

31.03.2026
Court No. 12
ML 49
March 2026
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 421 of 2025
IA No : CAN 1 of 2025

Manju Rudra Biswas
-Versus-

Krishnanagar Municipality & Ors.

Mr. Pramit Bag, Bar-at-Law,
Mr. Debabrata Das,
Mr. Tirthankar Nandi
.....for the appellant

Mr. Saibal Acharyya,
Mr. Sankar Halder
....for the respondent nos. 1 & 2.

Mr. Sudip Ghosh,
Mr. Dilip Kumar Maiti,
Mr. Bdish Ghosh,
Ms. Maitryee Maiti
....for the private respondent no. 6.

Mr. Jagabandhu Roy,
Mr. Rezaul Hossain
....for the State.

1) This appeal arises out of an order dated February 13, 2025 passed in W.P.A. 16205 of 2019. By the order impugned the learned Judge placed reliance on the inspection report of the concerned Municipality and directed demolition.

2) We find from the records that the Municipality had held two separate inspections and despite notice the appellant was not present. The finding of the Municipality was that around 182 sq. ft. of land of the writ petitioner/respondent no. 6 had been encroached by the appellant by raising a

construction. On such ground Her Lordship directed the Municipality to demolish 182 sq. ft. of the construction of the appellant.

3) Mr. Bag, learned advocate for the appellant has raised objection on the use of the term encroachment in the report, inter alia, on the ground that the Municipality did not have any authority to decide the issue of encroachment.

4) However, this issue is not required to be gone into as we find that the reports of the Municipality are very cryptic and on the basis of such report a demolition order could not have been passed by a writ Court. The Court could not arrogate to itself the function of the authority under the law. The West Bengal Municipal Act, 1993 provides a special procedure for demolition under Section 218 thereof. This procedure would have to be followed even if there is a finding by the Municipality of unauthorized. The challenge in the writ petition were two fold. First that the Municipality had not acted in accordance with law and secondly the appellant had constructed illegally without any plan and in deviation to the rules.

5) The report prepared by the Municipality do not indicate that these aspects were taken into consideration when the inspection was made. We also take judicial notice that the appellant did not ever attend during any of the inspections. Under such circumstances, we are of the view that the entire process should start from the stage of inspection. We also make it clear that if the parties, more so, the appellant is not available on the date of the inspection in

that event the Municipality will proceed in accordance with the provisions of Section 218 of the West Bengal Municipal Act, 1993, upon holding an inspection in the absence of such party.

6) The date of inspection is fixed as 10th April, 2026 between 11 A.M. and 1 P.M. Such inspection shall be held in presence of the parties by the Assistant Engineer of the Municipality. No further notice will be given to either of the parties as they are represented by their learned advocates.

7) The minutes of the inspection shall be prepared and the parties shall sign such minutes. If any party has any objection to the said report they shall file such objection before the Municipality separately. Copy of the report of inspection shall be supplied to the parties. Thereafter, a date of hearing shall be fixed with 48 hours notice to the respective parties. A hearing shall be held and a reasoned order shall be passed by the competent authority. The issues to be decided would be whether there has been any construction without any sanction at the instance of the appellant, and in the event the appellants had obtained sanction from the Municipality, whether the sanction plan has been adhered to or whether there has been any construction in deviation to or in excess of the area depicted in the sanction plan. If, during inspection, any deviation is found the same shall be reflected in the report and the reasoned order.

8) At the hearing, the parties will be allowed to make their submissions and also furnish oral and documentary evidence in support of

such construction. Necessary order will be passed with regard to alleged construction and communicated to the parties.

9) It is made clear that the question of right, title, interest will not be gone into by the Municipality and adjudication will be restricted to the issues already discussed hereinabove.

10) Needless to mention, if unauthorized construction is detected, steps shall be taken in accordance with law.

11) The order impugned and the inspection reports giving rise to the order impugned are set aside.

12) The entire exercise should be completed within six weeks from the date of inspection.

13) Accordingly, the appeal and the connected application are disposed of.

14) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)