

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

**WPA 27331 of 2025
With
CAN 1 of 2025**

**Bijoy Maji @ Bijoy Kumar Maji
Versus
The Asansol Municipal Corporation & Ors.**

For the petitioner	:	Mr. Biswaroop Bhattacharya Mr. Ratikanta Pal
For the Asansol Municipal Corporation	:	Mr. Sounak Bhattacharya
For the respondent no. 13	:	Mr. Saptanshu Basu, Sr. Adv. Mr. Debashis Sarkar
For the added respondent	:	Mr. Subhabrata Datta Mr. Aranya Saha
For the State	:	Mr. Amitava Chowdhury Mr. Ritesh Kumar Ganguly
Heard on	:	03.12.2025
Judgment on	:	03.12.2025

Raja Basu Chowdhury, J (Oral):

In re: CAN 1 of 2025

1. The instant writ petition has been filed, *inter alia* challenging the order dated 7th November, 2025 issued by the Asansol Municipal Corporation whereby the petitioner has not only been directed to

demolish the illegal and unauthorised construction measuring 15493.43 sq. ft. situate at L.R. Plot No. 740 Mouza Punuri, J.L No. 22, P.S. Kulti, District- Paschim Barddhaman but also to remove the debris and other materials from the plot in question and reinstate the plot to its original state i.e. pukur/pond within the time specified therein.

2. It is in connection with the above writ petition, a connected application being CAN 1 of 2025 has been filed, praying for addition of party in the above writ petition.
3. Mr. Datta, learned advocate appearing for the intervener/applicant for addition of party, by drawing attention of this Court to prayer (d) of the writ petition, would submit that the writ petition in fact seeks implementation of the order dated 28th July, 2025 passed by the Hon'ble Division Bench in a Public Interest Litigation being WPA (P) 232 of 2025 (***Sabyasachi Mukherjee v. State of West Bengal & Ors.***) which writ petition incidentally, was filed by the applicant. Notwithstanding the above, the applicant has not been made a party in the writ petition. The applicant is also interested in the implementation of the order passed by the Hon'ble Division Bench on 28th July, 2025, as such, no order in the present writ petition can be passed in absence of the applicant.
4. Having heard the learned advocates appearing for the respective parties and noting that the applicant is interested in implementation of the order dated 28th July, 2025 passed by the

Hon'ble Division Bench as aforesaid and considering that the writ petitioner herein also seeks implementation of such order, I am of the view that the applicant is a necessary party and should be added as a party respondent in the present writ petition.

5. Accordingly, leave is granted to the petitioner's advocate on record to add the applicant in CAN 1 of 2025 as party respondent in the instant writ petition in course of the day.
6. Mr. Datta, learned advocate appearing for the applicant, accepts service of the writ petition for the added respondent. The application CAN 1 of 2025 accordingly stands disposed of.

In re: WPA 27331 of 2025

7. By consent of the parties the writ petition is taken up for final consideration.
8. Mr. Bhattacharya, learned advocate appearing in support of the writ petition, at the very outset, would submit that the aforesaid order passed by the Superintending Engineer, Asansol Municipal Corporation dated 7th November 2025 suffers from procedural irregularities. He would submit that although, having regard to the provisions contained in Section 266 of the West Bengal Municipal Corporation Act, 2006, (hereinafter referred to as the "said Act"), the municipality was under an obligation to afford the person interested including the petitioner reasonable opportunity of showing cause as to why the demolition order shall not be passed, the petitioner has been denied such opportunity. In the instant case, the

