fact on record that, based on an application from the private respondents, the names of the two sons of Mira Dutta were mutated in the municipal records as assesses of the building, and as such a prayer was made by the present petitioners before the Municipal authority to cancel such mutation. The other affidavit was filed to contend that, initially, a building plan containing the signatures of all

co-sharers, including Mira Dutta, was submitted to the Municipality and was sanctioned. Based on this sanctioned plan, a one-storied building with 33 (thirty-three) rooms was constructed, 28 of which have been allotted to various tenants. On 23.11.2001, private respondents Nos. 5 and 6 submitted a sanctioned plan for construction on the ground floor of the building without obtaining any signature or consent from Mira Dutta, one of the co-sharers. This plan was sanctioned illegally, and based on it, the further construction carried out on the ground floor of the building is also illegal.

viii) Upon arriving at a finding that the writ petition needs to be decided after exchange of affidavits, a coordinate Bench of this Court directed the respondents to file affidavits in response to the writ petition with liberty to petitioners to respond to those affidavits. Subsequently, similar direction to file affidavits in response of the supplementary affidavits was also given. Record reveals that separate affidavits-in-opposition dealing with the averments made in the writ petition as well as the petitioners' supplementary affidavit, were filed on behalf of the private respondents. The Municipality filed their response to the writ petition in form of affidavit.

ix) The crux of the defence put forth by the private respondents in their affidavits is that Mira Dutta voluntarily left her residence with her belongings. The disputes involved in the writ petition are based on disputed questions of fact and civil in nature and as such, the writ petition does not lie, and the intervention of the competent civil court is required for adjudication of such disputes. It is also contended that one

of Mira Dutta's sons-in-law, namely, Somnath Sarkar, is responsible for the entire dispute. The largest shop room was assessed and mutated in the name of Mira Dutta, and holding no. 4/1/c, Idga Mahalla, was allotted to her. The remaining shop rooms, as detailed in paragraph 12 of the affidavit-in-opposition filed by respondent no. 5, were mutated in the names of her two sons, Debabrata and Satyabrata Dutta, private respondent nos. 5 and 6. The construction on the ground floor was carried out in accordance with the plan sanctioned by the Municipality, and there was no violation of the provisions of Section 210 of the West Bengal Municipal Act, 1993.

x) From the documents relied upon by the parties, it transpired that one of Mira Dutta's daughters, namely, Manjushree Sarkar, initiated probate proceedings vide Act-XXXIX Case No. 11 of 2007 before the District Delegate at Serampore, Hooghly, claiming that, prior to her demise, Mira Dutta had executed a registered will dated 19.05.2004, bequeathing her share in the building, along with her share of other properties, in favour of her three daughters, the present petitioners. Meanwhile, another daughter of Mira Dutta, namely, Gitashree Sarkar, instituted a partition suit, being T.S. 99 of 2006, before the Court of the Learned Civil Judge, Senior Division, Bankura, seeking partition of the building and other properties left by Mr. Dutta.

xi) The specific defence taken by the municipality in their affidavit-in-opposition is that, in 1979, a proposed plan for a four-storied building, containing the signatures of all co-sharers, including Mira Dutta, was submitted to the municipality. On 16.05.1979, the plan was sanctioned.

However, based on this plan, only a one-storied building was constructed. Subsequently, upon mutual understanding, Mira, Debabrata, and Satyabrata Dutta applied for the assessment and mutation of their names under different holdings. Based on this application, holding no. 4/1/C, Idga Mahalla, was allotted to Mira, and she paid the municipal taxes up to 11.04.2004, while holding nos. 4/1/A, 4/1/B, 4/1/D, 4/1/E, and 4/1/F were allotted to Debabrata and Satyabrata, who are paying municipal taxes accordingly.

xii) The sanctioned plan expired. Subsequently, Debabrata and Satyabrata applied for additional construction on the first floor of the building, and the same was sanctioned by the municipality in good faith on 17.04.2002. The municipality claimed that there was no violation of the West Bengal Municipal Act, 1973, and that it had no ill motive in granting sanction for the construction of the first floor. The death of Mira Dutta had not been brought to the notice of the municipality. It was asserted that the municipality had no involvement in the ongoing dispute between the brothers and sisters of the family that owns the building. The record reveals that, in a subsequent affidavit-in-opposition, the municipality averred that on 04.04.2005, the additional plan for construction of the first floor was sanctioned.

