

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

**WPA 3064 of 2025
Aniruddha Mukherjee
Versus
Chairman, Kamarhati Municipality & ors.**

For the petitioners	:	Mr. Sardar Amjad Ali, Sr. Adv. Mr. Puranjan Pal Mr. Samir Kr. Ghosh
For the Municipality	:	Mr. Sankha Subhra Ray
For the respondent no.2 :		Mr. Sagar Bandyopadhyay, Sr. Adv. Ms. Soma Kar Ghosh Mr. Arabinda Pathak Ms. Suparna Paul Ms. Shilpi Ghosh
For the State	:	Ms. Sipra Mazumdar Ms. Somashree Dey
Heard on	:	02.01.2026.
Judgment on	:	02.01.2026

Raja Basu Chowdhury, J (Oral):

1. The present writ petition has been filed, inter alia, complaining
illegal construction done by the respondent No. 2 pursuant to the

purported building plan sanctioned by the Municipal authorities forming annexure P-3 of the present writ petition.

2. In order to decide on the issues involved in the writ petition, it is necessary to note down the facts leading to the instant case. The petitioner claims to have acquired interest in respect of a property which originally forms part of a property which was held by the predecessor in title of both the petitioner as also the private respondent No. 2 being Debi Prasad Mukherjee. The petitioner claims to have acquired interest in a portion thereof vide a registered deed dated 20th April, 2022 which included acquisition of 1/3 share of land measuring an area of 490 sq.ft. together with pakka structure measuring 209 sq.ft. and 281 sq.ft. of vacant land on the ground floor in total 490 sq.ft. out of 2 khatas 30 sq.ft. forming premises No. 54/2 Nil Kantha Chatterjee Street North 24 parganas corresponding to L.R. Dag No. 347/348, Khatian No. 1038 of Mouza-Belghoria, P.S. Belghoria, North 24 Parganas.
3. On the eastern side of the petitioner's premises lies the property of the respondent No. 2. It would also transpire from the records that the respondent No. 2 had acquired interest in the property being holding No. 1030/2 mouza- Belghoria under ward No. 22 of Kamarhati Municipality. At the time when the property was purchased by the respondent No. 2 on 27th March, 2017, the property was already constructed upon by the petitioner's immediate vendor namely, Probandho Kumar Mukherjee up to the

first floor level. The said premises in question forms part of LR Dag No. 348. It appears that when the respondent No. 2 attempted to raise a construction on the basis of a sanctioned building permit over the 1st floor of the aforesaid building, the petitioner raised objection and claimed that the construction that is coming up is illegal and de hors the West Bengal Municipal Building Rules, 2007 (hereinafter referred to as the “said Rules”).

4. Mr. Ali, learned senior advocate appears for the petitioner. He has taken this Court through the report filed by the municipality in order to contend that the municipal authorities had acknowledged the fact that the adequate open space throughout the length and breadth of the building owned by the respondent no.2 which is adjoining the petitioner’s premises had not been maintained and only a 2 ft. open space had been maintained. According to him, though the municipal authorities have claimed that the original construction had come up on the basis of no objection issued by the petitioner’s vendor, however, the no objection could not have overridden the statutory provisions.
5. Mr. Ali, has also drawn the attention of this Court to Rule 50 of the said Rules to, inter alia, contend that the mandatory open space between the two buildings in this case which is 4 ft. has not been maintained. The building standing on the part and portion of premises no. 54/A Nilkanta Chatterjee Street belonging to the respondent no. 2 has been constructed de hors the provisions of the

said rules. Although, the petitioner had filed a civil suit, such suit according to Mr. Ali is in relation to the personal civil rights of the petitioner and the respondent no. 2. The writ petition has, however, been filed for infringement of the statutory and constitutional provisions by the respondent no. 2 as also the municipal authorities and / or to ensure that the municipal authorities enforce the statutory and constitutional provisions and act on accordance with law.

6. Mr. Bandopadhyay, learned Senior advocate appears on behalf of the respondent no. 2. He has, at the very outset, drawn the attention of this Court to the prayers made in the writ petition, inter alia, to contend that the challenge in the writ petition is limited to the alleged illegal construction being carried out by the respondent no. 2 on the basis of the building plan and/or the sanctioned building permit issued by the Kamarhati Municipality. He submits that the petitioner was aware of the fact that there was an existing structure at premises no.54/A, Nilkanth Chatterjee Street, Kolkata when the petitioner had purchased premises no.54/2, Nilkanth Chatterjee Street as such the petitioner cannot question the existing structure which has been purchased by the respondent no. 2. The petitioner is also a transferee of interest of the original property which was held by the co sharers of premises no. 54 Nilkanth Chatterjee Street. On the date when the portion of the property was purchased by the petitioner, there was an existing construction

standing on premises no. 54/A Nilkanth Chatterjee Street which had been constructed by the predecessor in title of the respondent no. 2. He submits that the construction carried out by the respondent no.2 is on the existing structure. There is no illegal construction. The petition is harassive and should be dismissed.

