

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 456 of 2026

**Tapas Kumar Chowdhury
Versus
The State of West Bengal & Ors.**

For the petitioner : Mr. Kallol Basu
Mr. Suman Banerjee
Mr. Atreya Chakraborty

For the Municipality : Mr. Gautam Lahiri

For the respondent nos. : Mr. Ayan Banerjee
8 to 22 Mrs. Sarmila Das

Heard on : 13.01.2026.

Judgment on : 13.01.2026

Raja Basu Chowdhury, J (Oral):

1. Affidavit of service filed in Court is taken on record.
2. The instant writ petition has been filed, inter alia, challenging the order dated 24th December, 2025, passed by the Chiarkan, Serampore Municipality, under the provisions of Section 218 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the "said Act").
3. The matter has a chequered history. It appears that private respondent nos. 8 to 22 had previously filed a writ petition, alleging illegal and unauthorized construction, which was registered as WPA

18390 of 2017. The said writ petition came up for final consideration when by an order dated 2nd April, 2025, a Coordinate Bench of this Court had noted that the municipality by carrying out an inspection had filed a report wherein the municipality found unauthorized construction.

4. The Coordinate Bench by the above order also directed that a proceeding under Section 218 of the said Act be initiated and that the municipal authorities shall comply with the guidelines of the Hon'ble Supreme Court as laid down in Writ Petition (Criminal) No. 162 of 2022 and Writ Petition (Civil) No. 328 of 2022. The petitioner herein, who was the private respondent in the first writ petition, filed an appeal which came to be disposed of by the Hon'ble Division Bench of this Court by an order dated 22nd September, 2025, by inter alia directing that the municipal authorities will commence proceedings under Section 218 of the said Act and shall hear out the objections by the appellants as also the writ petitioner in the first writ petition and pass a reasoned order demarcating the municipal land and the encroachments made, if at all. The order further provides that the encroachment shall thereafter be proceeded to be removed in accordance with law by Serampore Municipality.

5. Pursuant to the aforesaid, a proceeding under Section 218 of the said Act was initiated and the same culminated in the order passed by the Chairman, Serampore Municipality on 24th December, 2025.

6. Though, several points have been raised by Mr. Bose, learned advocate representing the petitioner, however, I find from the arguments advanced, the Chairman, Serampore Municipality did not have the competence to pass the order under Section 218 of the said Act.

7. Learned advocate for the municipality as also the learned advocate for the private respondents are represented.

8. Having heard the learned advocates appearing for the respective parties I find that the provisions of Section 218 of the said Act inter alia provides as follows:-

“218. Order for demolition or alteration of buildings in certain cases.— (1) If the Board of Councillors is satisfied —

(a) that the erection of any building —

(i) has been commenced without obtaining sanction or permission under the law, or

(ii) is being carried on or has been completed otherwise than in accordance with the particulars on which such sanction or permission was based, or after such sanction or permission has been lawfully withdrawn, or

(iii) is being carried on or has been completed in breach of any provision contained in this Act or in the Schedule or in any rules or regulations in this behalf, or

(b) that any building or projection exists in violation of any condition, direction or requisition lawfully given or made under this Act or the rules or the regulations made thereunder, or

(c) that any material alteration of, or addition to, any building has been commenced or is being carried on or has been completed in breach of any

provision contained in this Act or the Schedule or in any rules or regulations in this behalf,

it may, after giving the owner of the building a reasonable opportunity of being heard, make an order directing that such erection, alteration, addition or projection, as the case may be, or so much thereof as has been executed unlawfully, be demolished or altered and, upon such order, it shall be the duty of the owner to cause such demolition or alteration to the satisfaction of the Board of Councillors within such period as may be fixed in this behalf. In default, such erection, alteration, addition or projection, as the case may be, may be demolished or altered by the Board of Councillors at the expense of the said owner.

(2) The procedure relating to the opportunity of hearing to be given to the owner of the building under subsection (1) shall be such as may be prescribed.

(3) An appeal against an order made by the Board of Councillors in this behalf shall lie with the Court having jurisdiction.

[(4) Omitted]

(5) Notwithstanding anything contained in the foregoing provisions of this section or elsewhere in this Chapter, if the Chairman-in-Council is of opinion that immediate action is necessary in respect of any building being constructed, or any work being carried on, in contravention of the provisions of this Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith".

9. Nothing that the order under Section 218 of the said Act ordinarily can only be passed by the Board of Councillors, and the chairman in Council only, under certain contingencies as provided therein, can pass an order of demolition, and the order impugned having not highlighted any necessity to take immediate action, I am of

the view that the Chairman, Serampore municipality did not have the competence to pass the above order in the given facts especially when the exercise of authority was in terms of the order passed by the Hon'ble Division Bench on 22nd September, 2025. Accordingly, the order dated 24th December, 2025 stands set aside.

10. The matter is remanded back to the municipality to act in accordance with the direction passed by the Hon'ble Division Bench of this Court dated 22nd September, 2025.

11. The municipal authorities shall complete the entire process on remand within a period of four weeks from the date of communication of this order without granting any unnecessary adjournment to the parties. The above direction is peremptory.

12. It is made clear, if the inspection has already been conducted by the municipal authorities, no further inspection shall be necessary, though the report thereof must be served on the petitioner before proceeding further in the matter, and in such case the proceeding shall continue from that stage.

13. Needless to note that the petitioner shall be given opportunity of hearing, and to respond to the inspection report.

14. With the above observations and directions, the writ petition is disposed of.

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)