xiii) In their affidavit-in-reply to the affidavits filed on behalf of the municipality, the petitioners averred that Mira's communications dated 19.11.2001, 1.10.2002 and 18.2.2003 suggests that Mira was not aware of the fact of allotment of separate holding number in her favour. A question was posited how the municipality allotted only one shop room

to a co-sharer who was owner of 1/3rd share of the entire building. It was contended that Mira Dutta had never made payment of municipal tax in her name. It was claimed since 2000, Mira Dutta started leaving in the house of petitioner no. 1. It was asserted therein that subsequent plan was sanctioned illegally to permit Debabrata and Satyabrata to make further construction on the 1st floor.

- xiv) In another affidavit-in-reply, annexing a letter from Mr. Dutta and a copy of an order passed by a coordinate Bench of this Court in W.P. No. 9098(W) of 2005 therewith, it was contended that Debabrata and Satyabrata subjected their parents to torture and abuse, exerting pressure on them to transfer the land and building in their favour. Mira was compelled to seek the intervention of the local police to protect herself from their torture and neglect.
- xv) In another affidavit filed on behalf of the present petitioners, it was contended that Priyabrata Dutta was improperly joined in this writ petition, as he has no share in the land or the building standing thereon.

Case record:

- 3. The record shows that by an order dated 7.6.2006, passed in the present writ petition, a coordinate Bench of this Court formed a prima facie view that the sanction for the plan was granted to the private respondents for raising construction illegally. As a result, the Bench restrained the private respondents from inducting any tenants into the property in question or from creating any third-party interest therein. This order has not been challenged by either the private respondents or the municipality.

4. The record further shows that this Court, on several occasions, attempted to reconcile the disputes, but to no avail. By an order dated 4.7.2006, the Bench appointed learned Advocate Mr. Satya Ranjan Kundu as a Special Officer to take possession of the disputed construction from the private respondents and to retain it until further orders of this Court.
5. The order dated 15.10.2007, passed in this writ petition, indicates that the Special Officer was authorized to collect rent from the tenants and deposit the rents into a Savings Bank Account to be opened in his name in any Nationalized Bank. The record also reveals that, on several occasions, this Court had to issue orders to ensure and enforce the attendance of the Chairman and a representative of the Municipality in the proceedings. The Special Officer was also obstructed by the parties in executing the orders of this Court, which necessitated issuing directions to the jurisdictional police to extend assistance to him.
6. Pursuant to the order dated 19.08.2024 passed in this writ petition, the learned Special Officer submitted a report which stated that shop room nos. 4,5 19, 20, 30, 32 had been either sub-let or leased out by the original tenants during pendency of the writ petition. The tenants of shop room no. 2,3 and 11 and 12 had never paid any rent to him. The 11 tenants detailed in the report are defaulters for a long time. Only 5 tenants pay rent regularly. He has collected rent of Rs. 16,71,016.31/- so far which has been kept in the account opened by him. He paid Rs. 15, 734/- to the fabricator for installation of a shutter door in the said building. Some of the tenants told him that respondent no.5,6 and 7 organised dance classes in the building. However, on

the date of his inspection i.e. on 26.08.2024, he did not find anyone to hold dance class.

7. Satyabrata, private respondent no. 6 filed an exception to the report of the learned Special Officer which denies that any shop room was sub-let to anyone and the private respondent ever held dance class in the building.

Arguments:

8. Mr. Banerjee, learned senior advocate representing the petitioners, contended that the earlier building plan contained the signature of Mira Dutta, but it had expired. Subsequently, through fraudulent means, the private respondents submitted another building plan for construction on the ground floor of the building without obtaining the signature and/or consent of Mira Dutta. He argued that the subsequent building plan was sanctioned illegally, and as such, the construction based on that sanctioned plan must be deemed illegal. He further submitted that the municipality could not justify its actions in granting sanction to the subsequent building plan. He also asserted that the mutation made in the assessment record of the municipality was also illegal.
9. He sought to impress upon the Court that the private respondents, in an attempt to grab the property, inflicted both mental and physical torture upon their parents. As a result, their mother was compelled to file a writ petition seeking police assistance to protect herself from their abuse. Shifting back to the issue of construction, he argued that, given the clear evidence that the subsequent plan was sanctioned illegally, the only appropriate direction that can be issued is an order for the demolition of the portion of the construction unlawfully carried out by the private respondents.

