

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

**HEARD ON: 08.07.2025
DELIVERED ON: 08.07.2025**

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

WPA 28110 of 2024

SAMIR KUMAR DAS

VERSUS

THE STATE OF WEST BENGAL & ORS.

Appearance:-

**Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chatterjee,
Ms. Trisha Rakshit,
Ms. Aishwarya Datta,
Ms. Sadia Parveen,**

.....For the Petitioner

**Mr. Ansar Mondal, Addl. Govt. Pleader
Mr. SM Samim Ullah.**

... For the State

**Mr. Saptangshu Basu, Sr. Adv.
Mr. Sayan Sinha,
Mr. Adil Naser,**

... For respondent nos. 2 to 4

Gaurang Kanth, J.:-

1. The Petitioner, by way of the present writ petition, assails the legality and validity of the demolition order dated 21.10.2024, issued by the Bongaon Municipality in respect of the premises bearing Holding No. 21/A/291/2A, situated at Ratepara Road, Ward No. 10, Bongaon, Plot No. 3966, L.R. Khatian No. 21842, Mouza Bongaon, J.L. No. 116, District North 24 Parganas.

2. It is the case of the Petitioner that he purchased a plot of land measuring approximately 2 cottahs at the aforementioned location by way of a registered sale deed dated 09.10.2021. Subsequent to the said purchase, the land was duly mutated in his name in the records of Bongaon Municipality. The Petitioner avers that he submitted an application on 25.05.2022 seeking sanction to construct a G+4 storied building on the said plot, and thereafter issued a formal reminder on 25.04.2023 requesting early approval of the building plan. It is contended that no decision was taken by the Municipality on the said application within the stipulated period. Accordingly, the Petitioner claims that the building plan stands deemed to have been sanctioned by operation of Section 207 & 208 of the West Bengal Municipal Act, 1993. Relying upon such deemed sanction, the Petitioner undertook construction on the said premises. However, the Respondent Municipality issued the impugned demolition order dated 21.10.2024 under Section 218 of the West Bengal Municipal Act, 1993, directing the demolition of the constructed structure on the ground that no valid sanction plan had been granted. Aggrieved thereby, the Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

3. Mr. Basu, learned senior counsel appearing for the Respondent-Municipality, strenuously opposed the writ petition and submitted that the Petitioner is not entitled to the benefit of the deemed sanction provision under Section 208 inasmuch as no complete or valid application for building plan sanction was ever filed before the Board of Councillors. Drawing the Court's attention to the purported application form annexed as Annexure P-3 to the writ petition, the learned senior counsel pointed out that although the form bears the date 25.05.2022, it is actually the date on which the application form was issued to the Petitioner. The architect's certification on the building plan is dated

07.12.2022. Thus, it is evident that the building plan, a mandatory component of a valid application, could not have been submitted on 25.05.2022 as claimed by the Petitioner. Furthermore, the application bears no official seal or endorsement evidencing its receipt by the Municipality.

4. Learned counsel for the Petitioner admitted during the course of hearing that the document annexed is merely a form issued by the respondent-municipality and not the formal application itself. Upon specific query by the Court, learned counsel for the Petitioner failed to point out any document to establish that a duly completed application with all requisite documents was ever filed with or received by the Board of Councillors of the Municipality.

5. The Respondent further submitted that the construction was undertaken by the Petitioner without any approved sanction plan and that a hearing was conducted prior to the issuance of the demolition order. The demolition order was passed by the Board of Councillors following due procedure, and the Petitioner was given ample opportunity to present his case. Hence no judicial intervention is warranted in the present case.

6. Upon hearing the submissions of both the parties and on consideration of the materials on record, the core issue for determination is whether the Petitioner is entitled to the benefit of the deemed sanction under Section 208 of the West Bengal Municipal Act, 1993.

7. Before adverting to the facts of the present case, this Court would like to examine Section 208 of the West Bengal Municipal Act, 1993. The relevant section reads as follows:

“208. Sanction to be deemed to have been granted if the Board of Councillors defaults in according sanction.

If, within the period referred to in section 207, the Board of Councillors has neither accorded nor refused to accord sanction

to a building plan, nor granted permission to execute a work, the applicant may appeal to the Municipality, in writing, in this regard, and if the appeal as aforesaid is not disposed of within 30 days from the date of the appeal, such sanction or permission shall be deemed to have been granted.”

8. Section 208, by its very language, is not a blanket provision allowing automatic approval in the absence of a response from the Municipality. It is a conditional and sequential process that mandates strict compliance with procedural requirements:

- (i) a complete and valid application must be submitted to the Board of Councillors;
- (ii) the Board must fail to accord or refuse sanction within 60 days as per Section 207;
- (iii) the applicant must file a formal written appeal to the Municipality; and
- (iv) if such appeal is not disposed of within 30 days, only then can the sanction be deemed to have been granted.

9. It is imperative to highlight that each of the above steps is cumulative and mandatory. In the absence of strict compliance, the deeming fiction under Section 208 cannot be triggered. The provision does not create an automatic legal fiction merely on account of inaction by the authorities, it must be activated strictly within the contours prescribed by the statute.

10. In this legal background, this court is proceeded to examine the factual aspects.

11. In the present case, the Petitioner has not produced any evidence to show that a complete application was submitted, or that it was received by the Board of Councillors. In fact, there is a serious discrepancy as to the date of the architect's certification vis-à-vis the date of the alleged application.

12. This Court finds merit in the submissions made by the learned counsel for the Respondent that the Petitioner has failed to discharge the initial burden of proving that he is entitled to invoke Section 208 of the Act. Accordingly, the plea of deemed sanction is unsustainable in the facts and circumstances of the present case.

13. Upon perusal of the demolition order dated 21.10.2024, it appears that the order was duly passed by the Board of Councillors following due procedure as contemplated under Section 218 of the Act. The Chairman merely communicated the order, and the same does not suffer from any procedural impropriety. The records further indicate that the Petitioner was given opportunity of hearing and had duly responded to the notices issued by the respondent municipality. The Sub-Assistant Engineer's inspection report, which formed the basis of the impugned order, records that the Petitioner had undertaken construction of a G+4 structure without any sanctioned plan. The Petitioner failed to produce any such sanctioned plan when called upon to do so.

14. This Court is conscious of the limited scope of judicial review in matters involving municipal planning and building regulation. Unless there is a clear violation of statutory procedure, principles of natural justice, or demonstrable mala fides, interference under Article 226 is not warranted.

15. In light of the above discussion, this Court finds no infirmity in the impugned demolition order dated 21.10.2024. The action of the Respondent-Municipality is in accordance with law and does not call for interference by this Court.

16. Accordingly, the writ petition is dismissed as being devoid of merit.

17. There shall be no order as to costs.

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

(Gaurang Kanth, J.)

SG

