

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. 16981 OF 2024

KISHORI LAL PODDAR

-VERSUS-

BIDHANNAGAR MUNICIPAL CORPORATION AND OTHERS.

AND

W.P.A. 16979 OF 2024

KISHORI LAL PODDAR

-VERSUS-

BIDHANNAGAR MUNICIPAL CORPORATION AND OTHERS.

For the petitioner and	: Mr. Om Narayan Rai, Sr. Adv., Mr. Prashant Agarwal, Adv., Mr. Badal Singh, Adv.
For private respondents	: Mr. Debanik Banerjee, Adv., Mr. S. S. Biswas, Adv., Mr. Huzaifa Shahid, Adv.
For B.M.C.	: Mr. Sirsanya Bandopadhyay, Adv., Mr. Arka Kumar Nag, Adv., Mr. Tirthankar Dey, Adv.
For the State (W.P.A. No.16979 of 2024)	: Mr. Srijan Nayak, Adv., Ms. Rituparna Maitra, Adv.
Hearing concluded on	: 28.02.2025
Judgment on	: 08.05.2025

Kausik Chanda, J.:-

The present two writ petitions arise out of a long-standing dispute concerning alleged unauthorised constructions carried out by the petitioner at premises no. AK-128, Sector II, Salt Lake City, Kolkata-700091. The constructions include a kitchen, a toilet allegedly erected infringing the mandatory open space.

2. A series of complaints were received by the Bidhannagar Municipal Corporation (in short, the Corporation) from the respondent nos. 5 and 6 (owners of the adjoining premises at AK-111, Sector II, Salt Lake City, Kolkata 700091), alleging the obstructive and unhygienic nature of the unauthorised structures erected by the petitioner on the ground floor. Ultimately, respondent nos.5 and 6 filed WPA 14105(W) of 2019, seeking demolition of the constructions. A Coordinate Bench of this Court disposed of the said writ petition on September 24, 2019, giving a direction upon the Commissioner, Bidhannagar Municipal Corporation to conclude the proceeding initiated on the complaint made by respondent nos.5 and 6.

3. In compliance with the said order dated September 24, 2019, the Corporation initiated necessary inquiries and afforded both parties a hearing. A formal hearing was conducted on May 11, 2024, in the chamber of the Commissioner, where both sides were heard.

4. Following the said hearing, and based on an inspection conducted by the municipal authorities, a demolition order dated June 4, 2024, was passed. The said order directed removal of (a) all the alleged unauthorised

constructions covering the wider and rear mandatory open spaces, including the toilet and the kitchen and additionally (b) an alleged unauthorised roof structure erected above the first floor.

5. W.P.A. 16981 of 2024 has been filed by the petitioner challenging the order dated June 4, 2024, passed by the Commissioner.

6. It further appears that respondent nos. 5 and 6 also constructed a similar type of structure on the roof of their residential building at AK-111, Sector II, Salt Lake City, Kolkata 700091, as a counterblast to the filing of WPA 14105(W) of 2019, the petitioner has filed W.P.A. 16979 of 2024 against respondent nos. 5 and 6 seeking demolition of the said construction.

7. It was contended by the learned advocate appearing for the petitioner that the impugned order was passed pursuant to an earlier direction of this Court dated September 24, 2019, in WPA 14105(W) of 2019, which only concerned the alleged constructions at the ground level and did not authorise the Corporation to pass order against the rooftop structures.

8. It was submitted that the order under challenge is entirely unreasoned and fails to disclose any specific contravention of provisions under the West Bengal Municipal Corporation Act, 2006 or the West Bengal Municipal (Building) Rules, 2007. The petitioner argues that an order of demolition without assigning reasons or identifying statutory violations is unsustainable in law.

9. The petitioner further asserted that the demolition order relies upon a purported inspection conducted on February 13, 2020. However, it was pointed out that the petitioner had already removed the shed and had duly informed the Corporation about it by a letter dated January 9, 2020, which was also acknowledged by the authorities on the following day. Therefore, it was argued that no such inspection was in fact carried out on the stated date, and that the findings recorded in the order—including the presence of a kitchen—are patently incorrect.