Superintending Engineer did not disclose the documents based on which the aforesaid order has been passed. He would submit that though an enquiry has been conducted at the locale, the enquiry report thereof was not supplied to the petitioner. Independent of the above, by placing reliance on a supplementary affidavit which is filed in Court and is taken on record, he would submit that the only structure standing on the impugned plot is a long standing Tin shed house used for the petitioner's business activities which does not fall within the statutory definition of the term "building" requiring prior sanction under the applicable municipal laws. According to him, prior to the aforesaid area being added to the jurisdiction of the Asansol Municipal Corporation, the same was part of Kultu Municipality. In support of the aforesaid contention, reliance has been placed on a money receipt/acknowledgement issued in connection with renewal of certificate of enlistment fees under Section 118 of the West Bengal Municipal Act, 1993 and West Bengal Municipal (Finance and Accounting) Rules, 1999. According to him, the Asansol Municipal Corporation consequent upon addition of the aforesaid area to the jurisdiction of the corporation, has been accepting rates and taxes from the petitioner. Documents in support thereof, have also been disclosed. Independent of the above, a submission has been made from the Bar that a boundary wall has been constructed on the plot for which no sanction is required though, there appears no supporting

statement made by the petitioner in the pleadings. It is submitted that since, the order impugned has been passed without complying with the principles of natural justice and without adhering to the provisions of Section 266 of the said Act, the same cannot be sustained and should be set aside.

9. Mr. Sounak Bhattacharya, learned advocate appears for the Asansol Municipal Corporation. According to him, the petitioner was not only notified with regard to the aforesaid proceeding but was heard. The petitioner in course of such hearing has never raised the issue of non-supply of any document. It is only after the above order has been passed, as and by way of an afterthought the allegation has been made. He would further submit that since no additional document has been sought for, no further document had been supplied to the petitioner. According to him, admittedly there is no sanctioned building plan. A factual finding has been returned by the Superintending Engineer that RCC pillars with brick wall and construction with Tin shed is in existence. The record of rights would show that the plot in question has been recorded as pond/danga. Having regard thereto, the order passed by the Superintending Engineer cannot be said to be without any basis or perverse. No interference is called for.
10. Mr. Basu, learned Senior Advocate appears for the private respondent no.13. He would submit that he had lodged a complaint. According to him, the municipality being otherwise

competent under the provisions of West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as the “Fisheries Act”), had enquired into the issue as to whether a water body had been illegally converted and had accordingly returned the finding which is otherwise appealable under the provisions of Section 18 of the Fisheries Act, and as such this Court ought not to entertain the challenge to the order on such ground. By placing reliance before this Court on the judgment delivered in the case of ***Samsher Dorji v. Chammadali Dorji*** reported in **2001 (1) CLJ 555**, he would submit that a recording made in the record of right though not sacrosanct is presumed to be correct unless, it is proved to be incorrect by evidence. Admittedly, in this case, upto date record of right would establish existence of pond/danga. On such ground, the above order cannot be challenged. No interference is called for. On the issue of illegal construction, he would submit, admittedly, the petitioner does not have sanctioned building plan to construct on the plot in question. The structure constructed by the petitioner is covered by the term “building” as defined in the said Act. As such, no interference is called for on such ground, as well.

11. Mr. Datta, learned advocate appears for the added respondent. He supports and adopts the submissions of Mr. Sounak Bhattacharya and as also of Mr. Basu.
12. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the petitioner

claims to be running a business of retail sale of marble in the name and style of Kulti Marble House, situated at plot no. 191/1291, Kulti P.S., ward No. 21. The said area was later added within the Asansol Municipal Corporation and renumbered as House No. 0230432, Kulti G.T. Road, Near Kulti College Bus Stand, Ward No.23 (Old), Ward NO.64 (New). The petitioner had been issued a certificate of enlistment initially by the Kulti Municipality and later by Asansol Municipal Corporation for running the above business. I find that a Public Interest Litigation was moved before the Hon'ble Division Bench of this Court in the case of **Sabyasachi Mukherjee v. State of West Bengal & Ors.**, which was registered as WPA (P) 232 of 2025. The Division Bench presided over by the Hon'ble the Acting Chief Justice was pleased to dispose of the Public Interest Litigation by passing the following directions:

“a) The Additional District Magistrate and District Land and Land Reforms Officer shall conduct a detailed enquiry by serving notice to all the concerned parties for deciding the issue in hand.

b) When the petitioner and private respondents are put to notice, it will be for them to take all possible stands and file relevant document before the competent officer.

c) After hearing all the concerned parties, the Additional District Magistrate will take a decision in accordance with law by passing a reasoned and speaking order.

d) The entire exercise shall be completed by the Additional District Magistrate within 180 days from the date of communication of this order.

e) It will be open for the Additional District Magistrate to issue necessary direction to other statutory bodies.

