

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 11694 of 2026

Rishab Kumar Wadhwani & Anr.

-Vs.-

The Commissioner, Asansol Municipal Corporation & Ors.

For the petitioners : Mr. Debajyoti Basu, Sr. Adv.,
Mr. Aditya Chakraborty,
Mr. Anirban Ghosh

For the Asansol : Mr. Sounak Bhattacharya
Municipal Corporation.

For the Respondent no.6: Mr. Swarup Banerjee,
Mr. Sajal Kumar Ghosh,
Mr. Arindam Chatterjee,
Mr. Bishal Mondal,
Mr. Atik Masud Molla

Heard on : 21.05.2026.

Judgment on : 21.05.2026.

Raja Basu Chowdhury, J (Oral):

1. At the very outset, since Mr. Bhattacharya, learned Advocate appearing for the respondent no. 1 would submit that Asansol Municipal Corporation has not been made a party and considering the fact that the Asansol Municipal Corporation is a necessary

party, I am of the view that Asansol Municipal Corporation having its office at Dr. G. R. Mitra Sarani, District-Paschim Burdwan, Pin-713301 should be added as a party respondent in the present writ petition. Accordingly, leave is granted to the petitioners' Advocate-on-record to add Asansol Municipal Corporation as a party respondent. Mr. Bhattacharya, learned Advocate who appears for the respondent no. 1 accepts service on behalf of the added respondent.

2. The present writ petition has been filed, inter alia, praying for a direction upon the respondents not to give effect to the order dated 18th May, 2026 insofar as the same affects the petitioners and the petitioners' business establishment, namely Hindustan Cake Walk Café and Sweets situate at G.T.Road, Murgasol, opposite Hotel Asansol International, Asansol, District – Paschim Burdwan. The petitioners claim to be partners in the management and control of restaurant and confectionary business carried on under the name and style of Hindustan Cake Walk Café and Sweets from premises situated at G.T. Road, Murgasol, opposite Hotel Asansol International, Asansol. It is the petitioners' contention that the petitioners have been carrying on business with the authorization from the Municipality and for running its business has obtained a certificate of enlistment. A copy whereof has been annexed at page 25 of the writ petition. According to the petitioners, the certificate of enlistment is valid up to 31st August, 2028.

3. The learned Advocate representing the petitioners has also drawn the attention of this Court to the demand notice appearing at page 31 of the writ petition dated 1st October, 2024 and would submit that the Municipal Authorities had raised a demand on the petitioners regarding the licence fees for the private parking of the Hindustan Cake Walk Café and Sweets, G. T. Road, Murgasol, opposite Hotel Asansol International, Asansol. By referring to the aforesaid demand he would submit that the location indicated in the demand is G.T. Road, Asansol.
4. This apart by referring to the receipt voucher issued by the Municipal Authorities he would submit that the petitioners in terms of the demand raised had duly deposited licence fees along with the applicable GST. He has also drawn the attention of this Court to a demand notice for licence fees of private parking in front of Hindustan Cake Walk Café and Sweets dated 9th February, 2026. According to the petitioners, the aforesaid demand has been made for the period from 1st October, 2025 to 30th September, 2026. According to the petitioners, the petitioners have duly paid the entire demand which would corroborate from the receipt issued by the Municipal Authority. The learned Advocate for the petitioners would submit that notwithstanding the petitioners having been permitted to enjoy the private parking on G.T. Road, in front of its shop room, all of a sudden, the petitioners were served with a notice dated 6th May, 2026 and 13th May, 2026.

5. According to the petitioners, although the petitioners had attended the hearing, however, the Superintending Engineer, Asansol Municipal Corporation had in the most irregular manner directed the petitioners to remove the alleged illegal encroachment and erection of structural shed and to demolish the permanent flooring within seven days without supplying the petitioners with the copies of the complaints based on which the aforesaid hearing took place. The petitioners were also not favoured with copies of any inspection report. He has, however, placed before this Court a photograph of the location where the petitioners have been parking the van. A copy of such photograph has also been made over to Mr. Bhattacharya and the same is taken on record. In this context, he has also drawn attention of this Court to the definition of the term 'shed' as defined in the West Bengal Municipal Corporation Act, 2006 and would submit that by no stretch of imagination the construction of the petitioners can be termed to be permanent. As such when no permanent structure has been erected, no demolition order could be passed. Further since, the municipality has given the petitioners the licence to park the van, the tenure whereof is yet to expire, the municipality is estopped from claiming the parking of the van as illegal. The aforesaid order is arbitrary and has been irregularly issued, the same should be set aside.
6. Mr. Bhattacharyya, learned Advocate appears on behalf of the Municipality. He would submit that admittedly in this case, the

petitioners were illegally occupying a portion of the footpath and carrying on business. On such fact being detected, the petitioners were called on for hearing and upon hearing the petitioners, the order dated 18th May, 2026 which is impugned in the present petition, was passed. He submits that the petitioners have been directed to remove the illegal encroachment and/or erection of structural shed and/or demolish the permanent floor on the footpath within seven days from the date of receipt of this order failing which the Municipal Authority shall take appropriate steps. The petitioners cannot have any right over the footpath, the parking licence also does not authorise illegal use of the footpath.