10. The learned Counsel argued that there was clear discriminatory and biased conduct on the part of the Corporation, which failed to initiate any proceedings in relation to similar unauthorised constructions on the roof of the adjoining premises (AK-111) owned by the respondent nos. 5 and 6, despite the petitioner having filed a separate writ petition (WPA 16979 of 2024) and placing several representations before the Corporation. The petitioner alleged that such selective action points to mala fides and an unholy nexus between the private respondents and the Corporation authorities.

11. Turning to the legal character of the disputed structures, it was submitted that the tin shed erected on the roof cannot be considered a “roof” or “building” within the meaning of Section 259(1)(f) of the Act. Reference was made to Rule 59 of the Building Rules, which defines the essential characteristics of a “roof”, and it was argued that the shed fails to meet these requirements. Emphasis was also placed on Section 2(94) of the

Act, which defines a “shed” as a slight or a temporary structure. The shed in question, being a detachable structure supported by props affixed to the parapet wall, was said to be temporary in nature and incapable of qualifying as a permanent addition or alteration.

12. The petitioner further submitted that even the Corporation’s own demolition order acknowledges the temporary nature of the structure. Consequently, it was urged that the erection of such a shed does not amount to an “alteration” within the meaning of Rule 2(6) of the Building Rules, which contemplates structural changes that affect height or area. The petitioner distinguished the present case from such structural alterations and argued that a temporary covering over an existing roof does not amount to any modification in the built form or volume of the premises.

13. As regards the toilet at the ground level, it was contended that the same is permissible under Rule 113(3) of the Building Rules and may be regularised under the applicable provisions of law.

14. In support of its action, the Corporation relies upon Chapter XIV of the West Bengal Municipal Corporation Act, 2006, particularly Section 259(1)(f), which regulates the construction of buildings and covers acts such as roofing or enclosing spaces between existing structures. It is submitted by the Corporation that the constructions in question were carried out in contravention of these statutory provisions and, therefore, the Corporation was duty-bound to act.

15. It is also submitted by the Corporation that the relevant provisions of the West Bengal Municipal (Building) Rules, 2007, including Rules 58 and 59 governing habitable rooms, and Rule 95 relating specifically to the Salt Lake Township area, were violated by the private respondents. Particular reference is made to Rule 95(27), which defines “habitable room” and excludes kitchens and toilets from being erected in mandatory open spaces without express sanction.

16. Upon inspection, the Corporation submits that the so-called "temporary shed" over the first floor was found to be constructed using brick pillars and cement work, and thus, the same cannot be dismantled without demolition. Accordingly, it is submitted by the Bidhannagar Municipal Corporation that the structure is of a permanent nature and is not covered by any exemption applicable to temporary constructions. In this regard, reliance is placed on the decision of the Bombay High Court reported at **(2024) 6 AIR Bom R 605 (Hemant Bharat Kachare vs. Vasu Anna Shetty)** wherein the Court held that sheds supported by M.S. angles and parapet walls, and intended to expand usable space, constitute permanent constructions.

17. With regard to the kitchen and toilet built in the open area, it is submitted by the Corporation that these were constructed using concrete walls and reinforced slabs, and were clearly intended for permanent usage. Such construction is impermissible under the West Bengal Municipal (Building) Rules, 2007, which prohibit the erection of permanent structures

in mandatory open spaces. In support of this submission, reliance is placed on the judgment of the Hon'ble Supreme Court reported at **(2012) 10 SCC 409 (*Purushottam Das Bangur vs. Dayanand Gupta*)** which recognised that even structural changes made by tenants may amount to permanent construction if made with the intent of long-term usage.

18. Accordingly, it is submitted by the Corporation that both the structures—namely, the kitchen and toilet in the mandatory open space, and the additional construction on the first floor—are unauthorised and permanent in nature, and have been rightly ordered to be demolished under the applicable municipal laws and rules.

