

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

The Hon'ble Mr. Justice Bivas Pattanayak

W.P.A. 10868 of 2023

(Assigned)

Sri Palas Das

Vs

The Serampore Municipality & Ors.

With

W.P.A. 29103 of 2023

(Assigned)

Prasanta Pandit & Ors.

Vs

State of West Bengal & Ors.

For the petitioner
In WPA 10868 of 2023

: Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
Mr. K.R Ahmed
Mr. Tapash Chatterjee
Mr. Soumava Santra

For the petitioner
In WPA 29103 of 2023

: Mr. Syamal Kumar Das
Mr. P. K. Banerjee
Ms. Indrani Nandi,
Ms. Krishna Yadav
Ms. Bushra Neshar
P.K Biswas

For the State
(WPA 10868 of 2023)

: Mr. Biswajit Dutta

For Seramopore Municipality

: Mr. Gautam Lahiri

For the respondents nos.7 to 10 in
WPA 10868 of 2023 and respondent
nos.8 to 11 in WPA 29103 of 2023

: Mr. Sudeep Sanyal, Sr. Adv.
Mr. Jayanta Kumar Sanyal
Mr. Dibashis Basu

Mrs. Tutun Das
 Ms. Ketaki Ghosh
 Mr. Akash Talukdar
 Mr.C. Lahiri
 Mr. A Naskar,
 Mr. Chandrachur Lahiri

For the Union of India : Mr. Pinaki Ranjan Chakraborty
 Mr. Ganga Prasad Mukherjee

Heard on : 31.07.2024, 25.09.2024,
 07.11.2024, 20.11.2024,
 02.12.2024, 16.12.2024,
 10.01.2025, 23.04.2025,
 05.05.2025, 13.05.2025,
 21.05.2025, 02.07.2025,

Reserved On : 02.07.2025
 Judgment on : 20.05.2026

Bivas Pattanayak, J.:-

1. In the writ petition being WPA 10868 of 2023 (*in short WP-I*) the petitioner seeks as follows.

- (i) Direction upon the respondent municipal authorities to take immediate and proper steps as per provisions of section 218 of the West Bengal Municipal Act, 1993 (*hereinafter referred to as the 'Municipal Act'*) thereby issuing 'Stop Work' notice as well as to take further steps for demolition of the illegal and unauthorised construction carried on by the private respondents herein;
- (ii) Direction upon the respondent municipal authorities to take immediate and proper steps as per provisions of section 217 of the Municipal Act, for the purpose of cancellation of the sanctioned building plan issued by the municipal authorities in favour of the private respondents.

- 2.** In writ petition WP-I it is contended by the petitioner that he is a neighbouring resident to the municipal premises No. 12, Ray M.C Lahiri Bahadur Street, Hooghly, PIN-712204 corresponding to L.R Dag no. 8626 & 8627 under R.S Khatian Nos. 1501 & 1502, L.R Dag no. 8492 & 8493 under R.S Khatian Nos. 1618/4, 725/9 and 3955 within Mouza-Chatra (*hereinafter referred to as the 'subject property'*) wherein the private respondents by engaging one promoter under the name and style of *M/s Balaji Construction* have started illegal and unauthorised construction of the multi-storied building. The alleged construction has been undertaken without leaving the mandatory open space as required under the West Bengal Municipal (Building) Rules 2007. The boundary particulars shown in the plan are incorrect and illusory. Despite the municipal authorities being informed, they are reluctant to take appropriate steps against such illegal construction. Being aggrieved by such inaction on the part of municipal authorities the petitioner has preferred the writ petition seeking for appropriate reliefs as mentioned hereinabove.
- 3.** The private respondent nos. 7 to 10 in writ petition WP-I filed their affidavit-in-opposition contending, *inter alia*, as follows.

- (i) That the petitioners have not disclosed that a civil suit is pending in the Court of learned Civil Judge (Junior Division), 2nd Court, Serampore, Hooghly involving the subject property, wherein an order of injunction has already been passed by the learned Civil Judge and date has been fixed for hearing of the injunction application. The writ petition is not maintainable as a

civil suit is pending relating to the subject property and alternative remedy is already available to the petitioner.

- (ii) That assessment of the subject property and the work of construction has been undertaken as per the sanctioned building plan issued by the respondent no.1-municipal authorities.
- (iii) As per the report submitted by the respondent authority before the Hon'ble Court, it will be evident that there is no deviation made encroaching into the side/portion of the petitioners' area rather the space left is more than the allowed space mentioned in these sanctioned building plan.

4. The petitioner in WP-I filed his affidavit-in-reply contending that the civil suit has been initiated at the behest of the private respondents asserting that they being the promoter have the right to make construction over the subject property in terms of the sanctioned building plan obtained from the municipality and prayer was made seeking injunction against the defendants for restraining them from creating any disturbance in the work of construction. In the said suit the petitioner is not at all impleaded as a party and therefore the suit filed by the private respondents cannot create any legal bar whatsoever in respect of maintainability of the writ petition. Further considering the height of the building neither the space as per law in the four sides of the construction has been left nor construction has been undertaken in terms of the sanctioned building plan. Though the private respondents have annexed a receipt in their affidavit-in-opposition

showing deposit of Rs.10,000/-towards development fee for additional construction however there is no such law by which the municipality can allow a person responsible to carry out additional construction apart from the sanctioned building plan upon deposit of such fee.

