

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 6282 of 2026

**Barun Panja & Ors.
versus
The State of West Bengal & Ors.**

For the petitioner : Mr. Amalesh Ray, Sr. Adv.
Ms. Mousumi Bhowel
Mr. Aman Gupta
Mr. Ishan Bhattacharya

For the State : Mr. Sukanta Ghosh
Mr. Arghya Chatterjee

For Bidhannagar
Municipal Corpn. : Mr. Arka Kr. Nag
Ms. Tirthankar Dey
Mr. S Bandopadhyay

Heard on : 16.06.2026, 24.06.2026..

Judgment on : 24.06.2026

Raja Basu Chowdhury, J (Oral):

1. The present writ petition has been filed, inter alia, challenging the order dated 16th April, 2024 passed by the Commissioner, Bidhannagar Municipal Corporation, pursuant to the direction passed by the Hon'ble Division Bench of this Court in MAT 717 of 2024.

2. The matter has a chequered history. One Panchibala Polley approached this Court in WPA 11753 of 2023 with a grievance that a

representation dated 30th March, 2023 made to the Bidhannagar Municipal Corporation (in short the BMC) regarding illegal construction raised by the respondent nos. 13 and 14 who were the respondent nos. 8 and 9 in the previous writ petition was not being considered by the municipal authorities.

3. Record would reveal that by an order dated 17th October, 2023 a Co-ordinate Bench of this Court noting that though the building in question, was not constructed in accordance with any sanctioned building plan, however, since, the purchasers of the flats in the building came from a financially weaker section of the society who might have to spend their life savings in purchasing the flats, the Mayor and the Commissioner of the Corporation was directed to sit and find out a solution of the problem. Record would also reveal that in terms of the aforesaid direction, the Mayor of the BMC, the Commissioner, the concerned Councilors and the learned advocate of the BMC participated in the meeting and came to a conclusion by observing as under :

“The directions and observations contained in the order dated 17th October 2023 has been meticulously read over and understood to by all the participants. The history of the case, nature of construction and socio-economic problems faced by the occupiers of the building in question has been discussed.

BMC is guided by the Municipal Corporation Act, 2006 and the West Bengal Building Rules, 2007. Neither the Act nor the Rules framed thereunder nor the law governing the field provide for regularisation of a building constructed beyond the sanctioned plan or authorising an unauthorized construction. Such provision cannot be

inserted by the parties of this meeting and has to be left to the competent authority being the legislature.

On that note, the committee is tasked to find out a solution to save the occupiers of the building in question who are very poor and living almost a sub-human life. These occupiers have been duped either by the co-sharers/owners or by the developers, enticing them to buy property for a better living. Caught unaware of the myriad of laws, these occupiers have purchased flats sans the knowledge of the law or the requirements thereunder. Due diligence may not be in their dictionary when day to day survival is a challenge to most. These persons have wrung their life's saving to buy a property to have and give a decent way of living to themselves and their family. In the teeth of such a situation, demolition has not been discussed on a humanitarian ground as the same will leave these hapless people under the open sky. A sympathetic approach has been discussed with right earnest.

In order to resolve the issue it is expedient to investigate the structural stability of the building, to give it a glimmering hope of retention of the structure, already brought up. The structural stability, both from the technical/theoretical as well as practical aspect is of utmost importance since it is a matter of public safety. However, the same is an arduous and time-consuming process, let alone that the costs involved in it may be quite high. If the building is structurally stable, BMC may, as a one time measure, allow the occupiers to retain the building with or without modifications and/or corrections and/or alterations and/or additions and/or reduction of load, subject to approval of the appropriate authority.

The matter is more of equipment, that that of expertise. Though both are equally necessary and supplemental to each other. The same may not be conducted by individuals, but by institutions. The institutions which may be entrusted to assess the structural stability are the Civil Engineering Department of IIT Kharagpur, Jadavpur University of IEST Shibpur. The participants of this meeting have however not been able to reach a consensus with regard to, who shall bear the cost of this technical assessment of this legacy building.

