

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

**WPA 304 of 2024
With
CAN 1 of 2025
Mithu Bose
Versus
The State of West Bengal & Ors.**

**With
WPA 27948 of 2025
Souren Dey
Versus
The State of West Bengal & Ors**

For the petitioner : Mr. B. P. Banerjee
In WPA 304 of 2024 : Mr. P. Baidya

For the petitioner : Mr. Shib Shankar Banerjee
In WPA 27948 of 2025 : Mr. Santanu Chatterjee
& Private respondent in : Mr. Shaunak Ghosh
WPA 304 of 2024 : Ms. Shreyashi Maity
: Mr. Siddthanth Chamria

For the Municipality : Mr. Supriya Roychowdhury
: Mr. Sankar Ghosh
: Mr. Sagnik Chatterjee

Heard on : 15.01.2026.

Judgment on : 15.01.2026

Raja Basu Chowdhury, J (Oral):

1. The writ petition, being WPA 304 of 2024 (hereinafter referred to as the “first writ petition”), has been filed by the petitioner, inter alia, seeking for a direction upon the municipal authorities to take steps for

demolition of the illegal construction in the building situate at Mouza-Noapara, J.L. No.83, Revenue Survey No. 137, Touza No. 146, P.S. Barasat, Holding No.139 Gupta Colony, District North 24 Parganas, in terms of the report dated 8th May, 2019 prepared by the official of Barasat Municipality.

2. WPA 27948 of 2025 (hereinafter referred to as the “second writ petition), has been filed challenging the order dated 2nd August, 2023 passed by the Chairman, Barasat Municipality, whereby the Chairman had by noting the inspection report dated 8th May, 2019, directed the petitioner to demolish the unauthorised/deviated portions.

3. Mr. Banerjee, learned advocate appears in support of the second writ petition and would submit that the Chairman of the municipality did not have the competence to pass the demolition order impugned in the writ petition. In any event, it is submitted that the second writ petitioner is now armed with a revised sanctioned building plan issued and counter signed by the Chairman of the municipality whereby by the deviations have now been regularized in accordance with the provisions of the West Bengal Municipal Act, 1993 (hereinafter referred to as the “said Act”) and Rules framed thereunder.

4. By drawing attention of this Court to the inspection report as referred to in the order dated 2nd August, 2023, he submits that the inspection report refers to sanctioned building plan which now stands superseded by the revised building plan issued on 14th August, 2015

and having regard thereto, the above inspection report can no longer be relied on.

5. Learned advocate appearing in support of the first writ petition would, on the other hand, submit that in the year 2019, the petitioner in the second writ petition did not object to the inspection being carried out. Such inspection has been carried out on the basis of the sanctioned building plan issued on 29th September, 2014 as is referred to in the inspection report. According to him, the provisions of the said Act and the Rules framed there under do not authorize the municipality to issue a revised sanctioned building plan. By drawing attention of this Court to the certificate granting occupancy/completion certificate issued by the office of the Commissioner, Barasat Municipality he submits that once a certificate granting occupancy/completion is issued, there is no scope available to alter or revise the sanctioned building plan. According to him, admittedly, in this case the occupancy certificate has been issued on the basis of the sanctioned building plan issued on 29th September, 2014, and as such the purported revised sanctioned building plan relied on by the petitioner in the second writ petition dated 14th August, 2015 is a document which did not see the light of the day until, disclosure being made by the petitioner in the second writ petition. Having regard thereto, no reliance be placed to the same.

6. Having heard the learned advocates appearing for the respective parties and considering the materials on record in the instant case at

hand, I find that the writ petitioner in the first writ petition had previously approached this Court in WP 13864(W) of 2018 complaining illegal construction at the behest of the writ petitioner in the second writ petition. By an order dated 14th September, 2018, a Coordinate Bench of this Court noting from the submissions made by the municipality and the photographs relied on that unauthorized construction has taken place at the locale, had directed the municipal authorities to invoke the provisions of Section 218 of the said Act and such proceeding was directed to be completed within 12 weeks there from. Following the above, the Chairman, Barasat Municipality by an order dated 12th February, 2019 had recorded that inspection shall take place on 2nd March, 2019. Subsequently, the Assistant Engineer after carrying out an inspection had prepared an inspection report dated 8th May, 2019, which was forwarded to the Chairman, Barasat Municipality. To morefully appreciate the same, the said report is extracted hereinbelow.

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To,
The Chairman,
Barasat Municipality,
Barasat, North 24 Parganas.

Sir,

This is to inform you that physical inspection are made by me in presence of the both party 1) Sree Souren Dey 2) Mithu Bose and L.B.S. of Sree Bidyut Sarkar and Sree Sanjoy Bosu, on dated 02/03/19. The both party his/her representative identify the plot & existing G+III storied commercial building at Mouza :- Noapara, J.L. No. :- 83, R.S. Dag No. :- 2063, R.S. Khatian No. 1260, C.S. Khatian no. 429, C.S. Dag no. 1129, Holding No. :- 139, Gupta Colony, in ward no. :- 5, under Barasat Municipality, P.S. Barasat, Dist. North 24 Parganas.

