

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 833 of 2026

**Dipankar Mullick @ Dipankar Mallick & Ors.
Versus
The Kolkata Municipal Corporation & Ors.**

For the petitioners	:	Mr. Srijib Chakaraborty Mr. Aditya Tiwari Mr. Mayukh Majumder
For the Municipality	:	Mr. N. C. Bihani, Sr. Advocate Ms. Dipanwita Ganguly
For the respondent no. 11	:	Mr. Arnab Chakraborty Ms. Pragya Bhawmik Mr. Sukalyan Chakraborty
Heard on	:	20.01.2026.
Judgment on	:	20.01.2026

Raja Basu Chowdhury, J (Oral):

1. Affidavit of service filed in Court is taken on record.
2. The instant writ petition has been filed praying for a direction upon the municipality to forthwith demolish and remove the illegal, unauthorized boundary wall erected at the instance of the private respondents without any sanctioned plan and without any authority of law at the premises no.17, Ritchie Road, Police Station- Ballygunge, Kolkata-700 019 (hereinafter referred to as the "said property").

3. The petitioners claim that the grandfather of the petitioner nos. 1 and 3, namely Late Mukunda Behari Mullick during his lifetime was the sole and absolute owner of a parcel of land measuring about 6 cottahs 8 chittacks 33 sq.ft. more or less together with structures standing thereon being and forming the said property including a vacant portion of land measuring about 3 cottahs more or less situated on the western side thereof. The said Mukunda Behari Mullick during his lifetime after acquiring the said property had constructed a two-storied residential building on the portion of the said land where he resided with his family members till his demise. Prior to his death, the said Mukunda Behari Mullick executed his last Will and Testament dated 7th September, 1966 in respect of the said property and had appointed his eldest son Late Suniti Prasanna Mullick, the father of the petitioner nos. 1 and 3 as the sole executor thereof. Subsequently, upon the demise of the said testator the said Late Suniti Prasanna Mullick in his capacity as executor applied for probate. The probate was granted by the learned District Judge, Alipore, South 24 Parganas, in Original Suit No.11 of 1976. In terms of the aforesaid will the second son of the testator Jyoti Prasanna Mullick and Sati Prasanna Mullick became entitled to the land on the western side of the said property for construction of residential houses. The aforesaid property which was allotted to Jyoti Prasanna Mullick and Sati Prasanna Mullick was renumbered as premises no.17A, Pankaj Mullick Sarani. According to the petitioners, the said Jyoti Prasanna Mullick and Sati Prasanna

Mullick did not construct on the said property. According to the petitioners the Late Suniti Prasanna Mullick in his capacity as executor had executed a deed of indenture dated 16th October, 1998 whereby the specific portion of the vacant land comprising 17A, Pankaj Mullick Sarani was demarcated and was vested in favour of the respective legatees being Jyoti Prasanna and Sati Prasanna as aforesaid. According to the petitioners notwithstanding there being stipulation in the indenture dated 16th October, 1998 which expressly restricted alienation and prohibited disposal of the subject property in favor of third parties contrary to the testamentary scheme the private respondent no.9 along with her mother namely one Late Manjula Mullick and Late Aparna Mullick who happens to be the wife of Late Jyoti Prasanna Mullick, in the interregnum had executed an indenture of lease dated 30th April, 1999 thereby transferring their interest in premises no. 17A, Pankaj Mullick Sarani to a third party, namely, G.G. Developers being the respondent no.10 for a period of 99 years. The private respondent no.11 is the assignee of the interest of G.G. Developers.

4. Mr. Chakraborty, learned advocate representing the petitioners has drawn attention of this Court to the deed of assignment including the indenture of lease dated 16th October, 1998 as aforesaid and would contend that Jyoti Prasanna Mullick and Sati Prasanna Mullick and their legal heirs acquired interest to the extent of 3 cottahs more or less of land lying and situated at premises no. 17A Pankaj Mullick Sarani