In the context of the aforesaid it was further discussed that BMC is in no way promoting unauthorized constructions. It is only as a one time measure that such avenues have been ventured into, till a competent authority takes a decision. BMC has been making public

announcement through miking about unauthorized construction to spread awareness, letters to banks have been sent so that no home loan is sanctioned without verifying the papers through the Corporation, notifications have also been published in reputed news papers for generating awareness among public to alert the intending buyers about the threats in purchase of properties in BMC area. CESC WBSEDCL have also been requested not to give electricity connection without verifying whether the construction is authorised. In a short past, over 100 such requests of Banks and WBSEDCL has been thoroughly checked and then approved. The goal is to stop the menace of unauthorized construction.

The participants thus conclude on the way forward, however, the following may be adjudicated by the Hon'ble Court-

- (1) Who shall adjudge the structural stability?
- (ii) Who shall bear the cost of such assessment?
- (iii) Any other directions of the Hon'ble Court as deemed fit and proper.

The Mayor, BMC, thanked everyone for their valuable time and requested the minutes to be drawn up and circulated to all the participants. The Ld. Advocates were requested to submit the same before the Hon'ble Court for kind consideration."

4. When the matter came up for consideration before the Co-ordinate Bench, an order dated 3rd April, 2024 was passed. The directions passed by the learned Judge vide such order is extracted hereinbelow :

"The respondent no.11 that is the Station Manager (South), WBSEDCL is directed to immediately disconnect the electricity connection to the subject premises.

The Bidhannagar Municipal Corporation shall forthwith disconnect the water supply, if any, to the flats at the subject premises.

The Municipal Bidhannagar Corporation is directed not to permit the respondent nos.8 and 9 to continue with any construction work within the jurisdiction of the

Bidhannagar Municipal Corporation without valid sanction plan.

The respondent nos.8 and 9 directed to deposit a sum of Rs.1,00,000,00/- (one crore) only with the learned Registrar General of this Court within April 12, 2024 as security deposit.

The Corporation is directed to take steps against the respondent nos.8 & 9 for acting contrary to the provisions of the Act of 2006 and the Act of 1993 and particularly in accordance with Section 13A of the Act of 1993.

The occupiers of the construction in question are directed to vacate the subject property within a period of thirty days so that the Corporation can proceed with the work of demolition of the same.

The respondent nos. 8 & 9 are directed to file separate affidavit before this Court disclosing their bank accounts and income tax details. The list of assets owned by them shall also be indicated in the affidavit to be filed by the respondent nos.8 & 9. The said respondents are restrained from selling/transferring or alienating any of their personal properties without the leave of the Court.

The Bidhannagar Municipal Corporation is directed to affix notices at the conspicuous places in and around the subject property mentioning that the structure is an illegal and unauthorized one and will be demolished soon.”

5. Challenging the aforesaid direction, the two developers of the building in question being respondent nos. 13 and 14 had filed two separate appeals which were registered as MAT 690 of 2024 and MAT 685 of 2024.

6. By an order dated 9th April, 2024 the said appeals were disposed of by directing the Commissioner, BMC to grant an opportunity of hearing to the appellants in the two appeals i.e respondent nos. 13 and 14 herein as also to Panchibala, or their authorized representatives and

to take a reasoned decision in the matter in accordance with law. The Hon'ble Court further made it clear that no further notice of the meeting shall be served on the parties and that the order shall operate as such notice. It was further made clear that the order will not prevent the Mayor-in-Council of BMC from invoking its powers under Section 266(8) of the West Bengal Municipal Corporation Act, 2006 in the event the Mayor-in-Council is of the opinion that the same is necessary. The Commissioner shall take a decision in the matter in terms of the order without being influenced by anything recorded in the minutes of the meeting dated 29th November, 2023 or in the order of the learned Single Judge dated 17th October, 2023.

7. Subsequently, the petitioners had also preferred separate appeals from the order dated 3rd April, 2024 passed by the Co-ordinate Bench which was registered as MAT 714 of 2024, MAT 707 of 2024, MAT 705 of 2024 and MAT 703 of 2024. The said appeals were disposed of by an order dated 15th April, 2024 observing that the order passed in MAT 690 of 2024 and MAT 685 of 2024 shall apply and operate in the present appeal *mutatis mutandis*, and that the appellant's name in that order will be read as Barun Panja, Gita Panja, Tarak Dasi Mridhya and Kashinath Panja. In all other respects, the order dated 9th April, 2024 shall remain the same in its application to the present appeal.