5. In the writ petition being WPA 29103 of 2023 (*in short WP-II*) petitioners similarly prayed for demolition of the unauthorised construction, cancellation of the sanctioned building plan and for enquiry into the matter of illegal construction undertaken by private respondents without leaving requisite space on the front and the back side, upon consideration of the objection/representation made by the petitioners dated 20th September 2023.
6. In writ petition WP-II the petitioners contend that the petitioner no.1 purchased a part of the property measuring 0.012 acre comprised within premises no.13, Ray M.C Lahiri Bahadur Street, Hooghly and the petitioners are residing in the said property permanently without any interruption from any corner whatsoever. The private respondents who are the promoters under the name and style of *M/s Balaji Construction* are raising illegal and unauthorised construction of G+4 multi-storied building on the subject land without leaving requisite side space as required under the rules. The petitioners are the adjoining landowners to the subject property. The petitioners made several representations before the municipal authorities, however, no steps have been taken. Hence this writ petition.

7. The private respondent nos.8 and 10 in writ petition WP-II, filed their affidavit- in-opposition contending, *inter alia*, as follows.

- (i) That the writ petitioners reside on the southern side of the constructed building. In terms of sanctioned plan as well as report of the licensed municipal surveyor it is shown that the side space of the southern side i.e petitioners' side is 4 feet. However, in reality the side space is more than 11 feet. The surveyor has not mentioned the actual measurement.
- (ii) There is no statutory provision which obligates the petitioner to construct by leaving any space between railway lines and his own plot of land. The municipality which is the authority to sanction building plan has considered this aspect prior to sanctioning the building plan. It has also not been shown that the Railway authority raised any objection against sanctioning of building plan next to railway tracks although the Railway authority are aware that a work of construction has been undertaken by the answering respondents. Moreover, there is no government notification prohibiting the municipality from sanctioning building plans near railway tracks. There is existing boundary built by the railways to demarcate their property from the others. The railways, not being the owner of the property, have no right to prevent the private respondents from undertaking the work of construction. There is also no

requirement in law for obtaining any '*No Objection Certificate*' from the railway authority in this regard.

- (iii) The writ petitioners being defendants in the Title Suit being no. 667 of 2022 pending before the learned Civil Judge (Junior Division), 2nd Court, Serampore, Hooghly, has not disclosed the pendency of the said suit. The learned civil court has passed order of injunction restraining the writ petitioners from disturbing the work of construction undertaken by the answering respondents and the order of injunction has been made absolute. The petitioners have approached this Hon'ble Court with unclean hands in order to harass the answering respondents.

8. In their affidavit-in-reply, the petitioners contended that the private respondents being the promoters in the locality are influential persons and they are trying to grab the property of the petitioners. The promoters have not left required space of 10 ft from the back side. Similarly in the front side according to building plan 22 ft frontage/approach the road is necessary whereas the passage is only 8 ft broad. The requisite space from the south and north side has also not been left. There is a *Shib Mandir* situated just southern side of the petitioners' house however, the petitioners house is not shown in the plan.

9. Mr. Tanmay Mukherjee, learned Advocate for the petitioner in writ petition WP-I submitted that the petitioner is a next-door neighbour of the private respondents. The writ petition has been filed on the ground that the municipal authority failed to consider the written complaint of the

petitioner against illegal and unauthorized construction raised by the private respondents over the subject property at municipal holding No.12, Ray M.C. Lahiri, Bahadur Street, Serampore, Hooghly. The private respondents has obtained sanction building plan upon suppression of material facts and as such the same is required to be cancelled as per provisions of Section 217 of the Municipal Act and the rules framed thereunder. The alleged construction undertaken has largely deviated from the sanction building plan and, therefore, proceeding should be initiated by the municipal authority against the private respondents by invoking section 218 of the Municipal Act and consequently issue order for demolition of such unauthorised construction.

Pursuant to direction of this Hon'ble Court an inspection was carried out in the subject property by the municipal authority upon notice to the parties and a report dated 23rd November, 2023 is filed by the Municipal Authority before this Hon'ble Court. As per the West Bengal Municipal (Building) Rules, 2007 (*hereinafter referred to as 'Building Rules, 2007'*) it is mandatory that when the height of the building is above 12.5 metres and upto 15.5 metres, the front side and rear open spaces should be as follows. The front open space should be 2 metres (*equivalent to 6.5 feet at least*). The front open space on one side should be 1.5 metre. The front open space of side two should be 2.5 metres and the rear open space should be 4 metres. However, from point no.4 of the inspection report it is abundantly clear that the eastern direction of front open space of the building has been mentioned 6 feet 7 inches upto a stretch of 22 feet but thereafter the remaining front open space has been reduced to 6 feet 2

inches due to aerial encroachment and further reduced to 5 feet 0 inch for the rest of the area. The rear open space of the construction as per requirement ought to have been 4 meters (*equivalent 13 feet at least*). However, from point no.5 of the inspection report it will be apparent that the rear open space is 10 feet. Further the open space on the both side of the building at the side one should be 1.5 metres (*equivalent 4 feet 9 inches*) and open side space on side two should be 2.5 metres (*equivalent 8 feet 2 inches*). However, point no. 6 & 7 of the inspection report shows that the open space in side one is 4 feet and upon aerial encroachment made above the ground floor the same has been reduced to 2 feet 10 inches from first floor onwards. While on the southern direction of side two the open space is 4 feet which is far less than the side rear open space prescribed under Building Rules 2007. The alleged construction hence has been undertaken without leaving requisite adequate open space on the four sides of the construction without adhering to Rule 50 of the Building Rules, 2007 which is apparent from the inspection report itself and thus, such violation suggests a proceeding to be immediately drawn up under Section 218 of the Municipal Act by the Board of Councillors of the concerned Municipality.

