

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 6821 of 2023

Reserved on : 07.05.2026

Pronounced on: 22.05.2026

Shrimati Munmun Pal

...Petitioner

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. R. Mahato

... for the Petitioner

Mr. Sudeep Sanyal, Sr. Adv.

Mr. Sukanta Das

...for the Respondent No.4

Mr. Sujay Bandyopadhyay

Mr. Subhamoy Dutta

...for the Respondent Nos.2 & 3

Rajarshi Bharadwaj, J:

1. The present writ petition has been filed challenging the action of the Midnapore Municipality in granting mutation and certificate of enlistment in favour of respondent no. 4 in respect of Municipal Holding/Premises No. A-3 despite the petitioner's prior claim arising out of an earlier transfer by respondent nos. 5 and 6. The petitioner alleges violation of principles of natural justice and illegal exercise of administrative power on the part of the municipal authorities in dealing with the rival claims over the said municipal shop room.

2. The facts of the case in a nutshell are that the petitioner is a bona fide tenant-in-possession of a municipal shop room, namely Municipal Holding/Premises No. A-3 under Mouza-Bibiganj, J.L. No. 180, Municipal Ward No. 15 (New), School Bazar Market Complex, Post Office, Police Station and District-Midnapore (West), which originally belonged to Midnapore Municipality and was allotted as a shop room to one Triranjana Mahapatra by virtue of a Memorandum of Agreement dated October 14, 2006. After Triranjana Mahapatra's death, his widow one Sujata Mahapatra and son Mourya Kiran Mahapatra herein respondent nos. 5 and 6 stepped into his shoes, got the premises mutated in their names and were running an electrical goods wholesale and retail business from there under a certificate of enlistment issued by the Municipality.

3. On September 24, 2021, respondent nos. 5 and 6 handed over possession of the aforesaid municipal holding/premises No. A-3 to the petitioner upon receipt of a sum of Rs.11,00,000/- and affirmed an affidavit before the First-Class Magistrate, Midnapore (West), confirming transfer of the shop room in favour of the petitioner. From that date, the petitioner has been in continuous and peaceful possession of the shop room. However, during that period there was no elected Board in Midnapore Municipality and the administrative work was being conducted by the Administrator, being the Sub-Divisional Officer, Midnapore (West), on account of which the municipal authority refused to accept the petitioner's application for mutation and orally informed her that mutation would be considered only after formation of the new Board following municipal elections.

4. On August 17, 2022, Anubhav Bera, Sujata Mahapatra and Mourya Kiran Mahapatra herein respondent nos. 4 to 6 visited the shop room and tried to forcibly break open the padlock to take over possession, but were resisted by the petitioner and could not succeed. Thereafter, the petitioner accordingly lodged a written complaint before the Municipality on August 18, 2022 and also filed an objection praying that no mutation be granted in favour

of respondent No. 4 and that her own name be recorded as tenant. Despite receipt of this objection, the Municipality on August 18, 2022 received certain charges from respondent No. 4 and on August 30, 2022 issued a permanent certificate of enlistment in his favour, thereafter on September 21, 2022 issued a notice to the petitioner intimating that a hearing on her objection would be held on September 26, 2022. The petitioner attended the proceeding and the Municipality thereafter passed an order dated September 26, 2022 recorded in an affidavit of the municipal Chairman, directing that the shop room be sealed, status-quo maintained and a police complaint lodged against the legal heirs of Triranjana Mahapatra for repeatedly executing agreements with different parties and causing disputes, yet, the petitioner was never formally intimated of the contents or operative part of that order.

5. In the meantime, the petitioner had instituted Other Suit No. 240 of 2022 before the learned Civil Judge, Junior Division, First Court at Midnapore, seeking permanent injunction against Anubhav Bera, Sujata Mahapatra and Mourya Kiran Mahapatra, along with interim relief and the Court by order dated December 5, 2022 granted an ad-interim injunction directing the parties to maintain status quo as regards possession of the shop room, which was subsequently extended. However, on March 13, 2023 the Court allowed an application under Order 39, Rule 4 C.P.C. filed by respondent no. 4 and vacated the interim injunction, following which the Municipality proceeded to act on the mutation already recorded in favour of respondent No. 4 and the civil suit effectively became infructuous as the cause of action shifted to the issue of mutation. Owing to this, the petitioner contends that she has been illegally deprived of her legitimate claim to mutation in view of a distorted record, alleged collusion between the respondent authorities and respondent no. 4, and repeated assertions of payment and uncontested affidavit-based transfer in her favour by respondent nos. 5 and 6 much earlier than the documents produced by respondent no. 4 leading to preferring the present writ petition.

