

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

W.P.A. 12417 of 2026

**Sri Deepak Kumar Singh & Ors.
Versus
The State of West Bengal & Ors.**

For the petitioners	:	Mr. Sumitava Chakraborty Mr. Abhilash Chatterjee Ms. Nazmee Parvin
For the respondent Nos. 2, 3 & 4.	:	Mr. Ayan Banerjee Ms. Debasree Dhamali Ms. Riya Ghosh Ms. Debolina Ghosh
For the State	:	Mr. Sovan Mukherjee Ms. Aishwarya Rajyashree Mr. Arghya Chatterjee
Heard on	:	16.06.2026.
Judgment on	:	16th June, 2026.

Raja Basu Chowdhury, J (Oral):

1. Challenging the notice dated 3rd June, 2026 issued by the Executive Engineer, Bally Municipality intimating the petitioners that the demolition of 5th and 6th Floor of the building in Block -B of premises No. 5A, Bhujanga Dhar Road, P.O. Liluah, Howrah 711204 shall be undertaken in terms of an order of the Court, the instant writ petition has been filed.

2. Petitioner nos. 1 and 2 claim to be joint-owners in respect of one flat of Gita Enclave admeasuring about 696 square feet including super built up area on the fifth floor, being flat no. 503, North Western Side of Block – A comprised within L.R. Dag No. 3211 appertaining to R.S. Khatian No. 697 and 700 corresponding to L.R. Khatian No. 7011 and 7012 J.L. No. 12 situated at Mouza- Liluah Bally Municipality, Holding No. 5/A, Bhujangadhar Road, P.O. and P.S. – Liluah.
3. The petitioner no. 3 is the owner in respect of a flat at the aforesaid building admeasuring 631 square feet being flat no. 501 in the south eastern side of Block B comprised within the aforesaid holding.
4. Petitioners claim that without serving any prior notice upon the petitioners and without giving any opportunity of hearing, the aforesaid demolition proceeding has been initiated.
5. Mr. Chakraborty, learned counsel appearing on behalf of the petitioners while drawing the attention of this Court to the notice dated 3rd June, 2026 would submit that a Co-ordinate Bench of this Court by order dated 28th November, 2023 had only directed the municipality at the instance of a third party, to take steps against the unauthorized construction. According to him, at that stage, the petitioners were already the owners of their respective flats. Despite the above, without notifying the petitioners, the municipality has proceeded to pass the demolition order.

6. Drawing attention of this Court to the provision of Section 218 of the West Bengal Municipal Act, 1993 (in short, the “said Act”) he would submit that petitioners being the owners were entitled to a notice and as such any action taken by the municipality without notifying the petitioners is bad in law and cannot be sustained. In support of his aforesaid contention, he had placed reliance on an unreported judgement of this Court in the case of ***Prakash Kumar Singh & Anr. v. The State of West Bengal & Ors.*** passed on 12th November, 2025 in MAT 1944 of 2025, and would submit that the Division Bench by noting the directive issued by the Hon’ble Supreme Court in the case of ***The direction in the matter of demolition of structures*** reported in **(2025) 5 SCC 1**, had observed that every person affected by demolition order is entitled to avail the statutory remedy in the form of an appeal.
7. Mr. Chakraborty, has also drawn the attention of this Court to paragraph 14 of the judgement which highlights that an order passed under Section 218 of the said Act is subject of an appeal before the appropriate forum.
8. Mr. Banerjee, learned counsel appears for the Municipality. According to him, the petitioners though claim to be owners of their respective flats in the aforesaid property, at no stage the petitioners had approached the Municipal Authority for seeking mutation. The Municipality had proceeded on the basis of records and in accordance with law and has passed the self-demolition order.

According to him, the entire fifth and sixth floor of the aforesaid building is unauthorised, there is no sanctioned building plan, and as such the above demolition order has been passed. He has also placed the demolition order dated 27th August, 2025 before the Court which is taken on record. The same has already been partially carried out.

9. Having heard the learned advocates appearing for the respective parties, this Court notwithstanding the submission made by Mr. Banerjee that the petitioners had chosen not to apply before the Municipality for mutation having regard to the case made out by the petitioners as regards their ownership in the respective flats, had called upon Mr. Chakraborty to disclose as to whether there is any sanction in respect of fifth and sixth floor of the aforesaid premises.
10. Mr. Chakraborty learned counsel appearing for the petitioners on instruction would submit that the petitioners do not have any copy of the sanctioned plan. Since, the petitioners are unable to demonstrate that the fifth and sixth floor of the said holding/premises has been constructed on the basis of the sanctioned plan, I am unable to conclude that the construction is authorised as it is the specific case of the municipality that the construction is unauthorised as would appear from the demolition order. Further, as pointed out by Mr. Banerjee, there is no averment in the petition that the construction is in accordance with the

sanctioned plan. In the backdrop as aforesaid, in my view, the steps taken by the municipality to issue demolition order cannot be questioned.

11. Opportunity of hearing is to enable a party to set up a case in defence. In the instant case, the petitioners have not been able to make out a case to defend the construction by demonstrating that the construction has been carried out in accordance with law.
12. In the light of the above when an illegal construction has been carried out, if the petitioners have proceeded to purchase the same the municipality cannot be made responsible for directing demolition especially when the law does not authorize retention of unauthorized structures. Mere purchase of illegal structure cannot make the structure legal. Before purchasing the property, obviously the petitioners were under an obligation to make appropriate enquiry and find out whether the properties, the petitioners seek to purchase were authorized or constructed in accordance with law. The petitioners as *caveat emptors* were obliged to make such inquiry. If the petitioners did not do so, the petitioners are to be blamed for the same.
13. Although, Mr. Chakraborty by placing reliance on the judgement of ***Prakash Kumar Singh & Anr.*** (supra) had contended that every person affected by an order of demolition is entitled to avail statutory remedy in the form of an appeal, I find that the petitioners instead of availing such remedy have approached this Court by

invoking its extraordinary jurisdiction under Article 226 of the Constitution of India. When the petitioners have given go by to the statutory remedy in the form of an appeal and have instead approached this Court, and when this Court has examined the petitioners' case on merits, the petitioners, in my view, have forfeited further right to prefer any statutory appeal.

14. It is well settled that an alternative remedy is not an absolute bar for this Court to entertain a challenge to an order. Once this Court has exercised jurisdiction at the instance of the petitioners and has entertained the challenge, the petitioners cannot thereafter seek that the petitioners are entitled to avail of the statutory remedy. The petitioners have also failed to demonstrate how the petitioners have suffered for not being afforded with opportunity of hearing. Violation of natural justice does not mechanically call for the order to be set aside.

15. In this context, it would be relevant to refer to a judgment of the Supreme Court in the case of ***Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.***, reported in **(1993) 4 SC 727**. One of the issues that fell for consideration in this case was whether right to receive an enquiry report by the delinquent to effectively defend the proceedings constituted a valuable right and whether non-supply of the report vitiated the proceedings. The Hon'ble Supreme Court while deciding the issue, in response to an incidental question in paragraph 30 thereof, observed that “even

after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.”

16. In the light of the above and in this case, despite being afforded with opportunity the petitioners have failed to establish and demonstrate that the construction of the 5th and 6th floor is in accordance with law, and despite being afforded with an opportunity could not produce any sanctioned building plan. As such, this Court upon examining the materials on record does not find any cogent reason to interfere with the order passed by the municipality. The writ petition accordingly fails and the same is dismissed.

17. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)

SB
A.R. (Court)