

D/L- 7  
18/03/2026  
Ct. No.-19  
Aritra

**WPA 6099 of 2026**

**Abu Taleb Molla**

**Vs.**

**The State of West Bengal & Ors.**

Mr. Pankaj Halder  
Mr. Tapas Manna

....for the petitioner

Mr. Sadhan Kumar Halder  
Mr. Samir Kumar Ghosh

....for the State

Mr. Subhajit Mukherjee  
Mr. Swakshar Kumar Mondal  
Mr. Abdul Ahid Sekh

....for the respondent Nos.7 to 10

Affidavit of service filed in Court today is taken on record.

The petitioner claims to be the recorded owner of a plot of land being Dag No.2107 within Mouza-Sankiberia, J.L. No.22 in the District of South 24-Parganas.

The petitioner alleges that the private respondents have started filling up a waterbody/canal of plot No.2234 within Mouza-Sankiberia, J.L. No.22 in the District of South 24-Parganas, which is recorded as *Khal* situated in front of the petitioner's plot as a result of which the ingress and egress of the petitioner from his property has been seriously affected. Petitioner submitted representation before various authorities praying for removal of unauthorised construction from the land of the PWD.

The learned advocate appearing for the petitioner draws the attention of the Court to the Record of Rights, which is annexed at page 11-12 of the writ petition, in support of his contention that plot No.2030/2234 is recorded as a *Khal*.

Mr. Halder, learned advocate appears for the State. He submits that since a representation has been submitted before the concerned authority, necessary steps in accordance with law shall be taken.

The learned advocate appearing for the private respondents submits that the petitioner has filed a suit being Title Suit No.101 of 2026 before the learned Civil Judge (Jr. Div.), Kakdwip, District-South 24-Parganas for the selfsame cause of action. He further submits that the private respondents have not attempted to make any construction upon the land belonging to the PWD. No construction has also been made by the private respondents on the plot of land of the PWD.

A copy of the plaint filed by the learned advocate for the private respondents is taken on record.

In reply, the learned advocate appearing for the petitioner submits that pendency of a civil suit cannot be a bar in entertaining a writ petition for demolition of an unauthorised construction upon the public land. In support of such contention he placed reliance upon an order dated June 25, 2024 passed by the Hon'ble Division

Bench in MAT 1144 of 2024 in the case of *Shyamsundra Mishra & Ors. vs. Radha Kumari Tiwari & Ors.*

Heard the learned advocates for the respective parties and perused the materials placed.

It is interesting to note that the instant writ petition was affirmed on March 11, 2026 and the same was filed before this Hon'ble Court on March 11, 2026. The petitioner herein himself affirmed the affidavit portion of this writ petition.

The Title Suit No.101 of 2026 was filed before the learned Civil Judge (Jr. Div.), Kakdwip on March 11, 2026. The plaint of the said suit was affirmed by one Md. Osman Ali Molla, claiming to be the constituted Power of Attorney holder of the plaintiff, namely, Abu Taleb Molla, who is the son of the writ petitioner. In paragraph 5 of the plaint of Title Suit No.101 of 2026, it has been specifically stated that defendants of the said suit, who are the private respondents herein are threatening the plaintiff/writ petitioner herein that they will forcibly take over possession of the property of the plaintiff and they have also threatened the plaintiff that they will not allow the plaintiff to use the road by the side of Noyanjuli for the purpose of their ingress and egress.

The cause of action for filing the said suit appears to have arisen on March 5, 2026. In the plaint of the said suit no allegation has also been made by the plaintiff therein that the private respondents have raised any

construction over the Noyanjuli. The plaintiff/writ petitioner herein has prayed for declaration of their title in respect of the plot of land being L.R. Dag No.2107 measuring about 25 ½ decimals and for a permanent injunction, restraining the defendants therein/private respondents herein in this writ petition not to create any obstruction in the ingress and egress of the writ petitioner through Noyanjuli.

Thus it appears that the petitioner has approached different fora making different allegations against the private respondents at the same point of time.

This Court fails to understand as to what prevented the petitioner from making the allegation in the plaint of the Title Suit No.101 of 2026 that the private respondents were attempting to make a construction when such allegation has been made in the writ petition and both the writ petition and the suit has been filed more or less the same point of time.

To the mind of this Court, that the petitioner has approached different forum by making inconsistent plea in the plaint of the Title Suit and the writ petition.

Since the petitioner has approached the Civil Court, this Court is not inclined to grant any relief to the petitioner in this writ petition.

In *Shyamsundra Mishra* (supra), the issue relates to unauthorised construction within the jurisdiction of the Kolkata Municipal Corporation. The civil suit pending

between the parties in the said appeal was related to a suit for partition of the property in question. On such facts the Hon'ble Division Bench has held that the resort to the exceptional provision under Section 400(8) of the Kolkata Municipal Corporation Act against the unauthorised construction undertaken without sanction plan has not caused any prejudice to the appellants therein or the private respondent/promoter.

The said decision being distinguishable on facts cannot come to the aid of the petitioner in the case on hand.

At this stage, the learned advocate for the petitioner submits that the respondent authorities have not been impleaded as party defendants in the civil suit. It is observed that by way of clever drafting, the petitioner has approached different fora for more or less identical reliefs against the private respondents herein.

Before parting with, this Court makes it clear that this order shall not prevent the respondent authorities from taking steps in accordance with law if there is any encroachment upon the Government land or the land belonging to the Public Works Department in accordance with law.

With the above observation, WPA 6099 of 2026 stands disposed of.

There will be no order as to costs.

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

***(Hiranmay Bhattacharyya, J.)***