6. Learned counsel for the petitioner submits that the Municipal holding/premises No. A-3 was originally let out by Midnapore Municipality to Triranjana Mahapatra under Section 80(b) of the West Bengal Municipal Act, 1993, by Memorandum of Agreement dated October 14, 2006 and after his death his legal heirs, Sujata Mahapatra and Mourya Kiran Mahapatra, legally stepped into his shoes, got the premises mutated in their names and continued running an electrical goods business there under a certificate of enlistment issued by the Municipality. The Counsel further submits that clause 5 of the 2006 agreement restricts outright transfer, mortgage or sub-letting by the tenant, but allows the existing tenant to receive the “one-time security deposit” from a new intending tenant and to affirm an affidavit of ‘no objection’ towards letting out the shop in favour of such new tenant, as a mechanism to avoid refund and re-deposit formalities and that the petitioner falls squarely within this framework.

7. It is further emphasized that on September 24, 2021 respondent nos. 5 and 6 handed over possession of the shop room to the petitioner upon receipt of Rs. 11,00,000/-, issued a money receipt and affirmed an affidavit before the First-Class Judicial Magistrate, Midnapore (West), confirming transfer in her favour and that the petitioner has been in uninterrupted possession since that date, which entitles her to have her name mutated in the municipal records as the lawful tenant. Moreover, the Municipality, while acting under Administrator control, refused to accept her application for mutation and deferred the matter till constitution of the elected Board, although it later accepted respondent No. 4’s application and processed mutation in his favour despite the earlier affidavit-based transfer to the petitioner and the pending objection.

8. It is submitted that the Municipality’s action of granting mutation and issuing a permanent certificate of enlistment in favour of respondent No. 4 on August 18 and August 30, 2022, respectively, after receipt of the petitioner’s objection dated August 18, 2022, is illegal, arbitrary and in violation of

principles of natural justice, especially since the petitioner had clearly indicated that respondent nos. 5 and 6 had already affirmed an affidavit of 'no objection' in her favour and that she had paid Rs. 11,00,000/- to them. The Learned Counsel contends that the order dated September 26, 2022, which directed sealing of the shop and lodging of a police complaint against the legal heirs of Triranjana Mahapatra, was passed after a hearing but never formally communicated to the petitioner, thereby rendering the municipal decision tainted with procedural illegality.

9. Counsel further argues that the alleged "unholy nexus" between the Municipality and respondent no. 4 is evident from the fact that mutation in favour of respondent No. 4 was granted even though he has not disclosed or produced any valid money receipt of "one-time security deposit" from respondent Nos. 5 and 6, in contrast to the petitioner who has produced an affidavit and money receipt dated September 24, 2021 and that despite the Chairman's direction to seal the shop on September 26, 2022, respondent no. 4 continues to carry on business from the premises, which defeats the very purpose of the municipal order.

10. It is also submitted that mutation in favour of respondent no. 4 having rendered the civil suit infructuous, a fresh cause of action has arisen in favour of the petitioner, who now seeks a writ of mandamus directing the respondent authorities to cancel the mutation and certificate of enlistment granted to respondent No. 4 and to grant mutation and certificate of enlistment in her favour, along with a writ of prohibition restraining respondent nos. 5 and 6 from disturbing her peaceful possession. The learned Counsel therefore, in the interest of fairness and equity, requests this Court to set aside the impugned municipal decisions and direct mutation in favour of the petitioner.

11. The learned counsel appearing for the respondent nos. 2 and 3 submits that the dispute has arisen due to competing claims over the same municipal shop room on account of multiple transactions entered into by respondent

nos. 5 and 6 with different parties. It is submitted that the Municipality does not support any private party and is only concerned with ensuring that recognition of tenancy is made fairly and in accordance with law.

12. It is submitted that the shop room was originally allotted to late Trinanjan Mahapatra and after his demise, respondent nos. 5 and 6 continued as legal heirs. Subsequently, they entered into transactions first with the petitioner in 2021 and thereafter with respondent no. 4 in 2022, thereby giving rise to rival claims.