Further, it would be evident from the answer given by the Central Public Information Officer (under the Right to Information Act, 2005), being the Director/land and Amenities, Railway Board, in respect of a query "*what is the statutory provisions as regards of keeping the mandatory open spaces from Railway track and/or land under the Municipal area in the State of West Bengal for construction of multi-storied building*", that as per

Railway Boards letter no. 2015/LML-I/19/2 dated 25th June, 2015 as well as paragraph no.827 of the Indian Railway Workmen Manual, there is a procedure of obtaining '*No Objection Certificate*' for work of construction/development of any property, particularly on the land adjoining to the railway boundary within 30 metres.

Although the private respondents in their affidavit-in-opposition has raised the issue of suppression of material facts is not disclosing the pendency of the civil suit being Title Suit No.667 of the 2022 before Civil Judge (Junior Division), at Serampore yet such ground is not sustainable for the reason that the petitioner is not arraigned as a party in the civil suit. That apart, from the affidavit-in-reply at page 25 it is palpable that though initially an order of injunction was passed by the learned Civil Judge at the first instance but the same has been vacated *vide* order no. 16 dated 31st January, 2024. Since the municipal authorities and the petitioner is not a party to the suit, hence pendency of the suit cannot debar municipal authority from taking action as per section 217 of the Municipal Act.

Moreover, the private respondents in their affidavit-in-opposition annexed one miscellaneous receipt at page 8 (Annexure-B) showing payment of Rs.10,000/- on account of development fee for additional construction on the subject property and tried to impress upon of this Hon'ble Court that the Municipal Authority by virtue of an amended provision of Rule 50 of the Building Rules, 2007 have regularized such unauthorized construction. Such action to deposit fees for regularization of the alleged construction is acknowledgement of the illegal construction. As per the

amended provision of Rule 50 of the Building Rules, 2007, Vice-Chairman does not have the power to regularize any construction whatsoever. The power of regularization has to be exercised by Board of Councillors upon consideration of all objection raised by local inhabitants.

Relying on the decision of Hon'ble Supreme Court in ***Supertech Limited versus Emerald Court Owner Resident Welfare Association and Others*** reported in ***(2021) 10 SCC 1***, he submitted that from the commencement till the completion of the work of construction, the developers are required to Act within the framework of law. This regulatory framework ensures that all status of construction including allocation of land, sanction of plan for construction, regularization of structural integrity under construction, obtaining clearance from different departments, fire, mutation sewerage etc. and issuance of occupation and completion certificates. Therefore, for making such construction it is apparent that the municipal laws and other rules are to be adhered to.

Further a Coordinate bench of this Hon'ble Court in ***Syed Md. Aoun and Ors versus Board of Wakf, West Bengal & Ors (Re: WPA 1631 of 2022)*** relying on the judgment of Hon'ble Supreme Court has held that for complaining unauthorized construction the *locus* of the writ petition is not important. Whenever information of unauthorized construction is reported to the Municipality by any party particularly a tax payer of the country, it has to take appropriate steps in accordance with law.

In light of his aforesaid submissions, he prayed for cancellation of the sanctioned building plan issued by the municipal authorities and for

demolition of the illegal and unauthorised construction carried on by the private respondents.

10. Mr. Shyamal Kumar Das, learned Advocate representing the petitioners in writ petition WP-II, submitted that in terms of section 203 of the Municipal Act and Rule 4 of the Building Rules 2007 it is mandatory that before submission of building plan, approval of building site has to be obtained from the Municipal authority. However, the Municipality at the time of sanctioning building plan in respect of the alleged construction did not adhere to such provisions. In the instant case the private respondents did not obtain such approval and as such violated the rules in submitting the building plan before the Municipal Authority. Rule 49 of the Building Rules provide that the permissible height of the building depends upon width of access i.e Frontage Road. In the instant case the height of the building is 46 feet as per sanction plan, then the means of access should be above 7 meters. However, the width of the frontage road in the instant case is less than the required width and, therefore, the sanction building plan is void *ab initio*. Further as per Rule 50 of the Building Rules, 2007 where the height of the building is 46 feet, the rear space of 4 meters and front open space of 2 meters is to be maintained, which is lacking in the present case. As per paragraph 827 of the Railway Works Manual a '*No Objection Certificate*' for construction of building is to be obtained. However, the private respondents did not obtain such '*No Objection Certificate*' from the authority concerned. The private respondents also failed to obtain permission as per Rule 11(5) of the Building Rules, 2007. The Municipality has acted illegally in

sanctioning the building plan in favour of private respondents No.8 in violation of section 203 of Municipal Act as well as Rules 4, 49 and 50 of the Building Rules 2007. He seeks for appropriate orders for cancellation of the sanction building plan and for demolition of the alleged construction.