8. Pursuant to the aforesaid direction, the Commissioner BMC has passed a reasoned order dated 16th April, 2024. To more fully appreciate the same, operative portion is extracted hereinbelow :

“After taking into consideration all submissions made by all concerned parties and in the light of the legal provisions, it appears as follows:-

(1) That save and except the above mentioned submission the petitioner/appellant(s)/promoter and all concerned parties have given their final submission and have not raised any other point and or discrepancies in this matter.

(2) That in respect of the said premises physical inspection was conducted on 15.09.2023 at 4.30 pm by the officials of BMC upon receipt of complaint by the petitioner.

(3) As per the inspection report, the observation of Plot No. RA 181, Shantinagar, Sector -IV, Salt Lake, Kolkata 700098 are as follows:-

a) Now it is a G+IV storied building.

b) Ground floor, 3 (three) numbers of shops found on road side and rest portion consist of 3 (three) numbers of flats.

c) Second floor consists of 4 (four) numbers of flats and rest portion (floor) consist of 5 (five) numbers of flats.

d) Interior work going on in most of the flats.

e) Any copy of sanction plan could not be produced at the time of inspection.

(4) That it is admitted position in respect of the subject premise that no sanctioned building plan was issued by any appropriate authority, in this case by Bidhannagar Municipal Corporation.

(5) In *Priyanka Estates International (P) Ltd. v. State of Assam* reported in (2010) 2 SCC 27 the Hon'ble Apex Court, observed as follows:- "It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities

are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

The Apex Court observed that if unauthorized constructions were allowed to stand or are "given a seal of approval by Court", it was bound to affect the public at large.

(6) That in Civil Appeal No. 7356 of 2012 arising out of SLP (C) No. 23780/2011, Dipak Kumar Mukherjee V Kolkata Municipal Corporation & others, the Hon'ble Apex Court, observed as follows:-

"...Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer."

(7) That in respect of the subject premise at RA-181 no sanctioned plan from appropriate authority was issued. The G+IV storied structure is erected without having any sanctioned building plan.

(8) That under Section 13A of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 lays down that any offence committed by the promoter by violation of the provisions of Section 3(1) (mandatory registration and permission for construction); Section 7(1) (agreement and registration of written agreement by promoter); Section 8(1) (no alteration or addition without consent of transferee and rectification of defect); Section 8(2) (if constructed in accordance to sanctioned plan or any defect or change or any unauthorised construction is brought to notice within one year is liable to be compensated or defects rectified as the case maybe); section 9 (bar to execution of mortgage etc and refund of money if such mortgage is executed or for failure to give possession); and section 11 (promoter to convey title etc and to execute documents according to the agreement), is liable to have committed offence.

(9) That any offence committed by the promoter by violation of provisions contained under section 3(1), 7, 8(1)(2), 9 and 11 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 is classified as cognizable and non-bailable offence under section 13A of this Act.

(10) That the promoters have flouted all the aforesaid provision with impunity and acted in blatant violation of the statutory provisions as well.

ORDER

Under the facts and circumstances the undersigned is bound to act within the scope of West Bengal Municipal Act, 2006 and therefore directs the owners/occupiers/promoters/ of RA-181 (subject premise) to vacate the subject premises within 3 (three) weeks from the receipt of this order, after which the

owner(s)/promoter(s)/developer(s) will demolish the unauthorized structure erected without any sanctioned building plan within a further period of 1 (one) week from the receipt of this order failing which this Corporation will take appropriate steps without any further reference as per provisions of relevant rules and acts to demolish the unauthorized structure and recover the expenses of such demolition from the occupier as per provisions of West Bengal Municipal Corporation Act-2006.

The Executive Engineer (Building Plan) is also hereby directed to do the needful to lodge an FIR against unauthorized construction by the promoters/developers for violation of provisions of law, construction of unauthorised structure at the subject premise without any sanctioned plan and without any prior approval from this authority as per provision under West Bengal Municipal Corporation Act, 2006 as well as under the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 as well.

