

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11811 of 2026

Smt. Jhuma Mukherjee
Versus
Bidhannagar Municipal Corporation & Ors.

Mr. Arindam Banerjee, Sr. Advocate
Mr. Shashwat Nayak
Mr. Debjit Mukherjee
... For the petitioner.

Mr. Sirsanya Bandopadhyay
Mr. Arka Nag
Mr. Tirthankar Dey
... For Bidhannagar Municipal Corporation.

Mr. Samrat Dey Paul
.... For the respondent no.5

1. Affidavit of service filed in Court is taken on record.
2. The petitioner, in the instant writ petition, challenges the legality and/or validity of the order dated 18th May, 2026, passed by the respondent no.2, being the Commissioner, Bidhannagar Municipal Corporation, pertaining to the alleged unauthorized construction of an additional floor on roof top by making an enclosure with a tin shed at Plot No. AD-70, Sector-I, Salt Lake City, Ward No.41, Kolkata-700 064, under Bidhannagar Municipal Corporation.
3. Mr. Banerjee, learned senior advocate representing the petitioner submits that on 12th December, 2025 a show cause notice was issued by the

respondent no.3, with regard to the alleged unauthorized construction of the building in question and on the basis thereof, a physical verification was conducted on 20th November, 2025 in response to a specific complaint lodged by the respondent no.5. The petitioner submitted her response to the said show cause notice before the respondent no.3 by way of a reply dated 24th December, 2025.

4. Thereafter, considering the reply given by the petitioner, the respondent no.2 passed the order dated 18th May, 2026 directing the petitioner to remove the tin shed structure, which is the subject matter of challenge in the instant writ petition, at the roof top level beyond the last sanction building plan of the subject plot vide Plot No. AD-70, Sector-I, Salt Lake City, Ward No.41, Kolkata-700 064. The relevant portion of the order dated 18th May, 2026 is reproduced herein below:-

“In view of the above, the undersigned directs the alleged violator Smt. Jhuma Mukherjee to remove the Tin Shed structure at the roof top level beyond the last Sanctioned Building Plan of the subject plot vide no- AD-70, Sector 1, Salt lake City, Kolkata 700064 within two (2) weeks from the receipt of this order failing which this Corporation will take appropriate steps without any further reference as per provisions of relevant Rules and Acts to demolish the unauthorized structures beyond the Sanctioned Building Plan and recover the expenses of such demolition from the alleged violator Smt. Jhuma Mukherjee as per provisions of West Bengal Municipal Corporation Act-2006”.

5. In this context, the petitioner relies upon a judgment of a Co-Ordinate of this Court in the case of **Kishori Lal Poddar vs. Bidhannagar Municipal Corporation & Ors.** reported in **2025 SCC OnLine Cal 4087**, particularly relying upon paragraph 37 and 38 of the judgment which is reproduced herein below:-

"37. The structure in question is open on all sides. It is not enclosed or shows an intention to be an enclosed space. Hence, it fails the "enclosing, or intended to enclose," test. A non-enclosing roofed space, like a shade on a terrace or over an open area, does not alter land use, does not increase occupancy, and does not represent an enclosure that would trigger regulatory oversight. A roof connecting two walls, without creating an enclosure, does not constitute a "building" under the law, because it lacks the essential purpose of enclosing a space or land, which is a key legal test to determine whether a structure falls under the definition of building.

38. The structure does not create new floor space, does not add to the floor area ratio (FAR) of the building. It remains an accessory feature. If "structure" in Section 259(1)(f) includes even temporary coverings, the term becomes overly broad and brings into its fold even non-building activities, which the legislature could not have intended. Therefore, I am of the opinion that a

detachable shed affixed to parapet walls – not intended as a permanent construction and lacking enclosure – does not amount to the erection of a building within the meaning of the Act of 2006, and should not require municipal permission. However, if a structure like this is determined to be permanent in nature and interferes with the structural stability of the building, then the corporation shall have the power to interfere. It should be noticed that in the present case, the impugned order of the Commissioner dated 4-7-2024, describes the structure as temporary and there is no finding that it compromises with the structural stability of the building”.

6. It is further submitted that as per the definition of the building in the statute under the West Bengal Municipal Corporation Act, 2006 (hereinafter referred to as “said Act”), the 'building' means a structure constructed for whatsoever purpose or of whatsoever materials, and includes foundation, plinth, wall, floor, roof, chimney, fixed platform, verandah, balcony, cornice, projection or part of a building and anything affixed thereto, and any wall (other than boundary wall of less than two metres in height on the road side, having the solid portion not exceeding 1.5 metres in height) enclosing, or intended to enclose, any land, sign or outdoor display structure, but does not include a tent, shamiana or tarpauline shelter.

7. From the aforesaid definition, it is amply clear that the structure must be constructed for enclosure or with the intention to enclose land signage or a useable space, whereas in the instant case, the tin shed structure is not an unauthorized structure under the law as per Kishori Lal Poddar (supra), since, the same does not increase occupancy and does not represent an enclosure.

8. The private respondent no.5 being one of the co-lessees of the portion of the premises in question has raised an objection to the maintainability of the writ petition. It is submitted that, being one of the shareholders of the building in question, the petitioner neither obtained No Objection Certificate nor obtained any sanction from the Municipal Corporation and constructed an additional floor on the roof top by making the said enclosure with tin shed. He has vehemently opposed the submission and demonstrated by certain photographs that the petitioner has increased the occupancy by constructing three rooms, which amounts to an enclosure.

9. Mr. Bandopadhyay, learned advocate representing Bidhannagar Municipal Corporation submits that Kishori Lal Poddar (supra) is not applicable in the instant case, since the petitioner has already increased the occupancy by making an enclosure creating three rooms which represents an unauthorized structure forming part of the sanctioned building plan.

10. After considering the rival contention of the parties and upon perusing the available records, I am of the considered view that the Commissioner has not considered the reply of the petitioner in arriving at a logical conclusion with regard to the unauthorized construction of the premises in question. In view of the above, the order dated 18th May, 2026 passed by the respondent no.2 is set aside.

11. The respondent no.2 is directed to revisit the issue with the assistance of the respondent no.3 by considering the same in light of Kishori Lal Poddar (supra) within a period of four weeks from date by passing a reasoned order in accordance with law, after affording an opportunity of hearing to the petitioner, the respondent no.5 and the other stakeholders, if any. The reasoned decision shall be communicated to the parties along with all relevant documents within a week thereafter to be acted upon.

12. It is, however, made clear that in the course of hearing, if further physical verification is required, the respondent no.2 shall be at liberty to cause further physical verification upon prior notice to the parties for arriving at a logical conclusion.

13. It is also made clear that this Court has not gone into the merits of the case. The parties shall be at liberty to raise all issues before the respondent no.2 at the time of hearing.

14. WPA 11811 of 2026 is disposed of in terms of the direction contained hereinabove, without any order as to costs.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Smita Das De, J.)