19. The respondent nos. 5 and 6 have opposed the W.P.A 16981 of 2024 on the ground that the structures in question—specifically, a toilet and kitchen constructed in the mandatory open space at premises no. AK-128, Sector II, Salt Lake City—are clearly unauthorised and in direct contravention of the applicable municipal laws and building regulations. They have supported the demolition order issued by the Bidhannagar Municipal Corporation, which they submit is a lawful and necessary step taken in response to long-standing and justified complaints.

20. The respondents rely on Sections 266 and 272 of the West Bengal Municipal Corporation Act, 2006, to submit that no construction can be undertaken without prior approval of the Corporation, and any violation is liable to be demolished. It is contended that the structures in question were made without any sanction or authority and are, therefore, *ex facie* illegal.

21. The respondent nos. 5 and 6 further submit that under Rule 50 of the West Bengal Municipal (Building) Rules, 2007, mandatory open spaces are required to remain free of construction. Rule 60 and Rule 62 of the said Rules lay down specific conditions and requirements for the construction of kitchens and toilets, which, in this case, have not been met. The kitchen and toilet constructed in the open space are not only unauthorised but also pose sanitary risks.

22. In relation to the petitioner's attempt to justify the structures by invoking Rule 113(3) of the Building Rules, the private respondents argue that the reliance is misplaced. Rule 113(3) permits, under certain limited conditions, one additional bath-cum-W.C. for an attendant or watchman, either within a car parking space or on the rooftop of a building, subject to strict spatial limitations. It does not permit the construction of such facilities within mandatory ground-level open space.

23. It is, therefore, submitted that the Corporation acted well within its statutory powers in ordering the demolition of the illegal kitchen and toilet.

24. As regards the temporary shed located over the first floor of premises no. AK-111, the respondent nos. 5 and 6 submit that such a shed does not amount to an illegal structure under the governing Act or Rules. It is a non-permanent structure used for ancillary purposes and does not alter the structural plan of the building or impact any open space requirement. It is further submitted that the presence of similar sheds in neighbouring

premises lends support to the argument that such structures are permissible and commonly accepted.

25. Accordingly, the respondent nos. 5 and 6 urge this Court to uphold the demolition of the toilet and kitchen at AK-128, while exempting the temporary shed over the first floor of their own premises from any adverse action.

26. Let me first deal with the alleged unauthorised constructions on the roof of the petitioner's building. The construction in question is not uncommon in urban areas. It cannot be denied that such a structure is primarily intended to protect the roof of the building from the corrosive elements of nature, such as sunlight, rain, etc. It is also aimed at maintaining a cooler temperature on the top floor during the summer.

27. Whether such a construction requires permission or not, however should be determined in the context of the applicable legal framework.

28. Section 262 of the Act of 2006 provides that a previous sanction is required for erection or re-erection of a building.

29. The erection of building has been defined as follows:

“259. Definitions. — (1) In this chapter, unless the context otherwise requires, the expression "to erect a building" means—

.....

(f) to roof or cover an open space between walls or buildings to the extent of the structure formed by the roofing or covering of such space;”

30. Section 259(1)(f) makes it clear that an action can be termed as “erection of a building” when it “roof or cover an open space” between “walls” or “buildings” and a “structure” is formed by such roofing or covering.

31. The Act of 2006 does not define a “structure.” The term "structure" is, however, used within the definition of "building" as provided under Section 2(7) of the Act of 2006.

32. While Section 259(1)(f) does broadly define the act of roofing or covering as a part of "erection of a building", when it forms a “structure”, this deeming provision is not absolute. It requires contextual interpretation, particularly in light of the definition of "building" under Section 2(7) since Section 259(1)(f) specifically addresses the erection of “building.”

33. Rule of contextual interpretation (*Noscitur a Sociis*) holds that a word is known by the company it keeps. Since Section 259 uses the phrase “to erect a building”, any sub-section (like 259(1)(f)) describing what this entails must be read in the context of what qualifies as a "building".