All concerned are to be informed accordingly.”

9. As would appear from the above order, the Commissioner, BMC had directed the developers to demolish the unauthorized structure erected without any sanctioned building plan within a week from the receipt of that order failing which the Corporation will take appropriate steps without any further reference.

10. The petitioners have however, approached this Court directly by bypassing the statutory remedy available before the Building Tribunal.

11. Mr. Ray, learned senior counsel representing the petitioners would insist by drawing attention of this Court to the order passed by

the Division Bench of this Court on 9th May, 2024 in WPA 1410 of 2024 whereby the Commissioner, BMC was directed to consider the prayer made by the persons claiming to be the co-owners in respect of a plot of land for the purpose of granting approval and/or sanction for construction of a building. According to Mr. Ray, the Commissioner, BMC in furtherance to the above direction by an order dated 31st May, 2025 has already taken steps and directed the petitioners to submit a structural stability certificate of the existing building from any recognized institution. According to him, the petitioners' building is no different, and is similarly placed as such identical treatment should be extended to the petitioners. While responding to a query from the Court he would submit that it was not the case of the petitioners that there has been violation of the principles of natural justice on the part of the Commission while taking the reasoned decision.

12. Mr. Nag enters appearance for the Bidhannagar Municipal Corporation.

13. Having heard the learned advocates for the respective parties, I find that pursuant to the directions passed by the Division Bench of this Hon'ble Court, the Commissioner, BMC had heard the matter in detail.

14. Following the above, a detailed decision has been passed by the Commissioner, BMC. From the order which forms the subject matter of challenge in the present writ petition, it would transpire that an inspection was also carried out and on the basis of the inspection, it

was found that in plot no. RA 181, Shantinagar, Sector IV, Kolkata - 700098, there exists a G+4 storied building. On the ground floor, there are 3(three) numbers of shops on the road side and rest portion consist of three numbers of flats. In so far as second floor is concerned, the same comprises four numbers of flats and on rest portion, five numbers of flats are available. Interior work going on in most of the flats. No copy of the sanction plan could be produced at the time of inspection. The municipal commissioner had also found that the promoters have flouted the municipal law and acted in blatant violation of the statutory provisions following which the demolition order was passed.

15. From the aforesaid order it cannot be said that the order is based on no evidence or is perverse. It is well settled that the case involving unauthorized construction or continuous violation of municipal laws, the issue assumes a public character. The rationale consistently adopted by the Court is that the unauthorized construction affects plan development, civic amenities and public safety. Nothing has been placed before this Court by the petitioners so as to demonstrate that the order suffers from any irregularity.

16. Though Mr. Ray has tried to impress upon this Court by placing a judgment of the Hon'ble Division Bench dated 9th May, 2024 and had insisted that this Court should direct the Commissioner to reconsider this case having regard to the observations made in such judgment, however, I find that in the said case, though an order was passed for

demolition of unauthorized structure, in the speaking order it was observed that the occupiers do not possess any document relating to the land. It is in that backdrop and since, the petitioner in such case, had placed reliance on a lease deed executed in their favour by the government and further noting that the lease deed placed a clear embargo from putting up construction without obtaining a building plan, the Division Bench of this Court while remanding the matter to the Commissioner, BMC had directed him to examine as to whether the petitioners had got any valid document to establish their right over the land in question and if the same was established then the authority shall consider whether the petitioners can be permitted to apply for building plan and if such a plan is processed, and an approval is granted, whether the petitioners can bring the existing building in accordance with the plan, that may be approved. It is thus clear from the above that no mandatory direction was passed by the Division Bench of this Court directing the regularization of the illegal construction. In the instant case, the matter has travelled further. The Division Bench of this Court has already passed orders dated 15th April, 2024 arising out of a challenge to the order dated 3rd April, 2024 and had directed the Commissioner, BMC to give opportunity to the appellants and take a reasoned decision in the matter. Pursuant to the above, a reasoned decision has been taken. It is well settled that the illegal construction of this nature cannot be permitted to be retained.

This court does not find any irregularity in the order passed by the Commissioner, BMC. No interference is called for.

17. Accordingly, the present petition is dismissed.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

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A.R. (Court)