10. Mr. Biswas, learned advocate representing the private respondents, took exception to Mr. Banerjee's argument that the private respondents had practiced fraud in obtaining sanction for the subsequent building plan. He argued that the issues arose when the daughters secured custody of their mother, Mira Dutta. He further contended that in the original building plan, which was submitted for the construction of a four-storied building, Mira Dutta had signed, but the time stipulated for completing the construction had expired. As a result, a new building plan was submitted to complete the construction of the first floor. He asserted that the construction was carried out in accordance with the specifications of the sanctioned building plan and that there was no deviation from the plan. Therefore, it would not be appropriate to label the construction as illegal. In support of his argument, he cited an unreported decision rendered by a coordinate Bench of this Court in W.P. No. 25436 (W) of 2010.
11. He further argued that two civil suits are currently pending regarding the property, and as such, it would not be appropriate to interfere in this dispute, which, according to him, is a civil matter.
12. Mr. Mandal, learned advocate representing the Municipality, submitted that the subsequent building plan was mistakenly sanctioned. He further explained that while the earlier building plan contained the signature of Mira Dutta, the subsequent plan was submitted without her signature. He attributed this omission to an unintentional oversight on the part of the Municipality. Mr. Mandal argued that the subsequent building plan was sanctioned in good faith, and there was no ill-motive behind granting the sanction.

13. Mr. Kundu, the learned Special Officer, submitted that in compliance with the Court's orders, he has submitted a report detailing the current condition of the tenanted building and the status of payment of rents by the tenants. Mr. Kundu submitted that he has faced obstruction on several occasions in carrying out the directions of this Court. He requested that appropriate directions be issued for police assistance to enable him to carry out the Court's orders without further obstruction. He also seeks a decision regarding his remuneration and the fate of his appointment.
14. In response to the submission of Mr. Biswas, Mr. Banerjee, relying on the decision reported in *AIR 2008 SC 680 (State of Rajasthan vs. Ganesh Lal)*, argued that the decision cited by Mr. Biswas did not set any precedent and, therefore, holds no binding authority.

Analysis:

15. A summary of the admitted facts reveals that in 1979, a proposed plan for a four-storied building, bearing the signatures of all co-sharers, including Mira Dutta, was submitted to the municipality. The plan was sanctioned on 16.05.1979. However, based on this plan, only a one-storied building was constructed. Since the construction was not completed within the time stipulated in the plan, the sanctioned plan expired. Subsequently, Debabrata and Satyabrata applied for additional construction on the first floor, which was sanctioned by the municipality on 17.04.2002.
16. The subsequent sanctioned building plan, annexed to the supplementary affidavit of the petitioners dated 2.1.2018, indicates that one portion of the plan described it as an application for the addition and alteration of the proposed two-storied mercantile building (retail) of Debabrata and Satyabrata

Dutta. Another portion referred to it as the plan for proposed addition of the first floor at holding no. 4/1. The plan was signed only by Debabrata and Satyabrata Dutta. However, no materials have been presented to show that the subsequent building plan, submitted in 2001 i.e. approximately 22 or 23 years after the submission of the original plan, was intended to seek an extension of time to complete the construction of the first floor as per the building plan sanctioned in 1979. Therefore, from every angle, it is evident that the subsequent building plan is a completely new plan, having no connection with the previous one.