13. Learned counsel submits that the Municipality had executed an agreement in favour of respondent no. 4 on the basis of documents produced before it. However, upon receiving objection from the petitioner and during the hearing held on September 26, 2022, it came to light that multiple transactions had been entered into in respect of the same premises. In such circumstances, the Municipality formed an opinion that serious factual disputes were involved and that the matter required reconsideration after hearing all concerned parties.

14. It is further submitted that the Municipality does not adjudicate title but merely recognizes tenancy for administrative purposes. Therefore, where rival claims exist, recognition ought to be granted only after notice to and hearing of all affected parties along with scrutiny of the relevant documents. Allegations of mala fide or collusion have been denied and it is contended that the situation has arisen solely due to the conduct of respondent nos. 5 and 6.

15. Accordingly, it is submitted that an equitable course would be to keep the present recognition in abeyance and direct fresh consideration of the matter by the Municipality upon granting opportunity of hearing to all parties concerned.

16. Learned counsel appearing for the respondent no. 4 submits that the Midnapore Municipality had originally allotted Municipal Holding/Shoproom

No. A-3 in favour of one Triranjana Mahapatra and upon his demise, the names of his wife and son, namely respondent nos. 5 and 6, were mutated in the municipal records. It has been contended that respondent nos. 5 and 6 allegedly handed over possession of the shop room to the writ petitioner after receiving a sum of ₹11 lakhs. However, such contention does not prima facie appear to be borne out from the records in view of the findings of the Civil Courts indicating possession of the shop room to be with respondent no. 4. It has further been contended that although the writ petitioner alleged attempts by respondent nos. 4 to 6 to forcibly break open the locks of the shop room, no FIR or complaint before the police authorities was lodged in respect thereof.

17. It is submitted that as per the respondent no. 4, consideration had been paid to respondent nos. 5 and 6 and he has remained in possession of the shop room throughout. The Municipality thereafter entered into a tenancy agreement with respondent no. 4 on August 18, 2022 and subsequently issued a permanent certificate of enlistment on August 30, 2022. It has been specifically urged that, at the relevant point of time, the writ petitioner had neither applied before the Municipality seeking induction as tenant nor sought mutation of her name in respect of the said premises. As such, it is submitted by the learned counsel that no rival claim was pending consideration before the Municipality when respondent no. 4 was inducted as tenant and, therefore, no illegality can be attributed to the decision-making process of the Municipality. Any dispute regarding transfer of money or private arrangements between the writ petitioner and respondent nos. 5 and 6, according to the respondent No. 4, constitutes a purely civil dispute not amenable to adjudication in writ jurisdiction.

18. It has also been brought to the notice of this Court that the writ petitioner instituted Suit No. 240 of 2022 before the learned Civil Judge (Junior Division), 1st Court, Paschim Medinipur, seeking permanent injunction in respect of the said shop room. Though an ex parte interim order

was initially granted, the same was vacated by order dated March 13, 2023 and the injunction application stood rejected. The appeal preferred therefrom being Misc. Appeal No. 42 of 2023 was also dismissed by the learned District Judge, Paschim Medinipur on July 18, 2023, wherein it was observed that the plaintiff failed to establish a prima facie bona fide dispute and that the balance of convenience tilted in favour of defendant no. 1, namely respondent no. 4 herein.

19. It has further been submitted that respondent no. 4 has also instituted Suit No. 10 of 2025 against the Municipality and in Misc. Appeal No. 79 of 2025 arising therefrom, the learned District Judge, Paschim Medinipur by order dated May 02, 2025 restrained the Municipality from disturbing the peaceful possession and business of respondent no. 4 in respect of the shop room without due process of law. The said order is still subsisting.

20. In such circumstances, it has been submitted that any attempt on the part of the Municipality to reopen the issue or seal the shop room would amount to acting in derogation of the subsisting orders passed by the competent Civil Courts. It is, therefore, contended that the writ petition is not maintainable, inter alia, on the grounds that the writ petitioner had no pending claim before the Municipality at the relevant time, the disputes between the parties are already sub judice before the Civil Courts and any interference in exercise of writ jurisdiction would effectively permit circumvention of the orders passed by the Civil Courts.

21. Having heard the learned counsel for the parties and perusal of the records this Court is of the view that the controversy in the present writ petition does not pertain to adjudication of title over the disputed municipal shop room, but concerns the legality, fairness and procedural propriety of the decision-making process adopted by the municipal authorities while granting recognition and mutation in favour of respondent no. 4 despite the existence of a prior competing claim raised by the writ petitioner. It is well settled that

mutation or recognition of tenancy by a municipal authority is essentially administrative in nature and though such mutation does not confer title, the authority concerned is nevertheless obligated to act fairly, transparently and in adherence to the principles of natural justice while deciding rival claims relating to municipal tenancy.