34. The principle of harmonious construction states that different provisions of the same statute should be read in a manner that gives meaning to all parts, avoiding conflict. Therefore, “structure” in Section 259(1)(f) must be read harmoniously with Section 2(7), i.e., the structure must be one that falls within or resembles elements of a “building.”

35. The definition of “building” is quoted below:

“2. Definitions. — In this Act, unless the context otherwise requires,—

.....

- (7) "building" means a structure constructed for whatsoever purpose or of whatsoever materials, and includes foundation, plinth, wall, floor, roof, chimney, fixed platform, verandah, balcony, cornice, projection or part of a building and anything affixed thereto, and any wall (other than boundary wall of less than two metres in height on the road side, having the solid portion not exceeding 1.5 metres in height) enclosing, or intended to enclose, any land, sign or outdoor display structure, but does not include a tent, shamiana or tarpauline shelter;"

36. The definition makes it clear that a structure must be constructed for enclosing or with the intention to enclose land, signage, or a usable space. The term "includes" parts of a building (like a roof, wall, platform, etc.), but the existence of a part alone does not mean the whole is a building.

37. The structure in question is open on all sides. It is not enclosed or shows an intention to be an enclosed space. Hence, it fails the "enclosing, or intended to enclose," test. A non-enclosing roofed space, like a shade on a terrace or over an open area, does not alter land use, does not increase occupancy, and does not represent an enclosure that would trigger regulatory oversight. A roof connecting two walls, without creating an enclosure, does not constitute a "building" under the law, because it lacks the essential purpose of enclosing a space or land, which is a key legal test to determine whether a structure falls under the definition of "building".

38. The structure does not create new floor space, does not add to the Floor Area Ratio (FAR) of the building. It remains an accessory feature. If "structure" in Section 259(1)(f) includes even temporary coverings, the term

becomes overly broad and brings into its fold even non-building activities, which the legislature could not have intended. Therefore, I am of the opinion that a detachable shed affixed to parapet walls — not intended as a permanent construction and lacking enclosure — does not amount to the erection of a building within the meaning of the Act of 2006, and should not require municipal permission. However, if a structure like this is determined to be permanent in nature and interferes with the structural stability of the building, then the corporation shall have the power to interfere. It should be noticed that in the present case, the impugned order of the Commissioner dated July 4, 2024, describes the structure as temporary and there is no finding that it compromises with the structural stability of the building.

39. Moving to the other impugned constructions, i.e., the construction of the kitchen and the toilet; it appears that during the course of submission, it was acknowledged by the respondents that the structure used as a “kitchen” had been removed. Therefore, the only issue that remains to be decided is whether the toilet, allegedly constructed by encroaching upon the mandatory back open space, should be allowed to remain.

40. The relevant provisions of the West Bengal Municipal (Building) Rules, 2007, as applicable in Saltlake Township area are quoted below:

“107. Obligatory front space, minimum side spaces and back spaces for various categories of residential buildings.—

(1) Obligatory front space, minimum side spaces and back spaces for various categories of residential buildings shall be as follows:—

Category of plot	Front (fixed) (in metre).	Narrower side (Min.) (in metre).	wide side (Min.) (in metre).	Back (Min.) (in metre).
2k	1.00	0.90	2.50	2.00
3k	1.00	0.90	2.50	2.00
4k	1.00	0.90	2.50	4.00
5k	1.50	0.90	2.50	4.00
6k	2.00	1.00	3.00	6.00
7k	2.00	1.00	3.00	7.00
8k	2.00	1.20	3.00	7.00
9k	2.00	1.20	3.50	7.00
10k	2.00	1.20	3.50	7.00

(2) In every building specified in sub-rule (2) of rule 93 there shall be a fixed front open space measuring 1.0 metre, minimum side open space of 1.22 meters and minimum back open space of 1.22 meters.

Explanation—For Block Areas the provisions of rule 153 shall apply.

