

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

**HEARD ON: 02.07.2025
DELIVERED ON: 02.07.2025**

**PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH**

WPA 24793 of 2024

SK SADEK

VERSUS

THE STATE OF WEST BENGAL & ORS.

Appearance:-

**Mr. Soumen Kr. Dutta, Adv.
Mr. Dubham Dutta, Adv.
Ms. S. Barman, Adv.**

.....For the Petitioner

**Mr. Koushik Chatterjee, Adv.
Mr. Nilanjan Adhikari, Adv.
Mrs. Oindrila Sinha, Adv.
Mr. Nitin Sharma, Adv.**

..... for Respondent nos. 2 to 4

Mr. Masud Mallik, Adv.

.....for the KMC

JUDGMENT

Gaurang Kanth, J. :-

1. The petitioner has filed the present writ petition being aggrieved by the inaction of the respondent authorities in failing to initiate or take effective and timely steps to halt or demolish an unauthorized construction allegedly undertaken by the private respondent on a plot situated at Mouza-Jalalkhabar, J.L. No. 310, Dag No. 301.
2. Despite repeated complaints, the respondent authorities have not taken any steps either to stop the unauthorized construction or to demolish the same.

Pursuant to the direction of this Hon'ble Court, the respondent municipality has submitted a report, which categorically admits that the private respondent has raised construction in violation of the provisions of the Pradhan Mantri Awas Yojana (PMAY) Scheme. It is further stated in the report that a demolition notice under Section 218 of the West Bengal Municipal Act, 1993 was issued on 13.07.2021, directing the private respondent to remove the unauthorized structure within seven days, failing which the municipality would proceed with the demolition at the violator's cost.

3. The municipality has also admitted that the private respondent had encroached upon a public pathway by dumping construction materials, for which a separate notice was issued on 09.11.2022, directing removal of the obstruction. Additionally, a work stop notice dated 19.11.2022 was issued.

4. Bare perusal of the report reveals a grossly negligent and lackadaisical approach adopted by the respondent authorities. The report, filed in compliance with the order dated 30.09.2024 passed by this Court, is based solely on an inspection conducted in the year 2019. No subsequent inspection has been carried out. Although a demolition order was passed on 13.07.2021, it is evident that no steps have been taken to enforce the same. As a result, the private respondent has continued with the unauthorized construction unabated.

5. Learned Counsel appearing for the private respondent submits that the construction in question has been undertaken pursuant to a valid sanctioned building plan. He further contends that the present writ petition is barred by the principles of *res judicata*, this being the third round of litigation. He refers to W.P. No. 12693 (W) of 2019, which was disposed of by this Court by an order dated 12.07.2019, wherein the Court directed the authorities to consider the petitioner's representation dated 24.04.2019 within four weeks from the date of

communication of the order, after giving both the petitioner and the private respondent an opportunity of hearing. Pursuant to that order, an inspection was carried out on 16.08.2019 in respect of Plot No. 301, Mouza-Jalalkhabar, Ward No. 14, where unauthorized construction by the private respondent was noted. A work stop notice was thereafter issued, and notices of hearing were served on all parties on 07.01.2021. Subsequently, a demolition order was passed by the Board of Administrators on 13.07.2021. The private respondent states that he did not challenge the said demolition order due to his illiteracy and financial hardship. Following continued inaction by the municipality, the petitioner filed WPA 26298 of 2022, which was dismissed for default. Learned Counsel for the private respondent reiterates that the present writ petition is barred by *res judicata*.

5. Learned Counsel for the respondent municipality submits that after conducting due inspection with the assistance of the surveyor from the BL&LRO, a demolition order dated 13.07.2021 was indeed issued. However, he is unable to explain why the said order has not yet been implemented.

6. This Court has heard the submissions of the parties and has perused the materials on record.

7. The objection regarding maintainability raised by the private respondent is found to be untenable in the present context. The earlier writ petition, W.P. No. 12693 (W) of 2019, was disposed of by this Court with a direction to consider the petitioner's representation. No final adjudication on the merits of the unauthorized construction was made therein. The second writ petition, WPA 26298 of 2022, was dismissed in *limine* and not on merits. The petitioner has relied on the judgment of this Court in *FMA 2408 of 2004 (Rinku Mondal @ Biswas & Anr. vs. Union of India & Ors.)*, particularly paragraph 25, to support

the contention that a dismissal in *limine* does not operate as a bar under *res judicata* or under Article 226 of the Constitution for a fresh petition on the same cause of action.

8. This Court finds merit in the petitioner's submissions. The instant writ petition is not barred either by *res judicata* or principles akin thereto, and the same is maintainable in law.

9. Accordingly, the respondent-Contai Municipality is directed to implement the demolition order dated 13.07.2021 in respect of the unauthorized construction raised by the private respondent within a period of eight weeks from the date of communication of this order.

10. The Inspector-in-Charge, Contai Police Station, shall render all necessary assistance to the Contai Municipality for the purpose of carrying out the demolition, which shall be at the cost of the private respondent.

11. With the aforesaid directions, the present writ petition stands disposed of.

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

13. There shall be no order as to costs.

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

(Gaurang Kanth, J.)

SG