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09.02.2026
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Ct.3.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1826 of 2025

Swapan Kumar Manna & Ors.
Versus
The State of West Bengal & Ors.

With

WPA 5338 of 2025

Archana Deb (Sarkar)
Versus
The State of West Bengal & Ors.

Mr. Pratik Dhar, Sr. Advocate
Mr. Aritra Roychowdhury
Mr. S. Sinha

... For the petitioners in WPA 1826 of
2027 and respondent nos. 7 to 9 in
WPA 5338 of 2025.

Mr. Dipayan Kundu
Mr. Subham Ghosh

... For the petitioner in WPA 5338 of 2025
and respondent no.7 in WPA 1826 of 2025

Mr. Arijit Dey

... For Baranagar Municipality.

1. Affidavit of service in respect of WPA 5338 of 2025 filed in Court is taken on record.
2. By consent of the parties, both the above writ petitions are taken up for consideration together as the same relate to a demolition proceedings concerning Premises No.50/1. Dr. Nilmoni Sarkar Street, P.S. Baranaghar, Kolkata – 700090.
3. The matter has a chequered history. Complaining unauthorized construction and the failure on the part of the Baranagar Municipality to act on the basis of the

complaint lodged by the petitioner Archana Deb (Sarkar), a writ petition being WPA 11210 of 2021 was filed before this Court. Such writ petition came to be disposed of by an order dated 22nd April, 2021 with a direction upon the competent authority of Baranagar Municipality to dispose of the writ petition/complaint of the writ petitioner Archana Deb (Sarkar) dated 21st June, 2021 by carrying out an inspection and by passing a reasoned order. In furtherance to the above the Board of Concillors of Baranagar Municipality had passed a resolution on 2nd June, 2022 inter alia observing as follows:-

“Heard the matter.

Inspection report is considered. it appears that notices U/S218(1) of West Bengal Municipal Act, 1993 issued vide memo nos. PW/N/013 to PW/N/016 dated 12.04.2022 to Sri Swapan Manna, Sri Bikash Manna, Sri Tapan Manna owners and Sri Surojit Mitra, owners and developer in respect of premises no.50/1 Dr. Nilmoni Sarkar Street, Kolkata – 700 090 for unauthorized construction.

After threadbare discussion the Board of Councillors decided that direction is issued to Sri Swapan Manna, Sri Bikash Manna, Sri Tapan Manna owners and Sri Surojit Mitra, the respondents to demolish the unauthorized construction at premises no.50/1 Dr. Nilmoni Sarkar Street, Kolkata – 700 090 as per notice issued U/S 218(1) of West Bengal Municipal Act, 1993 issued vide memo nos. PW/N/013 to PW/N/016 dated 12.04.2022 within 4 weeks from the date of communication of this order. This order is passed U/S 218(1) of West Bengal Municipal Act,

1993. Thus the order of the Honorable Court in WPA No.12058 of 2021 is complied with.

Concerned engineer hereby directed to take necessary action in this matter”.

4. Being aggrieved with the aforesaid order, the developer of the property in question had filed a writ petition, which was registered as WPA 16467 of 2022. By order dated 28th September, 2022, a Coordinate Bench of this Court had directed the Board of Councillors of Baranagar Municipality to comply with the order passed by the Court on 22nd July, 2021, after giving a fresh opportunity of hearing to both the parties and the entire exercise was directed to be completed within a period of eight weeks from the date of communication of such order.

5. Despite the above direction, since the municipality chose not to take any further steps, Archana Deb (Sarkar) filed a writ petition which was registered as WPA 27267 of 2022. By an order dated 15th April, 2024 the said writ petition was disposed of by directing the municipality to pass a reasoned order with specific indication to be made therein, the portions which have been found to be unauthorized. The measurement of unauthorized portion was also directed to be disclosed.

6. Mr. Dhar, learned senior advocate representing Swapam Kumar Manna and his two brothers, the petitioners in WPA 1826 of 2025 and the private respondents in WPA 5338 of 2025 would submit that despite the above direction, the municipality by resolution

dated 27th November, 2024 has only reiterated its previous stand and has failed to identify the exact measurement of the unauthorized construction. He submits that the aforesaid order does not comply with the directions passed by Coordinate Bench of this Court in WPA 27267 of 2022.

7. The private respondent/petitioner in WPA 5338 of 2025 as also the municipality is represented in Court. Although, the writ petition, being WPA 5338 of 2025 has been filed more than a year back for demolition of the unauthorized structure at 50/1 Nilmoni Sarkar Street, Kolkata – 700090, the learned advocate for the municipality has not been favoured with any instructions.

8. Having heard the learned advocates appearing for the respective parties I find that in the instant case, the municipality has been able to detect the illegal construction at premises no.50/1 Dr. Nilmoni Sarkar Street, Kolkata – 700 090. Notwithstanding the aforesaid, the municipality did not identify in the order impugned the exact measurement of the unauthorized construction which was directed to be demolished. Though, I find and as rightly pointed out by Mr. Kundu, learned advocate representing the petitioner, Archana Deb (Sarkar) that the illegal construction has duly been noted by the Sub-Assistant Engineer, Baranagar municipality in the inspection report dated 28th September, 2021, however, such report was not made part of the order passed by the Board of Councillors on 2nd June, 2022. Thus, in the light

of the observations made by the Coordinate Bench of this Court on 15th April, 2024 in WPA 27267 of 2022, the order impugned in WPA 1826 of 2025 cannot be enforced by reasons of failure on the part of the municipal authority to identify the measurement in terms of the above order.

9. In the factual backdrop as aforesaid, the matter is remanded back to the municipality on the limited point to act in accordance with the order dated 15th April, 2024 and to pass the order identifying the illegal construction which is required to be demolished on a sketch plan, and the approximate measurement thereof.

10. Consequentially the order impugned is set aside. The order to be passed must be communicated to the parties. The municipality shall complete the entire exercise within a period of four weeks from the date of communication of this order.

11. With the above observations and directions, the writ petitions are 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.)