- 11.** Mr. Sudip Sanyal, learned Senior Advocate appearing for respondent nos. 7 to 10 in writ petition WP-I and respondent nos. 8 to 11 in writ petition WP-II, on the contrary, submitted in respect of WP-I that the petitioner's contention is that the provisions of Rule 50 of Building Rules, 2007 have not been followed in undertaking such work of construction. Such argument is not tenable in view of the *non-obstante* clause in Note iii of Rule 50 which gives the actual mandatory open space by providing that '*Notwithstanding anything contained in Clause (a) of Sub-rule 2, the minimum distance across the side open space from every new building to an existing building with a door or window opening shall be 1.80 metres.* Rule 51 (2) provides a canopy or canopies and/or a porch or porches each not exceeding 15 square metres in area or one percent (1%) of the ground floor area whichever is higher, having a clear width of not less than 2.5 metres may be allowed at a minimum clear height of 2.5 metres from the ground level. The petitioners have ignored such provisions while making complain primarily of such deviation. There is no such illegality or deviation and the inspection report is in line with Rule 51(2). Rule 50 is a two-way enactment containing both mandatory as well as directory provisions. The same section may contain

both mandatory and directory provisions. In support of his contention, he relied on the following portion of book and decisions.

- (i) ***Francis Bennion on Statutory Interpretation, 5th Edition, Page-55;***
- (ii) ***Dove Investments (P) Ltd versus Gujarat Industrial Investment Corporation*** reported in ***(2006) 2 SCC 619;***
- (iii) ***Rajeev Puri versus Delhi Development Authority*** reported in ***(2022) 11 SCC 1.***

The petitioner complains of inadequate side space left from the building where he resides (*Thakurbari*) and speaks of fraudulent depiction of boundary without himself producing the real measurement and boundary of the building which he says is adjacent and affected by the construction. The fact is that the building adjacent to the construction of the private respondents has no side space and is constructed right from the boundary wall. The measurements made by the Municipality show that more than 4 feet side space exists between the boundary wall and the construction made by the private respondents in terms of Note iii of Rule 50. Fees have been paid for regularization, pertaining chajja and protrusions in terms of Rule 51(2) the Building Rules, 2007 and thus have been substantially complied with. The petitioner has shown no substantial prejudice to be entitled to the relief that he has sought. The petitioner is not the owner of the adjacent building and cannot show its boundary, yet he complains about fraudulent representation of boundary. The petitioner has failed to demonstrate any personal right of his been infringed for which he is aggrieved. In support of his

contention, he relied on the ***De Smith's Judicial Review of Administrative Action, 4th Edition, Page-142***. The petitioner has not come to court in clean hands and the photographs submitted bear the testimony of such fact. It is settled proposition of law that one who seeks equity must do equity. Therefore, the petitioner is not entitled to any relief. To buttress his contention, he relied on the following.

- (i) ***V. Chandrasekaran & Another versus Administartive Officer & Ors*** reported in ***(2012) 12 SCC 133***;
- (ii) ***Snell's Equity, 34th Edition***;
- (iii) ***Rajeev Puri (supra)***.

The petitioner has no *locus standi* to make such complain. Reliance is placed on ***Satyanarayan Sinha versus S.Lal and Co. (P) Ltd*** reported in ***(1973) 2 SCC 696***. The judgment of this court sought to be relied in respect of *locus standi* in *Syed Md. (supra)* does not apply to this case in view of the fact that the petitioner has failed to show as to how he has suffered substantial prejudice. The petitioner has failed to demonstrate that the building has been constructed illegally and unauthorisedly for the simple reason that the spot enquiry shows that the building has been constructed according to sanction plan. When the authority sanctioned the plan and the building is constructed in accordance to sanction plan, it cannot be said to an unauthorized construction.

The argument advanced on behalf of the petitioner that the Vice-Chairman cannot regularize the deviation and it is upto the Board of Councillors to decide of such aspect. Such argument is based on the fee deposited for

allowing minor deviation. However, from the fee slip it is clear that no decision has been taken by the Municipality as yet. Terming minor deviation as illegal is incorrect. Rule 31 (2) gives right to developers/builder to apply for regularization of the deviation before completion of construction. The fee deposited by the private respondents is in accordance with the existing rules. Further under amended Rule 32 (2) such power is further reinforced. Irregularities may also be cured under statutory powers of modification. In support of his contention, he relied on ***Administrative Law, 6th Edition, H.W.R Wade, Page-253.***

A per Rule 46 the builder is entitled to cover 65 % of the ground area, which in the present case has been covered upto 60% which is apparent from the sanctioned plan. Fact remains that a statutory authority has sanctioned a building plan. No fraud has been demonstrated in obtaining the plan. The Municipality has not found any deviation. It is the plan sanctioning authority that has the expertise to decide as to whether a plan is to be sanctioned or not. The Hon'ble court is not equipped with such experience or expertise and it does not sit in appeal over the decision of the Municipality.