17. A conjoint reading of Rules 4(1) and 4(2) of the West Bengal Municipal Building Rules, 2007, mandates that the application for the construction of a building or for the addition or alteration of a building must be submitted in Form-A and Form-B, as the case may be, which are integral parts of the statute. It is well-established that, as per the settled principles of law, if the law requires something to be done in a particular manner, it must be done in that manner or not at all. Admittedly, both forms require the signature of the owners. Form-B specifically mandates the inclusion of the names and particulars of the owners, as well as details of occupancy.
18. In its affidavit, the municipality claimed that, based on mutual understanding between Mira, Debabrata, and Satyabrata, all of them applied for the mutation of their names in the municipality's assessment record under different holdings. However, no documentary evidence has been presented to support this claim. The municipality defended the subsequent plan contending that it was sanctioned due to a mistake and an unintentional

oversight regarding the absence of Mira Dutta's signature. It was asserted that the plan was sanctioned in good faith.

19. It is surprising to note that a municipality, who holds status of 'State' within the meaning of Article 12 of the Constitution of India has acted in this fashion. It has unlawfully shown favour to a group of two litigating groups. It is not clear before this Court, how a municipality allotted different holding numbers to Mira Dutta and the private respondent nos. 5 and 6. It is also unclear how a municipality, who is entrusted with the various sorts of responsible jobs of the State can act in such manner.
20. The term "holding," as defined in Section 2(24) of the West Bengal Municipal Act, 1993, refers to land held under a single title or agreement, enclosed by a single set of boundaries. However, if two or more adjacent holdings together form part of a dwelling house, factory, warehouse, or business premises, these holdings will be treated as a single holding for the purposes of the Act. The Explanation appended to the provision clarifies that holdings separated by a street or any other means of communication will still be considered adjacent for the purposes of this provision.
21. Section 108(1) of the Act of 1993 defines the "Unit of Assessment," stating that each building, along with its site and the land attached to it, shall be assessed as a single unit. However, if parts of a building, along with the attached land, are vertically divided and independently owned in a manner that allows for separate enjoyment, they may be assessed individually. On the other hand, Section 108(2) specifies that all lands or buildings that are contiguous, located within the same curtilage, or share the same foundation,

and are owned by the same person or co-owners as undivided property, shall be considered a single unit for assessment purposes under this Act.

22. Admittedly, the building is situated on the same foundation and is owned by its co-owners as undivided property. However, different holding numbers have been assigned, and the property is being assessed separately. The municipality has failed to provide a satisfactory explanation for why the land and the building, which have not yet been partitioned, are being assessed separately. Though it was claimed by the Municipality that it was done since the co-owners arrived at mutual understanding. However, no document has been presented in support of this claim.
23. Notably, the building plan, which was submitted only by Debabrata and Satyabrata for construction on the ground floor, was sanctioned, and based on this approved plan, the first floor of the building has been constructed.
24. The provisions of Section 217 of the Act of 1993 which deal with the power of the Board of Councillors to cancel permission on the ground of material misrepresentation by applicant mandates that if, at any time, sanction or provisional sanction to erect any building has been given and the Board of Councillors is satisfied that such sanction was given in consequence of any material misrepresentation or fraudulent statement contained in the plans, elevation sections or specifications or land or any material particulars submitted in respect of such building, it may cancel such sanction, and any work done thereunder shall be deemed to have been done without sanction.
25. The legislature has consciously used the terms “material misrepresentation” and “fraudulent statement,” but these expressions have not been explicitly defined in the Act. However, the term "misrepresentation"

is defined in Section 18 of The Indian Contract Act, 1872 (the "Act of 1872"). The word "representation" refers to a statement made by a representor to a representee. Misrepresentation, in this context, refers to a false statement of fact. This misrepresentation can occur either fraudulently, carelessly, or innocently, and it constitutes a false representation of facts. A statement that is false and made to induce another party to make a mistaken decision is considered a misrepresentation.

