

30.03.2026
Court No. 12
Item No. 19
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 496 of 2026
IA No : CAN 1 of 2026

Jamil Akhtar alias Sonu
-Versus-

Wasim Ahmed & Ors.

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Ms. Bipasha Bhattacharyya
.....for the appellant

Mr. Sandipan Banerjee,
Mr. Ankit Sureka
....for the Howrah Municipal Corporation.
Mr. Sayantan Adhya,
Mr. Md. Nadeem,
Mr. Rejwan Ali
....for the private respondent.

- 1) The appellant is aggrieved by an order dated March 9, 2026 passed by a learned single Judge in W.P.A. 14544 of 2025, directing the appellant to file an affidavit disclosing the number of rooms and floors which had been constructed and the name of the licensed building surveyor engaged in the construction.
- 2) We find that the allegation of the writ petitioner was unauthorized construction by the appellant. The writ petitioner is the respondent no. 1 in the appeal.
- 3) The specific allegation of the writ petitioner was that an illegal and unauthorized construction was going on at premises No. 472/1, G. T. Road, Shibpur, Howrah. A multi-

storeyed building with major encroachment of the road had been raised. The Corporation's intervention was requested. With the allegation that the Corporation remained silent on and from May 2025, the writ petition was filed for necessary orders.

4) The allegation before us is also that, additional floors had been raised, although a sanction for a G+ 2 construction was permitted by the Corporation.

5) His Lordship directed the appellant to file a report disclosing the number of rooms and floors and also disclosing the name of the licensed building surveyor.

6) The proper course of action should have been for the learned court to ask the Corporation to file a report instead of asking the person allegedly responsible for unauthorized construction to provide evidence in respect of his own construction.

7) In our opinion, the issue of unauthorized construction is to be decided by the Corporation. If unauthorized construction is detected, the matter will have to be proceeding with in terms of the Howrah Municipal Corporation Act, 1980. Any observation on the merits by the writ court will prejudice such proceeding. It is also submitted by the writ petitioner/respondent no. 1 that he wants to ensure that the unauthorized construction should not be continued and the unauthorized portions if found to be contrary to the sanction plan, or the building rules, should be demolished.

8) As we have already recorded that the Corporation is the ultimate authority to decide the issue, the appeal and the application are disposed of by directing the appropriate authority of the Corporation to treat the writ petition as a representative of the respondent no. 1 with regard to alleged unauthorized construction of the appellant and act and proceed in accordance with law. The writ court cannot discharge the functions of a statutory authority.

9) Mr. Banerjee submits that the corporation has already issued stop work notice.

10) It is directed that no further construction will be raised and no third party interest will be granted. The nature and character of the alleged construction shall remain as it is. No one should be inducted as an occupant.

11) Before any decision is taken by the competent authority, an inspection of the premise shall be held by the concerned Assistant Engineer in presence of the parties, upon granting 48 hours notice. A report shall be prepared and handed over to the parties. A reasoned order shall be passed. If it is found that the construction was beyond the sanctioned plan i.e. additional floors had been raised, in that event the demolition shall take effect immediately. The parties will be heard before the reasoned decision is passed by the competent authority.

12) The cost of demolition will be borne by the appellant in the event the appellant is found to have raised unauthorized construction.

13) The order impugned is set aside. The entire exercise shall be completed within six weeks from date.

14) Accordingly, the appeal and the connected application are disposed of. As nothing remains to be decided in the writ petition, the same is also disposed of with the consent of the parties.

15) 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.)