12.In respect of writ petition WP-II, Mr Sanyal, learned Senior advocate for private respondents No. 8 to 11, in reply, submitted that the petitioners claim to be persons of neighbourhood where private respondents have illegally undertaken alleged work of construction. The private respondents with the assertion that some people of the neighbourhood were preventing them from carrying out the work of construction on the subject property, filed a civil suit

being Title Suit No. 667 of 2022 before the Civil Judge (Junior Division), Serampore in which the writ petitioners are also defendants and upon hearing on 23rd December, 2022 an *ad interim* order of injunction was passed by the learned Civil Judge restraining the defendants from the creating disturbance in the work of construction and such order of injunction has been made absolute on 31st August, 2024. The petitioners did not file any affidavit-in-reply to affidavit-in-opposition of the private respondents and, therefore, the contention of the affidavit-in-opposition is deemed to be admitted by the petitioner following the principle of non-traverse.

The present writ petition is a backlash of the civil suit by the private respondents against the petitioners wherein order of injunction was passed by the learned Civil Judge restraining the defendants from the creating disturbance in the work of construction. Not having been succeeded in stopping the construction by restoring to muscle power, the writ petition has been filed by the petitioners seeking refuge before the writ court on ostensible grounds of violation of building rules.

As per the spot enquiry report there is no violation since the gap in the rear side is above 10 feet and also more than 4 feet from the residence of the petitioner. It is argued that on a Municipal Road having a width of 20 feet road, a building with such a height ought not to have been sanctioned. There is no substantial prejudice caused to the petitioners been shown or they have suffered due to the height of the building. The Municipality while sanctioning the plan took care to see the structural safety of the building. There is no harm caused to anyone owing to the elevation which has been

sanctioned by the Municipal Authority. Thus, there is substantial compliance of the Rules. The chajja and cornices of the building are well within the land developed and does not abut the street in any way. The chajja and cornices are as per provisions of Rule 51(2). As such there is no further deviation. Further the entrance to the building in no way prejudices the petitioners because they do not reside in the building.

The Railway Authorities pursuant to the order of this Court filed a report wherein an order of the concerned officer is enclosed directing private respondents to stop work though no such direction was given by the Hon'ble Court. Thus, the order of stop work was illegal and arbitrary as because the Railway Manual is not at all a statute and was no law to be obeyed. An examination of paragraph 827 of the Railway Manual clearly shows that it has no statutory force. It is a manual for the guidance of the Railway personnel where aims and objects are adumbrated. By no stretch of imagination, it could be termed as law and therefore has no binding effect on any third party. In support of his contention he relied on the decision of Hon'ble Supreme Court passed in ***Chief Commercial Manager, South Central Railways Secunderabad & Others versus G.Ratnam & Ors*** reported in ***(2007) 8 SCC 212***. None of the provisions of the Railway Manual have been incorporated in the Municipal Building Rules and there is no scrap of paper to show of any consultation with the State Government or the Municipal bodies for incorporating these provisions. Therefore, the plea that the Municipality illegally sanctioned plan without adhering Railway Manual is baseless. Schedule 7, List II, Entry 5 of the Constitution of India provides

*‘Local Government, that is to say, the constitution and powers of municipal corporations. As such the Railways cannot make laws with regard to municipalities and municipal jurisdiction. Even the Parliament does not have power to make laws with regard to the State list. To buttress his contention, he relied on the decision of Hon’ble Supreme Court passed in **Calcutta Gas Company (Proprietary) Ltd versus State of West Bengal and Others** reported in **AIR 1962 SC 1044**.*

In light of his aforesaid submissions, he prayed for dismissal of both the writ petitions.

13. Mr. Gautam Lahiri, learned Advocate representing Serampore Municipality - respondent No.1 to 3, in respect of writ petition WP-I submitted that the work of construction was started in the year 2018. The petitioner contending to be a next-door neighbour of the alleged construction did not raise any objection when the work of construction was undertaken and kept silence for a long period. The petitioner intentionally in paragraph no.2 contended that such illegal and unauthorized construction has come to his notice recently, which is not at all acceptable since the construction has started few years ago. As per the order of this Court inspection has been carried out and the measurement of four side space of the building has been mentioned in paragraph nos.3, 4, 5, 6 and 7 of the said report. The name of the owner of the holding No.11 has been mentioned in the assessment record of the Municipality as “Joy Guru Sri Sri Ashok Kr Mukhopadhyay Seva Kendra Trust”. The petitioner has not raised any ground basing on the restriction of Railway tracks. The statement in Exception at paragraph no.12 that the

building is just facing to the Railway tracks of the Eastern Railways and therefore should obtain '*No Objection Certificate*' from the Railway, is an afterthought matter. The letter under Memo No.2023/LML-1/RTI/30/14 MORLY/R/P/01202 dated 8th August, 2023 of Director/Land and Amenities, Railway Board is addressed to one Debojyoti Ghosh (Annexure-C) at page-14 is not related to this case and as such cannot be considered by this Court. The notification of the Government of West Bengal published in Kolkata Gazette dated 28th July, 2023 permitted Board of Councillors of the Municipal Authorities to order for regularization of minor unauthorized construction or minor deviation from the sanction plan on payment fees/charges by the person responsible.