On the basis of Field Survey Work the following observation points are below :- (As per physical condition) :- 1) At the time of Field Survey Work there is an existing G+III storied commercial building has been completed which covered area is :- (1) Ground Floor covered area is :- 3561 sft. (with cantilever Projection), (2) First Floor :- 3646 sft. (including cantilever Projection), (3) Second Floor :- 3646 sft. (including cantilever Projection) (4) Third Floor area is :- 3646 sft. (including cantilever Projection) but G + III storied commercial building plan sanctioned covered area is :- (1) Ground Floor :- (Car Parking) area 2188 sft. + others are :- 471 sft. (2) First Floor :- 2659 sft. (3) Second Floor :- 2659 sft. (4) Third floor area :- 2659 sft, vide building plan sanctioned meeting dated :- 29/09/14, Sl. No. 724.

As per physical condition :-

- Height of existing G+III storied building :- 41'-0" in front of Municipal road.
- Total covered area per floor :- (1) Ground Floor :- 3561 sft. (including 124 sft. Carpet area for car parking space at ground floor) (2) First Floor :- 3646 sft. Including cantilever projection, (3) Second Floor :- 3646 sft. Including cantilever Projection, (4) Third Floor :- 3646 sft, including cantilever projection.
- Total project area :- 14499 sft. But sanctioned area is :- 10636 sft. So, deviation is :- 3863 sft.
- In the Front side (West) :- 4'-10"/4'-0" wide space kept including 3'-3" wide cantilever projection, (0'-10"/1'-0" space kept open to sky) in placed of 4'-0" as shown in the sanctioned plan.
- In the Back side (East) :- 9'-5"/10'-0" wide space kept including 4'-0" wide cantilever projection, (5'-5"/6'-0" wide space kept open to sky) in placed of 10'-0" as shown in the sanctioned plan.
- In the North side :- 3'-0"/3'-6" wide space kept including 2'-0" wide cantilever projection, (1'-8"/1'-0" space kept upto boundary line) in placed of 4'-0"/5'-1" wide as shown in sanctioned plan.
- In the South side :- 4'-0"/3'-0"/3'-9" wide space kept including 2'-0"/1'-6"/1'-0" wide cantilever projection, (2'-3" wide space kept upto boundary line) of 04'-0"/5'-7" as shown in the sanctioned plan.
- Physically front side of this plot is P.C.C. road.

Forwarded for your valuable decision.

7. The matter did not stop there. The municipality did not conclude the proceedings. This prompted the petitioner in the first writ petition to once again approached this Court in WPA 3792 of 2022. On this occasion, the Coordinate Bench of this Court noting the previous orders including the inspection report dated 8th May, 2019, directed the municipality to take immediate steps for conclusion of the proceedings in accordance with Section 218 of the said Act within eight weeks from the date of communication of such order. Despite passing such order the municipality did not act. The writ petitioner in the first writ petition

therefor was compelled to invoke the contempt jurisdiction of this Court. By an order dated 15th June, 2023 this Court directed service of the contempt application on the alleged contemnors. Ultimately, the Chairman, Barasat Municipality passed the order dated 2nd August, 2023. In the light of the above, the contempt proceeding was dropped. The aforesaid order dated 2nd August, 2023 forms the subject matter of challenge in the second writ petition. Though the Coordinate Bench of this Court by its order dated 18th July, 2022 had directed the municipality to act in accordance with law and pass an order in accordance with the provisions of Section 218 of the said Act, the Chairman proceeded to take up the responsibility upon himself and pass an order in the proceeding. As rightly pointed out by Mr. Banerjee, learned advocate representing the writ petitioner in the second writ petition that the Chairman ordinarily does not enjoy the power to pass any demolition order. Only in certain contingencies mentioned in Section 218 of the said Act the Chairman can pass the order. To morefully appreciate the above provision, Section 218 of the said Act is extracted hereinbelow:-

“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.”

8. The order does not disclose any immediate urgency nor does it record any reasons for invoking the powers of the Chairman to pass an order under Section 218 of the said Act. On such ground obviously the

order cannot be sustained and the same is accordingly set aside. However, at the same time one must not lose sight of the fact that how the municipality despite being aware of the repeated directions passed by the Court had chosen to ignore the same and ultimately, to frustrate the order passed by this Court has purported to take upon himself the responsibility and passed the order. It may be noted that at this stage the petitioner in the second writ petition has come up with a new case and is attempting to claim that a revised sanctioned building plan has been issued. The plan disclosed by the petitioner in connection with the second writ petition is a purported document dated 8th August, 2015 which bears the signature of the Chairman of Barasat Municipality and that of the Assistant Engineer, Barasat Municipality. It is not known under which provision of law such plan has been countersigned by the Municipality. Prima facie, the above plan is *de hors* the provisions of the said Act. In any event, the occupancy certificate dated 14th August, 2015 has already been issued with reference to the plan sanctioned on 29th September, 2014, in the light of the above, no reliance can be placed on the purported plan dated 8th August, 2015.

9. Be that as it may, noting that the municipal authorities had been delaying the proceeding despite repeated orders being passed by this Court, I am of the view that the matter should be brought to a logical conclusion by the Board of Councillors of the municipality within a period of two weeks from the date of communication of this order. The Board of Councillors of the municipality shall give notice of hearing to

the parties and/or the learned advocate for the parties. Service of notice on the learned advocate-on-record of the parties shall constitute service of proper notice on the parties. Following such hearing, the Board of Councillors of the municipality shall decide on the cause.

10. With the above observations and directions, the writ petitions and the connected application are disposed of.

11. Let the original of the purported revised plan, issued on 14th August, 2015, be returned to the petitioner in the second writ petition, by retaining a photocopy thereof on the file.

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)