26. When the misrepresentation is wilfully made with knowledge of its falsity and with the intent to deceive or mislead, it qualifies as a fraudulent misrepresentation. The term "material" is used to narrow the scope of misrepresentation, meaning that not every false representation will be treated as material under this provision. Only those misrepresentations that are material which significantly affect the subject matter or the decision of the party relying on the representation will be acknowledged and acted upon.
27. The Forms A and B, as appended to the Rules of 2007, require the disclosure of the names and signatures of all owners on the application for building plan sanction. This indicates that the legislature considers the names and signatures of all co-owners as necessary for making a decision on the application. Therefore, such information and signatures are material. In the case of the erection, alteration, or addition to any existing building, the consent of all co-owners is required. Consequently, the signatures of all co-owners on the application signify their consent to the proposed changes.
28. Rule 11 of the Building Rules, 2007 requires the applicant(s) to provide a declaration that they will comply with the building rules. This requirement indicates that the applicant(s) will be held responsible for any contravention

of the rules, and the municipality may require them to indemnify it if the situation demands. Therefore, the disclosure of the names or particulars of all co-owners, as well as their signatures on the application, is a mandatory and essential requirement.

29. The maxim "*Supressio veri, expressio falsi*" means that the suppression of the truth is equivalent to the expression of falsehood. The term "*Supressio veri*" refers to the withholding of information. It is important to note that when there is an obligation to disclose information, a failure to do so or remaining silent constitutes the suppression of a fact. Similarly, when there is a duty to disclose certain information, the non-disclosure of that information is considered a suppression of fact.
30. The word 'fraud' is defined in Section 17 of the Indian Contract Act, 1872, and includes: i) the suggestion, as a fact, of something that is not true by someone who does not believe it to be true; ii) the active concealment of a fact by someone who knows or believes the fact; iii) making a promise without any intention of performing it; iv) any other act intended to deceive; and v) any act or omission specifically declared by law to be fraudulent. If a false statement or misrepresentation is made to induce someone to act upon it to acquire a wrongful gain, it constitutes fraud. A false statement made with the intent to acquire wrongful gain and to induce someone to make a mistake is considered a 'fraudulent statement. Therefore, the active concealment of fact is also a fraud.
31. Therefore, based on the discussion, the inevitable conclusion is that if two co-owners, fully aware that the building belongs to three co-sharers, suppress or conceal the co-ownership of the third co-owner, and, without obtaining the

signature or consent of the other co-owner, induce the municipal authority to mistakenly grant sanction for a building plan for the purpose of erecting, altering, or adding to a building that is an undivided property, then such suppression and/or action must constitute material misrepresentation and/or fraudulent statement. Consequently, the provisions of Section 217 of the Act of 1993 will clearly apply. It is important to note that the Municipality has taken the stance that the sanction was mistakenly granted based on the application presented only by Debabrata and Satyabrata.

32. Indisputably, the right to build on his own land is a right incidental to the ownership of that land but such right is regulated by the relevant municipal building rules. The provisions of Section 203 of the Act of 1993 mandates that no building shall be erected unless a building plan has been sanctioned for such erection in accordance with the provisions of the Act and the rules or regulations framed thereunder. Thus, as the sanction of the plan was obtained suppressing the material facts and by taking recourse to material misrepresentation and fraudulent statement, it is obvious that the construction made based on such sanctioned plan is illegal and unauthorized.
33. The question that inevitably arises is whether it would be justified to direct the demolition of the first floor of the building. Undoubtedly, the Municipality is vested with the power to compound minor deviations from building rules. However, a Municipality, which is duty-bound to act within the confines of the law, cannot claim to have unfettered power to condone violations of building rules of this nature, nor can it claim the authority to validate a sanctioned plan obtained through the suppression of material facts, which contravenes the provisions of Section 217 of the Act of 1993.

34. In the present case, there is no dispute regarding the right, title, and interest of the private respondents. However, if approval is granted for such a construction, where two co-owners, by suppressing material facts, got the plan sanctioned, it would severely prejudice the property rights of the other co-owner. It is important to note that any alteration of property of this nature, without the consent of a co-owner, will undoubtedly affect and infringe upon the proprietary rights of that co-owner, and such injury is of an irreparable nature. Misplaced sympathy or generosity in such cases could have serious consequences in society, where the deprivation of a co-owner's proprietary rights by other co-owners through various means is unfortunately common.