14. Mr. Lahiri, learned advocate representing Serampore Municipality-respondent nos. 2 to 4 in writ petitioner WP-II submitted that there is considerable delay in raising the issue since work of construction was started in the year 2018, though the petitioners' residence is at a short distance from the alleged construction. The petitioner intentionally did not mention the name of the owner of the said building. The writ petition is bad for misjoinder and non-joinder of necessary parties. The Municipal Act governed under Schedule IX of the Constitution of India is purely a State Act and not a Central Act. Section 16 of the Municipal Act provides that the Chairman is the Head of the Municipality and all Municipal administration shall be under his control. The restriction provision mentioned in paragraph 827 of the Indian Railways Works Municipal (in short 'IRWN') has no overriding effect on the Municipal Act. Further the letter issued by the Railway Authorities relate

to another person who has got no connection with the present case. The construction of the building has been completed and during the period of construction no complain. has been lodged by any authority.

15. Mr Pinaki Ranjan Chakraborty, learned advocate representing Union of India submitted that as per paragraph 827 of the Railway Works Manual there has to be an open space of 30 metres from the railway boundary. In the present case the distance between the alleged building and railway track is 5/6 metres. The rules under the Railway Works Manual have been framed as per section 2 and 3 of the Railways Board Act and such rules are binding. Such documents and rules are available in the public domain and therefore the private respondents cannot say that they were not notified. The Railway Board Act being a Central Act operates unconditionally and State Act cannot override Central Act. The rules of the Railways is mandatory and has to be complied. Since this case relates to infrastructural issue, the court can intervene.

16. Upon hearing the learned advocates for the respective parties, the question which is to be determined at the very threshold is whether the issues raised by the petitioners with regard to alleged illegal and unauthorized construction over the subject property is maintainable before the court exercising writ jurisdiction in the facts and circumstances of the case?

17. On bare reading of the contentions and allegations made in both the writ petitions it is found that precisely the petitioners in the aforementioned writ petitions have alleged of unauthorised and illegal constructions undertaken by the private respondents without leaving requisite side space in violation of

the existing Municipal Act and Rules. The private respondents by engaging one promoter under the name and style of *M/s Balaji Construction* have started illegal and unauthorised construction of the multi-storied building.

18. Indisputably, the *M/s Balaji Construction* represented by its partners being private respondents nos. 7 to 10 in writ petition in WP-I and respondent nos. 8 to 11 filed a civil suit being Title suit no. 667 of 2022 before the learned Civil Judge (Junior Division), 2nd Court, Serampore, Hooghly against the petitioners nos. 1, 3 and 6 and others. In the said suit the private respondents categorically contended that the private respondents obtained sanction building plan from Serampore Municipality for construction of proposed multi-storied building over the subject property. On sanction of the building plan the private respondents have demolished the existing old dilapidated structure after shifting the owners of the subject property to a rented accommodation. The defendants nos.1, 2, 3 and 4 are the permanent residents surrounding the suit property of the plaintiffs, where plaintiffs nos. 1, 2 and 3 are residing and having their respective properties on the adjacent southern side of the suit property of the plaintiffs as well as the defendant no. 4 having residential house on the adjacent northern side of the suit property of the plaintiffs. After obtaining sanction plan the plaintiffs (private respondents) have started to construct the project work namely G+ 4 multi-storied building over the subject-property, living statutory space as per West Bengal Building Rules and West Bengal Municipal Act. All of a sudden, the defendants jointly protested the legal constructional work of the plaintiffs over the subject property without any reason. Since March 2020 due to

Covid-19 pandemic the constructional work was stopped. Thereafter, when the plaintiffs-promoter developer started legal constructional work over the subject-property defendant no.4 filed a suit against the plaintiffs-promoter but subsequently did not turn up. The defendants forcibly and illegally obstructed the constructional work of the plaintiffs and disturbed the peaceful possession of the plaintiffs over the subject property. On the basis of the aforesaid facts the plaintiffs (private respondents herein) prayed for following reliefs:- (a) A Decree declaring that the plaintiffs is the authorized promoter developer and having full of right, title and interest to construct G+4 multi-stored building over the suit property of the *proforma* defendant no. 5 & 6; (b) An order of Permanent injunction by restraining the all defendants along with their men & agents not to disturb the peaceful possession of the plaintiffs/promoter-developer over the suit property and not to obstruct the plaintiffs along with their men & agents for construction of G+4 multi-stored building over the suit property; (c) All cost of the suit; (d) Any other relief or reliefs as the plaintiffs is entitled to. In the said suit the plaintiffs (private respondents herein) filed an application seeking for temporary/*ad interim* injunction. It is not in dispute that upon hearing the plaintiffs (private respondents herein) the learned Civil Judge on 23rd December 2022, passed an *ad interim* order of injunction restraining the defendants restraining the defendants, some are writ petitioners herein in writ petition WP-II, from disturbing the construction of the plaintiffs (private respondents). Upon bare reading of the contentions made in the plaint as aforementioned it is manifest that the issue pertaining to right of the

plaintiffs (private respondents) to make construction over the subject property and the related disputes are pending before the jurisdictional Civil Court.