7. The Complainant is also represented and has been heard.
8. Having heard the learned Advocates appearing for the respective parties and on the basis of the disclosure made and the materials-on-record including the photograph disclosed in Court today, it would transpire that the petitioners have been authorized by the Municipal Authority to carry on business from holding no. 141/52N, G. T. Road, Asansol, District – Paschim Burdwan. Certificate of enlistment as disclosed in the petition would reflect the same. Incidentally, materials on record, would demonstrate that the petitioners have encroached 960.33 sq.ft. of Government land unauthorisedly, where a van is parked which is in front of the petitioners' business premises and the same is obstructing the free pedestrian movement and the van is also used for cooking purpose

which is not permitted under the provisions of West Bengal Municipal Corporation Act, 2006.

9. Records would reveal that a site inspection was conducted on 13th May, 2026 by the Sub-Assistant Engineer at the locale. Although, the learned Advocate for the petitioners would submit that the said report has not been supplied to the petitioners, however, there is no contemporaneous document filed by the petitioners calling upon the authorities to disclose the site inspection report. In the demand justice dated 19th May, 2026, he has claimed in paragraphs 5 and 6 thereof that though he was aware that the hearing was in connection with the complaint of one Gourav Gupta, Councillor, concerning alleged encroachment of public road and P.W.D. land, he was not supplied with the copies of the complaints. The petitioners have, however, failed to demonstrate, how the petitioners were prejudiced by non-supply of the complaints, especially when the petitioners could not establish any legal right on the Government land. It is also not the case of the petitioners that they were not aware of the purpose of the hearing. In fact the hearing notice dated 6th May, 2026 specified complaint of illegal encroachment of Public Road and PWD land by the petitioners.
10. Records would also reveal that the petitioners could not support the encroachment of land in front of the petitioners' shop room, the construction of permanent flooring and the structural shed with any authorisation. At this stage as well, no document has been

disclosed by the petitioners whereby the petitioners can make out a case that they had been authorized by the Municipal Authorities to develop the flooring in front of the shop room. I find that it is not the petitioners' case that the petitioners have not parked the van on public space or have not developed the public space, rather it is the case of the petitioners that on the strength of the licence given by the Municipal Authorities that the above development and parking of the van has been made on public road/land. Although, the petitioners' claim that they are authorised to park in front of its shop room, such parking licence in my view, cannot authorise the petitioners to encroach Government land unauthorisedly and illegally. Grant of the above permission in the form of licence cannot compel the Government to permit the continuance of the van being parked for cooking food and aiding business, which is otherwise prohibited. There cannot be any estoppel against the municipality to make the footpath and the Government land encroachment free. The municipality cannot be compelled to perform its promise in the form of grant of licence for parking on the footpath and public land when the same seeks to interfere with free pedestrian movement. Estoppel thus, must yield to equity for larger public interest, it demands.

11. This apart, there is another aspect of the matter. Although going by the materials available on record and although going by the disclosure made by the petitioners, it will not appear that the

petitioners have developed the same overnight rather the photograph supports the petitioners' case that the development has been made sometime back, however, no document authorizing such development work has been disclosed by the petitioners and as noted above there can also be no estoppel against larger public interest as held in the case of ***Sharma Transport v. Government of Andhra Pradesh***, reported in **(2002) 2 SCC 188**.

12. Now, I find that the Municipal Authorities have already taken a decision and have directed the petitioners to remove the encroachment. I do not find any illegality or irregularity in such order. This Court exercising extraordinary writ jurisdiction cannot enter into disputed factual aspects. In my view, the petitioners have failed to identify any procedural irregularity and/or also any justifiable grounds, to resist the State from acting in public interest, to free the footpath or for that matter for the petitioners to encroach upon public land in the form of a footpath. Accordingly, no interference is called for. The writ petition is dismissed.

13. 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.)

**Srimanta
A.R. (Court)**