

12-11-2025
ct no. 13
Sl. 9
Sp/pk

M.A.T. No. 1944 of 2025
With
I.A. No. CAN 1 of 2025
Prakash Kumar Singh & Anr.
-Versus-

The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Id. Sr. Adv.
Mr. Arindam Banerjee, Id. Sr. Adv.
Mr. Sabyasachi Chatterjee,
Mr. Soumyadeep Nag,
Ms. Soumali Das.

...for the appellants.

Mr. Swapan Banerjee,
Mr. Diptendu Narayan Banerjee,
Mrs. Paromita Pal.

..for the State.

Mr. Sankha Subhra Ray.
..for the respondent nos. 2 to 6/Kamarhati
Municipality.

Mr. Partha Sarathi Datta.
..for the respondent no. 9.

Mr. Phiroze Edulji, Id. Sr. Adv.
Mr. Achintya Kumar Banerjee,
Mr. Debjit Mukherjee,
Mr. Avik Ghatak,
Ms. Afreen Begam,
Ms. Priyanka Bhattacharya,
Mr. Aritra Ranjan Dutta Roy.
..for the respondent no. 10.

1. The appeal is directed against the judgment and order dated 3rd November, 2025 passed by a Single Bench of this Court in WPA 21459 of 2024 (Ripan Mondal Vs. The State of West Bengal & Ors.).
2. The grievance of the writ petitioner/respondent no. 10 herein, was that the appellants are

occupants of an unauthorized and illegal structure under the jurisdiction of the Kamarhati Municipality. The Municipality has found that the construction is without any sanction plan.

3. It appears that at the initial stages of the writ petition, an order of the Single Bench was carried in appeal. In the appeal being MAT 837 of 2025, a Co-ordinate Bench has directed the appellants to be impleaded as party respondents in the writ petition and the Single Judge was directed to decide all questions after hearing the parties including the locus of the appellants. The Single Judge, however, proceeded on the basis of the actions of the Board of Councillors of the Municipality post the decision of the Co-ordinate Bench. The Board of Councillors found that the building was unauthorized.
4. The appellants claim to have purchased portions of the property and are occupying the same. The purchase, according to the learned counsel for the petitioner/respondent no. 10 is on the basis of an unregistered agreement. The fact remains that the appellants are occupants of the property in question. The order of demolition passed by the Board of Councillors of the Kamarhati Municipality, under Section

218(1) of the West Bengal Municipal Act, 2006 is indeed comprehensive and conclusive.

5. Be that as it may, since Sub-Section 3 of Section 218 of the West Bengal Municipal Act, 2006 provides a rights of appeal to a local Civil Court, the appellants cannot be denied such statutory right.
6. Learned counsel for the writ petitioner/respondent no. 10 submits that the right of appeal against the order of the Board of Councillors is only vested in the owner of the property and not any occupier.
7. Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel, representing the appellants has placed the decision of the Supreme Court in the case of ***Directions in the matter of Demolition of Structures in re*** reported in ***(2025) 5 SCC 1***. Paragraph nos. 93 and 94 of the said judgment are set out hereinbelow,

“Directions

93. *In order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time needs to be given to them to vacate and arrange their affairs. It is not a happy sight to see women, children and aged persons dragged to the streets overnight. Heavens would not fall on the authorities if they hold their hands for some period.*

94. At the outset, we clarify that these directions will not be applicable if there is an unauthorised structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a court of law.

A. Notice

94.1. No demolition should be carried out without a prior show-cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

94.2. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.

94.3. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

94.4. To prevent any allegation of backdating, we direct that as soon as the show-cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a Nodal Officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

94.5. The notice shall contain the details regarding:

- (a) The nature of the unauthorised construction.
- (b) The details of the specific violation and the grounds of demolition.
- (c) A list of documents that the noticee is required to furnish along with his reply.
- (d) The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place.

94.6. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show-cause notice and the order passed thereon would be available.

B. Personal hearing

94.7. The designated authority shall give an opportunity of personal hearing to the person concerned.

94.8. *The minutes of such a hearing shall also be recorded.*

C. Final order

94.9. *Upon hearing, the designated authority shall pass a final order.*

94.10. *The final order shall contain:*

(a) The contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof.

(b) As to whether the unauthorised construction is compoundable, if it is not so, the reasons therefor.

(c) If the designated authority finds that only part of the construction is unauthorised/non-compoundable, then the details thereof.

(d) As to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

D. An opportunity of appellate and judicial scrutiny of the final order

94.11. *We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.*

94.12. *An opportunity should be given to the owner/occupier to remove the unauthorised construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorised construction, and if the same is not stayed by any appellate authority or a court, the authority concerned shall take steps to demolish the same. It is only such construction which is found to be unauthorised and not compoundable shall be demolished.*

94.13. *Before demolition, a detailed inspection report shall be prepared by the authority concerned signed by two panchas.*

E. Proceedings of demolition

94.14. *The proceedings of demolition shall be videographed, and the authority concerned shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.*

94.15. *The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal."*

8. It is clear and explicit from the aforesaid directions of the Supreme Court that every person affected by the demolition order is entitled to avail the statutory remedies of appeal.
9. The tenor of the judgment of the Hon'ble Supreme Court indicates that a Municipality or any other authority should not be over anxious to demolish and dispossess even on unauthorized constructions and occupants.
10. Mr. Phiroze Edulji, learned Senior Counsel appearing for the writ petitioner/respondent no. 10 has relied upon two decisions of the Supreme Court in the case of ***M/s. T.S. Construction & Ors. Vs. The Howrah Zilla Parishad & Ors.*** being order dated 25.08.2025 in ***SLP (Civil) Diary No. 16673 of 2025*** and the case of ***Kaniz Ahmed Vs. Sabuddin & Ors.*** reported in ***2025 INSC 610***. He submits by reference to the aforesaid decisions that the Supreme Court has been equally anxious to ensure that unauthorized constructions are dealt with by an iron hand.
11. This Court cannot, at this stage, pronounce finally upon whether the the constructions in question are unauthorized and whether the appellants have been duly heard and their arguments considered by the Board of

Councillors of the Kamarhati Municipality. These are matters within the domain of the Civil Court.

12. In view of the above discussions, this Court is of the view that since the appellants albeit even if they are unauthorized occupiers of the property were in fact heard before the Board of Councillors and the Single Bench of this Court.
13. The locus of the appellants has not been decided by the Single Bench. The same even otherwise may be irrelevant in view of the observations of the Supreme Court ***In Re Demolition case (supra)***.
14. In that view of the matter, this Court directs the appellants to file an appeal under Sub-Section 3 of Section 218 of the West Bengal Municipal Act, 2006, within a period of 10 days from date.
15. The minutes of the meeting of the Kamarhati Municipality dated 28.07.2025 shall be the subject matter of challenge before the Civil Court.
16. A copy of the minutes has been supplied to the appellants by way of an affidavit filed before the Single Bench by the Kamarhati Municipality.
17. If such appeal is filed within 10 days from date, the Civil Court is requested to dispose of the same within a period of 2 months thereof without granting any adjournment to any of the

parties. All questions including the locus of the appellants are left open to be decided by the Civil Court uninfluenced by any observations made by this Court or the Single Bench. The notice dated 07.11.2025 issued by the Kamarhati Municipality shall not be given effect to and shall abide by the final decision of the Civil Court.

18. With the aforesaid directions, MAT 1944 of 2025 shall stand disposed of.
19. Consequently, all connected applications shall also stand disposed of.
20. There shall be no order as to costs.
21. All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)