19. In both the writ petitions the petitioners have stated in their affidavit-in-reply that such order of injunction was ultimately vacated. It is a fact that the order of *ad interim* injunction dated 23rd December, 2022 passed by the learned Civil Judge was vacated on 31st January, 2024. Be that as it may, in their affidavit-in-opposition the private respondents nos. 8 to 10 in writ petition WP-II have annexed a subsequent order being no. 20 dated 31st August 2024 passed by the learned Civil Judge in Title Suit No. 667 of 2022. It appears from the said order of the learned Civil Judge that on an application of the plaintiffs (private respondents) dated 5th March 2024, praying for restoration of the *ad interim* order passed on 23rd December 2022, the learned Civil Judge restored the same. Further, the application for temporary injunction was heard on the said date and upon considering the submission on behalf of the plaintiffs and the defendants as well as the documents filed by the respective parties including the development agreement, power of attorney, two sanction building plan issued by Serampore Municipality pursuant to Board meeting dated 31st August 2018, and sanction dated 5th October 2015, the learned Civil Judge observed and ordered as follows.

“Perused. Considered. It appears that there lies a prima facie dispute in respect to the alleged illegal construction. However, the plaintiffs have successfully established their right, title and interest over the suit property by producing cogent documents, whereas the defendants have failed to file any single cogent document in respect

to the alleged illegal construction. This Court is of the view that plaintiffs are likely to suffer irreparable loss and injury if their constructional work over the suit property is stopped on mere allegation. Further, balance of convenience and inconvenience also lies in favour of the plaintiffs. Hence it is.

Ordered

That the injunction petition u/or.39 r.1 & 2 r/w Sec. 151 CPC filed by the plaintiffs is hereby considered and allowed and the ad-interim order being no. 02 dated 23.12.2022 is hereby made absolute till the disposal of the suit.

Fix 27.09.2024 for payment of costs of Rs. 1000/- to be paid to the SDLSC by the plaintiffs and framing of issue.”

Thus, the argument advanced on behalf of the petitioners in both the writ petitions that the *ad interim* order of injunction was ultimately vacated by the learned Civil Judge does not hold water. Rather, on perusal of the aforesaid order, it is found that the learned Civil Judge upon due consideration of the arguments of the plaintiffs and the defendant and the considering the documents submitted by the parties including development agreement and two sanction building plans furnished by the plaintiffs (private respondents), has been pleased to make the *ad interim* order of injunction dated 23rd December 2022 absolute till the disposal of the suit.

- 20.** The petitioner in WP-I in his affidavit-in-reply has contended that since the writ petitioner is not arraigned as a party in the civil suit, hence the suit being initiated at the behest of private respondents cannot create

any legal bar whatsoever in respect of maintainability of the present writ petitioner. Be that as it may, the petitioner in WP-I in his affidavit-in-reply has annexed the copy the plaint, temporary injunction application and certain orders passed in the suit. Therefore, it can well be presumed that the petitioner in WP-I has the knowledge of the civil proceedings pending before the jurisdictional civil court. Although, the petitioner is not a party to the suit however, that *per se* cannot be a reason for the order of temporary injunction passed by the civil court to be not binding or to have no effect or consequence. The petitioner raising grievance of alleged illegal construction by the private respondents can very well approach the civil court, before which the suit is pending, for redressal of his grievance.

- 21.** An injunction is a most solemn and authoritative form of order made by the court expressly enjoining a party either to do a particular act, in which case the injunction is known as a mandatory injunction, or to refrain from doing a particular act, in which case the injunction is known as a prohibitory injunction. When an injunction order has been issued, by a competent court the same must be obeyed and respected by all concerned till it is set aside or vacated. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules it should either approach the court that passed the order or invoke the jurisdiction of the Appellate Court. Till the order stands and its operation has not been suspended by another court or by the court which passed the order, no person should disobey such order. It is so because

administration of justice can only be effective if it has the means to enforce court orders. Therefore, the argument advanced on behalf of petitioner in WP-I that as he is not a party to the civil suit there is no legal bar in invoking writ jurisdiction is not sustainable for the reason that order of temporary injunction passed by the civil court is binding upon all concerned.

22. Mr Sanyal, learned, Senior advocate for the private respondents relying on *Satyanarayan Sinha (supra)* have vociferously argued in writ petition WP-I, that the petitioner failed to demonstrate of any substantial prejudice caused to him and therefore the writ petition is not maintainable at his instance. In order to deal with such argument, it would be profitable to examine the pleadings of the petitioner. The petitioner in paragraph no.2 of the writ petition contended that being the neighbor in the locality he has recently noticed that the private respondents herein by engaging one promoter under the name and style of *M/s Balaji Construction* have started illegal and unauthorized construction of multi-storied building over the subject-property. At this juncture it would be apposite to refer to the following decisions of Hon'ble Supreme Court.

23. The Hon'ble Supreme Court in ***Mani Subrat Jain and Others versus State of Haryana*** reported in **(1977) 1 SCC 486** observed as follows:

"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for

a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122; State of Haryana v. Subash Chander Marwaha & Ors.(1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. (2) and Ferris Extraordinary Legal Remedies paragraph 198.”

24. Further in ***Ayaubkhan Noorkhan Pathan versus State of Maharashtra and Others*** reported in **(2013) 4 SCC 485** the Hon'ble Supreme Court observed as follows:

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary)

Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

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10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: *Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361).*

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17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.”