22. From the materials placed on record, it appears that the shop room in question was originally allotted by Midnapore Municipality to late Triranjana Mahapatra by virtue of Memorandum of Agreement dated October 14, 2006. Upon his demise, respondent nos. 5 and 6, being his legal heirs, stepped into his shoes and continued in occupation and business from the said premises after mutation in their favour. It further appears that on September 24, 2021 respondent nos. 5 and 6 accepted consideration of Rs. 11,00,000/- from the petitioner, handed over possession of the premises to her and executed an affidavit before the learned Judicial Magistrate affirming their no objection in respect of the petitioner's induction in the said shop room. The petitioner has also produced contemporaneous documents including money receipt and affidavit in support of such transaction.

23. This Court finds substance in the contention of the petitioner that despite existence of the aforesaid documents and despite the petitioner raising objection before the Municipality on August 18, 2022, the municipal authorities proceeded to entertain the claim of respondent no. 4 and granted mutation and certificate of enlistment in his favour without first adjudicating the objection raised by the petitioner and without granting her an effective opportunity of hearing prior to such decision. The records further reveal that during the subsequent hearing held on September 26, 2022, the Municipality itself noticed the existence of multiple transactions concerning the same premises and recorded that the conduct of respondent nos. 5 and 6 had generated serious disputes requiring maintenance of status quo and even lodging of police complaint. Once the Municipality itself acknowledged existence of rival claims and disputed transactions, the earlier grant of

mutation and recognition in favour of respondent no. 4 without comprehensive consideration of all competing claims stood vitiated by procedural impropriety and arbitrariness.

24. The contention advanced on behalf of respondent no. 4 that no application for mutation had been filed by the petitioner prior to induction of respondent no. 4 does not impress this Court in view of the admitted factual position that the petitioner had already approached the Municipality objecting to the proposed recognition of respondent no. 4 and asserting her own claim arising out of the earlier transaction dated September 24, 2021. The Municipality, being a public authority, was under an obligation to withhold final recognition until the rival claims were examined upon notice to all affected parties. Administrative fairness required the Municipality to maintain neutrality and refrain from conferring exclusive recognition upon one claimant in the face of an unresolved competing claim supported by documentary materials.

25. This Court is also unable to overlook that the order dated September 26, 2022 admittedly passed after hearing the parties was never formally communicated to the petitioner. Non-communication of an order affecting civil consequences amounts to violation of principles of natural justice and deprives an affected party of meaningful opportunity to seek appropriate remedies. Such conduct further renders the municipal action legally unsustainable.

26. The reliance placed by respondent no. 4 upon the orders passed in the civil proceedings also does not persuade this Court to non-suit the petitioner. The orders passed by the learned Civil Courts were confined to the question of interim injunction and possession and cannot operate as conclusive adjudication upon the legality of the municipal decision-making process relating to mutation and recognition of tenancy. The writ petitioner has not sought declaration of title before this Court but has challenged the arbitrary exercise of administrative power by the Municipality. Therefore, the pendency

of civil proceedings cannot bar judicial review where violation of natural justice and arbitrariness in administrative action are apparent on the face of the record.

27. At the same time, this Court is conscious that disputed questions relating to ultimate entitlement and validity of inter se transactions between the private parties cannot conclusively be adjudicated in writ jurisdiction. However, the Municipality, being the statutory authority controlling the municipal premises, is duty bound to consider the rival claims afresh in a transparent and reasoned manner without being influenced by any prior decision already taken.

28. Accordingly, the mutation and certificate of enlistment granted in favour of respondent no. 4 are set aside. The respondent Municipality is directed to reconsider the issue of recognition of tenancy and mutation in respect of Municipal Holding/Premises No. A-3 afresh upon granting adequate opportunity of hearing to the writ petitioner, respondent no. 4 and respondent nos. 5 and 6 and upon consideration of all relevant documents produced by the respective parties. A reasoned order shall be passed strictly in accordance with law and the same shall be communicated to all concerned parties forthwith.

29. Till such reconsideration is completed, the Municipality shall maintain status quo with regard to the nature and character of the premises and shall not create any third-party interest therein.

30. With the aforesaid observations and directions, the writ petition stands allowed. There shall, however, be no order as to costs.

31. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

22.05.2026

PA (BS)