together with one brick built room having area of 3 sq ft. forming western part of 17 Ritchie Road, Kolkata – 700 019 which has been renumbered as premises no.17A Pankaj Mullick Sarani, butted and bounded by the boundary walls on its north, south and west excepting the water reservoir and service place containing an area about 100 sq. ft. According to him, the respondent no.11 could not have acquired any interest in the property beyond what was conferred on Jyoti Prasanna Mullick and Sati Prasanna Mullick. By drawing attention of this Court to the photographs appears at page 115, 116, 117, 131 and 132 of the writ petition he would submit that the boundary wall which has now been constructed by the respondent no.11 interferes with the right of access of the petitioners to the portion which stands excluded from the portion of premises no.17A Pankaj Mullick Sarani by virtue of testamentary scheme and the indenture dated 16th October, 1998. According to him the water reservoir which was excluded has been included in the premises no. 17A Pankaj Mullick Sarani, by constructing the boundary wall. The boundary wall could not have been constructed by the private respondents as the petitioners are the owners in respect of the said property and the same also interferes with the basic amenities of right to life of the petitioners as the portion of the water reservoir has now been encroached.

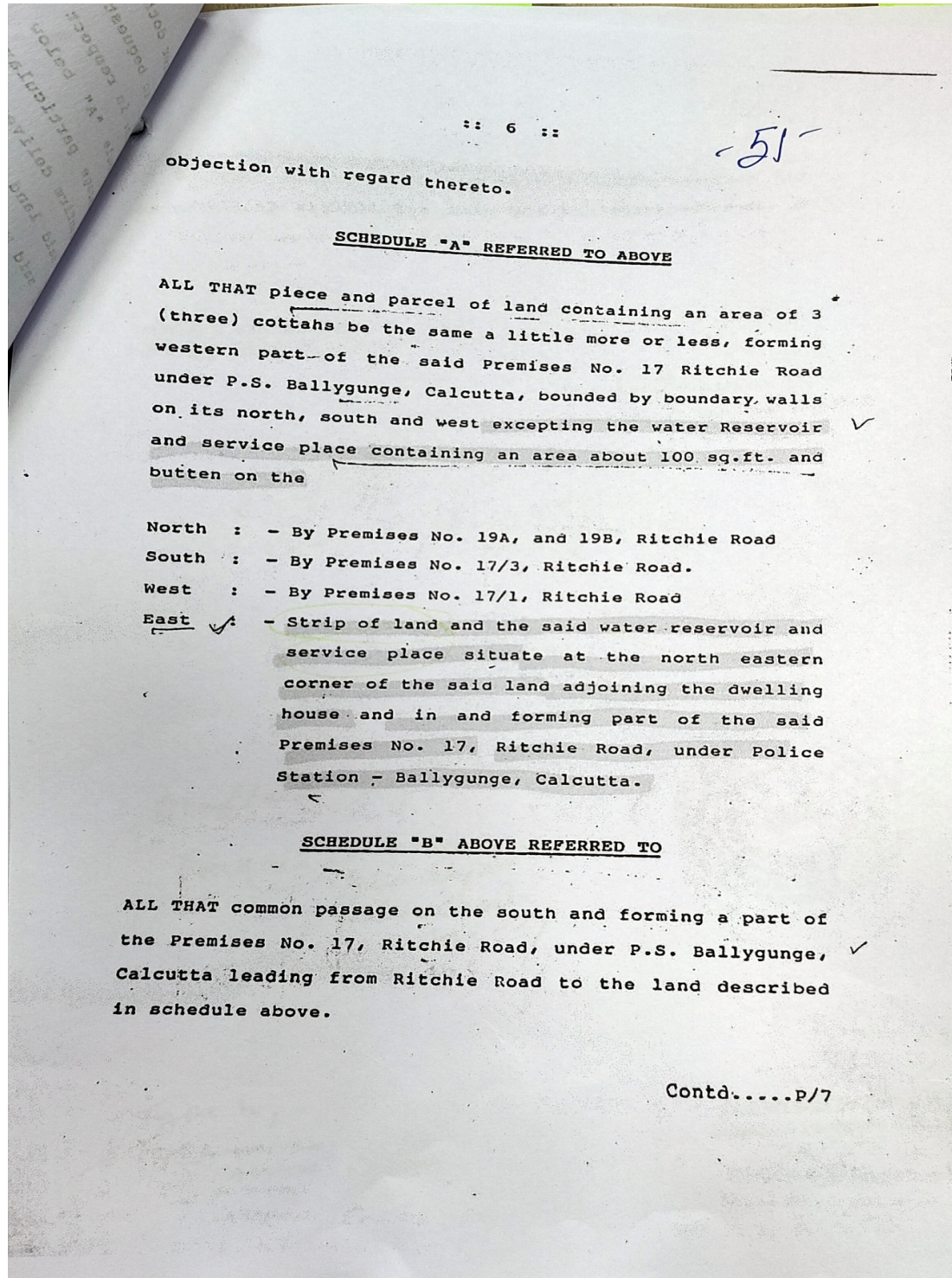
5. Learned advocate for the respondent no.11 is represented in Court. He submits that the petitioners had previously filed a suit for declaration and injunction. The petitioners could not succeed in getting