7. Mr. Roy, learned advocate appears on behalf of the Kamarhati Municipality. By placing reliance on the report filed by the Kamarhati Municipality, he has drawn the attention of this Court to the sanctioned building permit pertaining to premises no. 54/A Nilkanth Chatterjee Street which had been constructed by the predecessor in title of the respondent no. 2, namely, Prabandho Kumar Mukherjee. According to him, the original plan was for construction of a three storied premises. however, the building was constructed only up to the first floor level and no further construction was undertaken by the original owner. According to him, the construction up to the first floor level was as per the sanctioned building permit. He has also drawn the attention of this Court to the no objection issued by the co sharers of the premises no. 54, Nilkanth Chatterjee Street to contend that the building standing on the western part of the property of the respondent no. 2 had encroached upon the portion of the property belonging to the respondent no. 2 by 2 ft., and consequentially an undertaking was given that if in future any construction is carried on by the predecessor in title of respondent no. 2, the predecessor in title of

the respondent no. 2 shall not be required to maintain the four feet mandatory open space since, two feet open space belonging to the respondent no. 2 had been consumed by the adjacent owner. The aforesaid undertaking forms part of the report.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record.
9. I find that the petitioner herein is a transferee of interest in respect of a portion of plot nos. 347 and 348, Mouza-Belgharia, which property originally formed part of the property held by Mr. Debi Prasad Mukherjee. It also appears from the materials on record that on the basis of a partition, a portion thereof, to the extent of 1 katha 10 chittaks with a single storied building was allotted in favour of Prabandho Kumar Mukherjee, the predecessor in interest of the respondent no. 2. The respondent no. 2 had acquired the interest of the said Prabandho Kumar Mukherjee on 27th March 2017 by a sale deed. The same had been duly registered with the Sub-Registrar, North 24 Parganas, DSR Barasat. From the title deed disclosed in the present proceedings, it would transpire that the property had been duly identified and comprises of 1 katha 10 chitaks on R.S. Dag no. 348 with a single storey constructed building along with adjoining land.
10. The petitioner on the other hand has acquired interest in the property in respect of a portion of Bastu and Danga homestead land measuring 490 sq. feet out of total of 2 katahs 30 sq. feet situated

at premises no. 54/2 Nilkanth Chatterjee Street with a single storied building standing thereon being part and portion of Dag nos. 347 and 348 having estimated area of 209 sq. feet including 80 sq. ft stair room. As such, as on the date when the petitioner purchased the property, the original construction standing on premises no. 54/A Nilkanth Chatterjee Street was in existence.

11. On the basis of the disclosure made in the petition it is apparent that a permit was issued by the municipality under Rule 21 of the said Rules on 20th December 2022 permitting the respondent no. 2 to construct an additional floor on its property situated at premises no. 54/A, Nilkanth Chatterjee Street. It is the construction carried on by the respondent no. 2 on the basis of the sanctioned building plan, which is under attack.
12. Although, the respondents had raised the issue of alternative remedy and have alleged that since the petitioner has been pursuing a civil remedy by filing a suit, the writ petition ought not to be entertained, however, I find that the right of the petitioner to maintain the civil suit is in relation to its personal rights whereas by filing the writ petition, the petitioner has sought for enforcement of its statutory and constitutional rights by activating the municipal authorities to act in accordance with law. On such consideration I find that the writ petition is maintainable.
13. As noted above, the municipality has already filed a report in the form of an affidavit and in the said report, the municipality has

clarified that it had granted sanction for construction of first floor measuring 706 sq. feet corresponding to 65.61 sq. meters of covered area in premises no. 54/A, Nilkanth Chatterjee Street. In the said report which has been affirmed by the Sub Assistant Registrar of the Municipality, in paragraph 4(b) it has been recorded that in course of inspection it was observed that the terrace has also been kept as per the building place and that the allegations of the petitioner could not be substantiated from the field inspection report. However, at the same time it has also been observed during inspection that the petitioner has constructed a tin shed room with brick pillar over the ground floor without any sanctioned building plan. Although, from the aforesaid report it would appear that the mandatory four feet open space as required to be maintained between the two adjacent buildings had not been maintained, however, as noted above, I find that the petitioner has only challenged the construction being made by the respondent no. 2 and not the existing building. In any event, the existing building which was constructed by the predecessor-in-interest of respondent no. 2, was constructed in accordance with the sanctioned building plan which plan, is not under challenged. It may also be noted that the part or portion of the property belonging to the original predecessor in title of the respondent no. 2 had been encroached, as would appear from the no objection. On such consideration it cannot be said that the respondent no.2 had not kept the

mandatory open space. However, this Court at this stage is not inclined to go into such disputed questions on the issue of title as the same may more conveniently be dealt with in the pending civil suit. Since, admittedly, the petitioner has not challenged the original sanctioned building plan and since it also transpires that there was some sort of arrangement between the original co-owners, inter alia, including encroachment of a portion or part of the property belonging to the original predecessor of the respondent no. 2, though no final finding could be reached, I am of the view that there is no scope for this Court at this stage to interfere in the matter and the writ petition is accordingly dismissed without any order as to costs.

14. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

**Sayandeep/Saswata
A.R. (Court)**