4. With the aforesaid, this PIL is disposed of without expressing any opinion on the merits of the case.”

13. Records would also reveal that in furtherance of the aforesaid order, certain steps have been taken. In the interregnum, however, on the basis of the complaint made by the respondent no.13 that the petitioner has unauthorisedly filled up a pond with debris in disregard to the Inland Fisheries (Amendment) Act, 2017 and the West Bengal Municipal (Building) Rules that a proceeding had been initiated by the Superintending Engineer, Asansol Municipal Corporation. I find that Mr. Bhattacharya, learned advocate representing the petitioner has questioned the order on the ground that the order does not comply with the provisions of Section 266 of the said Act and the principles of natural justice has been breached. He has also contended that the petitioner had not been favoured with the survey report which had the effect of denying the petitioner an opportunity to effectively defend the cause. In this context, it may be noted that admittedly in this case the petitioner does not have any sanctioned building plan, the petitioner did not disclose any such plan before the authority or before this Court. Although, Mr. Bhattacharya, learned advocate for the petitioner has attempted to make out a case that there is existence of only a Tin shed, and the construction is of a boundary wall only, however, having regarding to the factual finding returned by the Superintending Engineer which demonstrates that there are RCC pillars with brickwork and construction with pillars and Tin shed, I

am afraid that this Court cannot interfere with such factual finding. I also find that at the time of inspection, the petitioner was present. There is also no contemporaneous correspondence that there is no RCC pillar construction at the locale. The petitioner was also present in course of hearing before the hearing officer. It is not the case of the petitioner that the petitioner had sought for any documents from the authorities. Although, according to Mr. Bhattacharya, it was the obligation of the hearing officer to supply relevant documents which were relied on for taking a decision in this case, I, however, find that the record of rights would establish the fact that the land in question has been classified as pond/danga. Though such recording is not sacrosanct, however, it is not the case of the petitioner that any steps had been taken by the petitioner to correct the recording made in the record of rights. No submission has been made before this Court that any application is pending before the B.L. & L.R.O. in relation to change of user of the land. Thus in absence of any other evidence, the presumption is, in favour of the recordings made in the record of rights, as has been held in the case of **Samsher Dorji** (supra). Further, in absence of sanctioned building plan, no construction of any building could have taken place, that too by construction of a RCC structure. It is true that the Division Bench of this Court while disposing of the writ petition being WPA (P) 232 of 2025 had issued certain direction on the Additional District Magistrate and Land

Reforms Officer to conduct an enquiry and in furtherance thereto, an enquiry has been conducted, the said order did not, however, interfere with the rights of the Asansol Municipal Corporation to take a decision under Section 266 of the said Act, and the Fisheries Act. The petitioner has also not challenged the order impugned by way of an appeal insofar as the same directs the petitioner to restore the character of the land to pond. The petitioner has thus, failed to identify the procedural irregularities, far less any jurisdictional error committed by the Superintending Engineer. Non-disclosure of documents, which were not sought for, in my view, does not amount to violation of principles of natural justice especially when the petitioner participated in the survey and was heard.

14. The writ petition fails and is accordingly dismissed.
15. There shall be no order as to costs.
16. After the order is dictated Mr. Bhattacharya, would insist that the *status quo* as is prevailing should be permitting to continue for 7(seven) days for the petitioner to test out the above order. The learned advocates for the respondents have raised serious objections.
17. Considering the peculiar facts and noting that the order dated 28th November, 2025 was in fact passed on the basis of concession as morefully recorded therein, I am of the view that there is no scope to grant any further protection to the petitioner.

18. The prayer is accordingly rejected.

Urgent photostat certified copy of this order, if applied for be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)

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A.R. (Court)