any order of injunction restraining the defendants including the private respondents from enjoying the part and portion of the premises no. 17A Pankaj Mullick Sarani. According to him the construction of the boundary wall is on the part and portion of 17A Pankaj Mullick Sarani. Since, the height of the boundary wall is below the permissible limit of 3 meters, no sanctioned building plan is necessary and accordingly the private respondent no. 11 did not apply for any plan but an intimation thereof was forwarded to the municipality. This apart, by referring to a judgment delivered in Misc. Appeal No. 38 of 2013, arising out of T.S. 345 of 2012, by the learned additional District Judge, 14th Court, Alipore on 3rd April, 2014, he would submit that the learned Court had specifically provided that the petitioners did not have any interest in premises no. 17A Pankaj Mullick Sarani, apart from preferential right.

6. Mr. Bihani, learned senior advocate appears on behalf of Kolkata Municipal Corporation.

7. Having heard the learned advocates appearing for the respective parties, I find that the respondent no.11 is enjoying the assignment of the residuary period of lease executed in favour of G.G. Developers. Records would reveal that by an indenture dated 16th October, 1998 executed by the executor of the Will of Mukunda Behari Mullick which has since been probated, part of the portion of the said property has been indicated in Schedule A of the aforesaid indenture had been transferred for enjoyment thereof in favour of Jyoti Prasanna Mullick and Sati Prasanna Mullick and or their legal heirs. To morefully

appreciate the same, the aforesaid schedule along with the plan appended thereto are extracted hereinbelow.



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-52-

IN WITNESS WHEREOF the executordoth hereby affixed his
signature on the day and month and year aforementioned. ✓

SIGNED SEALED AND DELIVERED
at Calcutta in presence of :

Amrit Prasanna Mukherjee
Signature of the Executor

1. *Singh Roy*
17. Runa Rd. South, 3rd floor
Calcutta - 700033
2. *Amrit Bose*
8 - MAHANIRVANA ROAD
CAL - 29.

Drafted by

Pooja Ashi Ch. Ghosh
Adv. Calcutta
Police Court
CAL - 27.