25. Bearing in mind the aforesaid proposition as laid down by the Hon’ble Court and reverting to the facts pleaded, it found from the writ petition WP-I that the petitioner contended that he is a neighbouring resident to the subject property wherein the private respondents by engaging one promoter under the name and style of *M/s Balaji Construction* have started illegal and unauthorised construction of multi-storied building. The alleged construction has been undertaken without leaving the mandatory open space as required under the West Bengal Municipal (Building) Rules 2007. The boundary particulars shown in the plan are incorrect and illusory. Despite the municipal authorities been informed, they are reluctant to take appropriate steps against such illegal construction. Be that as it may,

petitioner failed to establish that he suffered any legal injury or has any judicially enforceable right. There is no assertion in the writ petition of any legal injury caused to the petitioner. The petitioner having not suffered any legal injury is a stranger to the subject property. A stranger having no right whatsoever on the property cannot be permitted to intervene or meddle with the right of others by seeking mandamus invoking writ jurisdiction.

26. Mr. Mukherjee, learned advocate for the petitioner in writ petition WP-I relying on the decision of a Co-ordinate Bench of this Court passed in *Syed Md. Aoun (supra)* tried to impress upon the court that unauthorized constructions are against public interest and affect the environment and rights of the citizen to live in a planned and organized city. In such circumstances the writ jurisdiction is very much attracted and can be invoked by the Hon'ble Court.

27. In *Syed Md. Aoun (supra)* the petitioners alleged that they used to offer their prayer in *Imambara* which has been demolished and unauthorized constructions have been allegedly made. The facts in the cited decision are at variance with the case at hand inasmuch as the dispute regarding the alleged construction is pending before the Civil Court which has protected the rights of the private respondents in making construction by an order of injunction till the disposal of the suit. There is no quarrel that the civil suit is still pending before the learned Civil Judge. Such being the position, the ratio of the cited decision does not apply to the facts of this case. Therefore, such arguments are not at all sustainable.

28. In writ petition WP-II the petitioner no.1, 3 and 6 are defendant nos. 3, 1 and 2 in the Civil Suit. The order of the learned Civil Judge dated 31st

August 2024, shows that the petitioners along with other defendants have entered appearance in the suit and have also contested the temporary injunction application. It is relevant to note that the writ petitioners have admitted the pendency of the Civil Suit in the writ petition and the order of *ad interim* injunction passed by the learned Civil Judge. Be that as it may, the petitioners in their affidavit-in-reply admitting of the pending civil suit made an incorrect statement that the order of *ad interim* injunction was ultimately vacated by the learned Civil Judge. It has already been found that by order dated 31st August 2024, the learned Civil Judge restored the *ad interim* injunction and was made absolute till the disposal of the suit upon hearing the parties including the petitioners in the writ petition WP-II some of whom are defendants in the suit. Such order having passed in presence of the defendants, some of whom are petitioners herein, it can well be said that despite knowledge of the said order of the learned Civil Judge making the order of *ad interim* injunction absolute, the petitioner chose not to disclose the same. Upon perusal of the order the learned Civil Judge dated 31st August 2024 it is found that the defendants in connection with the alleged construction also filed a suit being Title suit no. 217 of 2019 wherein an order of *status quo* was passed and the plaintiffs (private respondents) contested the same. However, the suit was dismissed for non-compliance on 21st December 2022. An application seeking restoration of the said suit has also been filed before the learned Civil Judge. The aforesaid fact has also not been disclosed by the petitioners in the present writ petition. Needless to mention that the orders passed in the civil suit filed by the private respondents in respect of the prayers made therein and

the suit filed by the petitioners are material facts which have been suppressed by the petitioners. For the reasons of such suppression of material facts the petitioners do not qualify to obtain any relief in the writ petition.

29. In this context it would be profitable to reproduce the observation of Hon'ble Supreme Court in ***S.J.S. Business Enterprises (P) Ltd. versus State of Bihar and others*** reported in **(2004) 7 SCC 166**, that suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The relevant portion has been extracted below:

'13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material from the consideration of the court, whatever view the court may have taken '

30. Mr. Chakraborty, learned advocate representing Union of India submitted that as per the Railway Works Manual the distance between the alleged construction and the railway boundary should be 30 meters. The private respondents have violated such Rule by making construction within 5/6 meters from the railway boundary.

31. Indisputably, the alleged construction has been undertaken by the private respondents over the subject property since 2018. The Railway authority during this period has neither taken any steps/endeavour against such construction having been undertaken by the private respondents nor have raised any objection till the filing of the writ petitions. Moreover, the

learned Civil Judge after considering the development agreement as well as two sanction building plan, has been pleased to pass an order of temporary injunction restraining the defendants from obstructing the construction undertaken by the private respondents. Since the civil court is seisin of the matter the railway authority can approach the civil court raising such issue.

32. In view of the above discussion the writ petitions being no **WPA 10868 of 2023** and **WPA 29103 of 2023** stands dismissed being not maintainable.

33. No order as to costs.

34. It is made clear that this Court has not expressed any opinion with regard to the merits of the case.

35. It is left open to the petitioners as well as railway authority to approach the jurisdictional Civil Court for redressal of the issues raised, if so advised.

36. Interim order, if any, stand vacated.

37. All connected applications, if any, stand disposed of.

38. Urgent photostat certified copy of the order if applied for be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)