Conclusion:

35. In the present case, one might be inclined to think that, due to only this reason, what could be viewed as a minor or negligible issue, directing the demolition of part of the building would be an exaggerated action. There is a legal maxim, '*dura lex, sed lex*' which means the law is hard but it is law. It goes without saying that a court would inevitably resolve an issue without being swayed by irrelevant considerations. Misplaced sympathy can be harmful to the integrity of the justice delivery system. While the breach may seem minimal, the law is sensitive and cannot tolerate even the slightest violation of its provisions. Neither the Act of 1993 nor the Rules of 2007 contain any provision allowing such breaches to be disregarded. Therefore, the legislature did not permit any breach, regardless of how minor, to be overlooked. As such, there can be no obstacle to conclude that the sanction of the building plan for further construction on the ground floor of the building is illegal. Consequently, the construction carried out based on the sanctioned

plan must be considered unauthorized and/or illegal. It is undisputed that there is no provision to regularize such illegal and/or unauthorized construction. In the interest of justice, it would be appropriate to issue an order directing the demolition of the building.

Order:

36. Therefore, based on the discussions in the preceding paragraphs, I dispose of the writ petition by directing that the mutation in the assessment record of the Municipality in respect of the building and the allocation of different holding numbers for the building be cancelled. Until the disposal of the partition suit, the building shall be assessed as a single unit. The sanctioned building plan, empowering the private respondents Nos. 5 and 6 to construct on the first floor of the building, is also cancelled.

37. Additionally, it is directed that Respondent No. 3 shall demolish the first floor of the building within 2 (two) months from the date of receipt of a copy of this order. If necessary, Respondent No. 3 may seek assistance from the jurisdictional Police or the District Police Administration to ensure the proper execution of this order. In such cases, the police authorities shall provide the required assistance. The Executive Officer of the Municipality shall supervise the entire demolition process. If the demolition work is obstructed by any individual or group, the Municipal authority or its Executive Officer shall take appropriate legal action against them, regardless of their status or position in society.

38. Liberty is granted to the petitioner to implead the Executive Officer of the Municipality as a party to this proceeding. The Executive Officer of the

Municipality shall conduct a thorough inquiry to identify the individuals responsible for altering the assessment records of the building and assigning different holding numbers to Mira, Debabrata, and Satyabrata. Responsibility shall be determined, and appropriate action must be taken against those involved. If any outsider to the Municipality is found to be involved in such actions, appropriate steps for initiating criminal proceedings shall also be taken.

39. Mr. Kundu, the learned advocate of this Court was appointed as a Special Officer by an order dated 4.7.2006. The order dated 15.09.2006 indicates that the private respondent no. 5 to 7 were directed to pay 300 GMs to Mr. Kundu. By another order dated 15.10.2007, the respondent nos. 5 to 7 were directed to pay 150 GMs to Mr. Kundu. Mr. Kundu was authorised to receive possession of the building from the private respondents and to collect rent from the tenants inducted in the shop rooms located in the building. Mr. Kundu has collected rent of Rs. 16,71,016.31/- so far, which has been kept in the account opened by him. He paid Rs. 15, 734/- to the fabricator for installation of a shutter door in the said building.
40. Therefore, in 2006, a sum of 300 GMs, equivalent to Rs. 5100/-, was granted to him as his remuneration. Since 2006, for over 18 years, he has been in possession of the building and collecting rents from the tenants. In light of these facts, I am of the view that if Mr. Kundu is allowed to withdraw Rs. 80,000/- from the amount deposited in the bank, justice would be served.
41. Accordingly, the Branch Manager of the bank is hereby directed to allow Mr. Kundu to withdraw Rs. 80,000/- from the account he opened for

depositing the rent. This amount shall be treated as an ad hoc payment of his remuneration until the year 2025. Mr. Kundu is required to appear before the learned Court dealing with the partition suit and submit an application outlining all facts leading to his appointment, along with details of the account in which he has deposited the rents collected from the tenants in the shop rooms located in the building and the costs incurred by him for maintenance of the building or any portion thereof. The Court shall consider these facts and recognize him as *custodia legis* of the building and the rents. Based on these considerations, the Court will determine the future of his appointment, including whether he will be discharged or continue to serve as a special officer until the disposal of the partition suit, along with his remuneration.

42. With these observations and order, the writ petition and the connected application, if any, are disposed of. There shall be no order as to the costs.

(Partha Sarathi Chatterjee, J.)