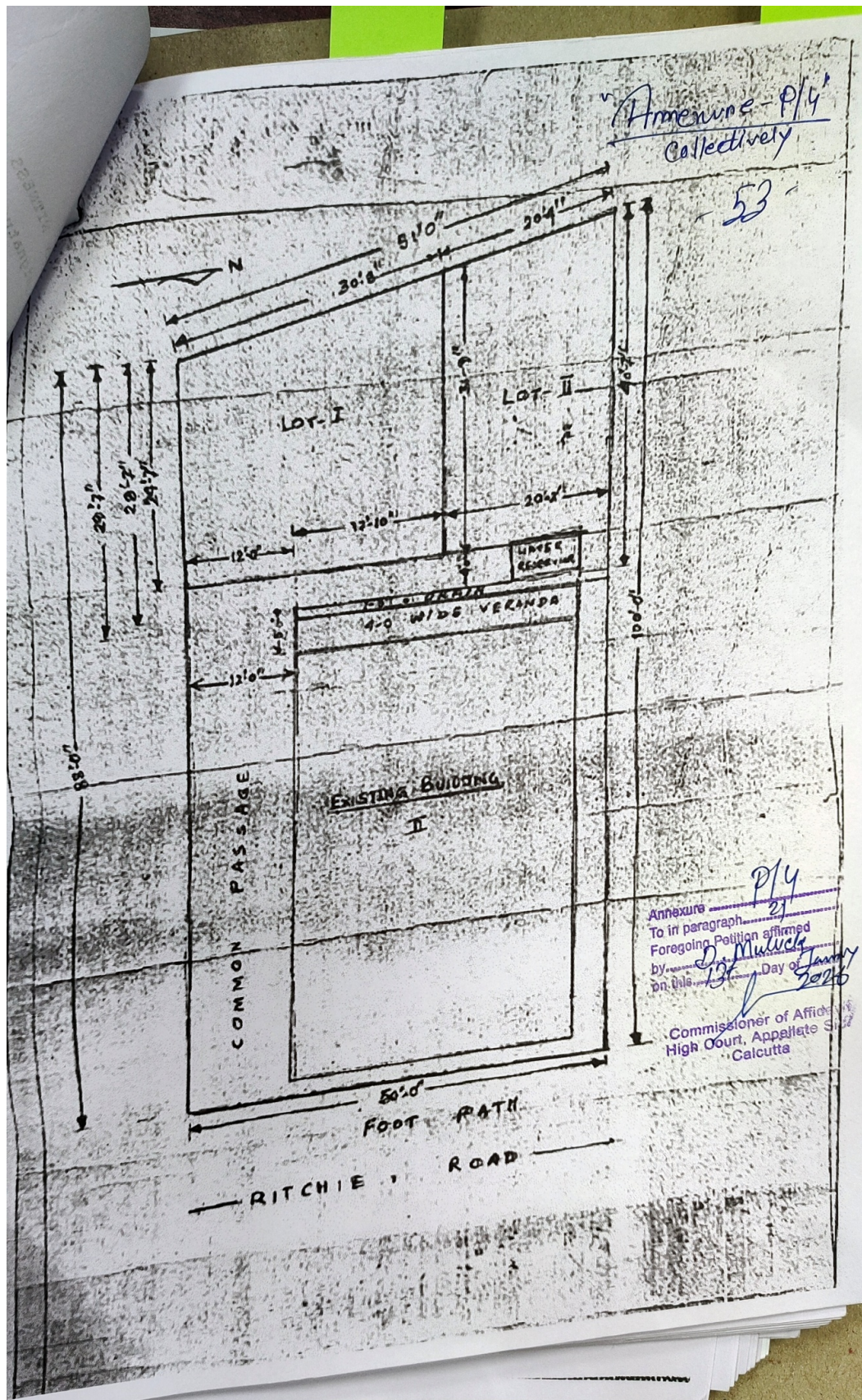


True Copy

[Signature]
District Registrar
24 Parganas (South)
2.11.98

Typed by

K. manna
Alipore. Cal 29



8. It is also not in dispute that the legal heirs of Jyoti Prasanna Mullick and Sati Prasanna Mullick had executed a registered lease deed unto and in favour of G.G. Developers on 30th April, 1999 wherefrom it would appear that the aforesaid 3 cottahs of land which was later renumbered as premises no. 17A Panjak Mullick Sarani formerly Ritchie Road, Kolkata, was lease out in favour of the G.G. Developers. Let a copy of the aforesaid lease deed as placed by the private respondent no.11 before this Court be taken on record. I have also considered the assignment deed executed in favour of the private respondent no.11 whereby the residuary period of lease had been assigned in favour of the private respondent no.11. In all the three deeds the sketch plan is somewhat similar. Be that as it may, without entering into such issue at this stage, taking note of the fact that the egress and ingress of the petitioners to the water reservoir has been interfered with by constructing the boundary wall, I am of the view that the municipal authorities should carry out an inspection in the premises in question and if, upon carrying out inspection is of the view that the newly constructed boundary wall interferes with the rights of the petitioners to access water reservoir, the municipal authorities shall ensure that the petitioners are able to freely access to the same. The above decision and the consequential step of the municipal authorities must be rendered and taken upon giving an opportunity of hearing to the parties interested and by carrying out an inspection. The inspection report whereof must be supplied to the parties. The aforesaid direction is

limited to the rights of the petitioners to access the water reservoir which is adjacent and falls on the western side of the building standing at premises no. 17 Pankaj Mullick Sarani. It is expected that the above decision and the consequential step shall be taken by the municipal authorities within a period of two weeks from the date of communication of this order.

9. As to whether the petitioners are entitled to exclusively enjoy the verandah which is adjacent to and falls on the western side of the existing building standing at the said property should be adjudicated before a civil forum.

10. The issue of mandatory open space is not, however, considered in the present writ petition, which in my view can only be decided upon there being demarcation of the property in a manner known to law.

11. Since, no affidavit-in-opposition has been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

12. 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.)