(3) For the corner plots, the width of wider side space will be reduced to counterbalance, the difficulty of planning of the building due to rounding off the frontage but the clear gap with its adjacent building shall never be less than 2.5 meters (8'-2"). The side spaces of the corner plots will also be suitably adjusted where provision for paved passage, open ground, playground, will allow for such adjustment. The maximum covered area and E.A.R. will however remain the same as in other plots.

(4) A Plan showing the area that may be built up or covered can be seen by each plot holder in the office of the Authority sanctioning the building.

.....

113. Maximum number of flat per storey.—

(1) Maximum number of flats per storey shall be as follows:—

2K	One Flat per Storey
3K	One Flat per Storey
4K	One Flat per Storey
5K	Two Flats per Storey
6K	Two Flat per Storey
7K	Two Flat per Storey
8K	Two Flat per Storey
9K	Two Flat per Storey
10K	Three Flats per Storey
In the case of any building specified in sub-rule (2) of rule 93	One flat per Storey

(2) A certificate shall be furnished by the owner of the plot measuring 2 cottahs to 5 cottahs on the body of each plan of building furnished for sanction in the following form:—

"Certified that I shall not on later date make any addition or alteration to this plan so as to convert it for use or allow it to be used for two separate flats per floor/per storey."

(3) Notwithstanding anything containing in the preceding sub-rules, one additional bath-cum-W.C. for attendant may be allowed in each building, over and above the permissible numbers having minimum size as specified in rule 117. The said bath-cum- W.C. will be the integral part of the whole building:

Provided that one room for watchman with attached bath-cum- W.C. may be provided at car parking space of cooperative building, the floor area of which shall not be counted in floor area ratio. The floor area of such room shall not be more than 10.00 sq. m. and that of the bath-cum-W.C. shall not be more than 3.00 sq. m.:

Provided further that one room for watchman with attached bath-cum- W.C. may be allowed at the roof level of all existing buildings not exceeding the height of mumti roof, subject to the condition that the wider side space of all such buildings will be made free from any sort of construction, the floor area of which shall not be counted in floor area ratio. The floor area of such room shall not be more than 10.00 sq. m. and that of the bath-cum-W.C. shall not be more than 3.00 sq. m.”

41. Rule 107 clearly mandates minimum front, side, and back open spaces for plots of various sizes. These spaces are designated as obligatory, meaning no construction is normally permitted in these spaces—they are meant for ventilation, light, and access, and to maintain urban spacing standards.

42. The main part of Rule 113(3) permits one additional bath-cum-W.C. in each building over and above the permissible number, intended for an attendant's use, as long as the minimum dimension (as per Rule 117) is followed. It does not specify where this bath-cum-W.C. can be located. The absence of a restriction in the main part of Rule 113(3) is not sufficient to permit construction in a space otherwise clearly regulated. Silence is not consent.

43. The phrase "will be the integral part of the whole building" in Rule 113(3) means that the bath-cum-W.C. must be within the main structural envelope of the building. It must be physically attached to and functionally

part of the building—not a detached or stand-alone structure and cannot be constructed in any of the required open spaces, such as the back yard, as governed by Rule 107.

44. In result, the impugned order of the Commissioner dated June 4, 2024, is set aside insofar as it relates to the construction of the shed on the roof of the building. The demolition order in respect of the toilet constructed in the open back space is upheld with the observations as made herein above.

45. I am, however, of the view that if the petitioner makes a prayer before the Bidhannagar Corporation for a revised sanctioned plan for an additional bath-cum-W.C. for attendant, the same should be considered by the Corporation in the light of Rule 113(3) as quoted above as expeditiously as possible, subject to compliance with the necessary formalities by the petitioner.

46. In view of the aforesaid discussion, it is not necessary to deal with the other aspects of the matter as argued by the parties before this Court.

47. Accordingly, **W.P.A. 16981 of 2024 is disposed of** and **W.P.A. 16979 of 2024 is dismissed** in terms of the aforesaid.

44. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)