

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 14729 of 2025

**Krishnendu Kumar Barik
Versus
The State of West Bengal & Ors.**

With

WPA 1910 of 2025

**Manju Rani Barik
Vs.
State of West Bengal & ors.**

For the petitioners : Mr. Soumen Kr. Dutta
Mr. Subham Dutta

For the State : Mr. Kapil Guha

For the respondents
Nos. 2-3

In WPA 14729 of 2025 : Mr. Nilanjan Adhikari
Ms. Oindrila Sinha

For the respondent : Mr. Subrata Kumar Dutt
No. 4 in : Mr. Sankha Subhra Dutta
WPA 14729 of 2025

For the respondents : Mr. Nilanjan Adhikari
Nos. 2,3,4 Ms. Oindrila Sinha
In WPA 1910 of 2025

Heard on : 23.02.2026.

Judgment on : 23.02.2026

Raja Basu Chowdhury, J (Oral):

1. The instant writ petition has been filed in effect seeking implementation of the order of demolition dated 29th March, 2025, passed by the Board of Councillors of Kontai municipality.
2. When the present writ petition came up for consideration, Mr. Dutt, learned advocate representing the private respondent No. 4 would submit that he has already filed an independent writ petition being WPA 1910 of 2025 (hereinafter referred to as the previous writ petition) where under his client has challenged not only the report filed by the Assistant Engineer but also the order dated 20th March, 2025 passed by the Board of Councilors of Kontai Municipality passed under Section 218 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the "said Act"). According to him, the aforesaid previous writ petition was adjourned at his instance and is likely to appear in the month of March, 2025. According to him, the above writ petition should be taken up for consideration along with the present writ petition being WPA 14729 of 2025.
3. Considering such submissions, by consent of the parties, this Court had directed the writ petition being WPA 1910 of 2025 which was scheduled to be listed in March, 2026 to be listed in the daily supplementary list, for it to be taken up along with the

present writ petition. Accordingly, both the writ petitions are taken up for consideration together.

4. Although the writ petition being WPA 14729 of 2025 has been filed for implementation of the order passed by the Board of Councilors of Kontai municipality, however, since the petitioner in the previous petition seeks to challenge the said order, inter alia, on the ground that the inspection that was conducted by the Assistant Engineer prior to passing of the said order which forms the basis of the order is arbitrary and violative of principles of natural justice, this Court has taken up the hearing of the writ petition being WPA 1910 of 2025, i.e., the prior petition, first.
5. The matter has a chequered history. It appears that the writ petitioner in WPA 14729 of 2025 had previously moved a writ petition alleging unauthorized construction at the behest of the private respondents which includes Manju Rani Barik, i.e. the petitioner in WPA 1910 of 2025, which was registered as WPA 12284 of 2023.
6. Such writ petition came to be disposed of by an order dated 12th November, 2024 whereby this Court taking note of the submissions made by the parties including the private respondents therein which included Manju Rani Barik that second storey of the building in question was constructed over the first floor allegedly with the building permit dated 19th April,

2024 which was valid upto April, 2027, for residential purpose, granted liberty to the writ petitioner therein to file a comprehensive representation before the Board of Councillors, Contai Municipality wherein the petitioner shall be at liberty to raise all points with regard to alleged construction as well as issuance of alleged sanctioned plan dated 19th April, 2024. It was further provided that in the event the representation was filed within the time period noted therein, the Board of Councillors shall afford an opportunity of hearing to the parties or their authorized representatives and take a decision on the representation in accordance with law.

7. Pursuant to the aforesaid order, the petitioner in WPA 12284 of 2023 having filed a representation, a spot inspection was fixed on 11th December, 2024 at 3. P.M. Incidentally, Manju Rani Barik had issued a letter addressed to the Chiarman, Contai Municipality on 12th December, 2024 that she did not get any copy of the representation. Records would reveal that Manju Rani Barik had previously written a letter addressed to the Chairman, Contai Municipality on 4th December, 2024 indicating that the respondent nos. 2 and 3 there in are her daughters and they are residing at their matrimonial home and they are now ill and as such the Manju Rani Barik had prayed for shifting the date of holding inspection work on 11th December, 2024. Records would also reveal that the Sub-Assistant Engineer had reached

the spot on the scheduled dated when, according to the report, Manju Rani Barik and some anti-social persons obstructed him to carry out the duty so entrusted upon him. As such, he had returned and subsequently sought for police protection to carry out the inspection work. Further notice of inspection work which was rescheduled on 30th December, 2024 was duly provided. Records reveal that admittedly Manju Rani Barik received the notice on 30th December, 2024. So far Mayurakshii Barik is concerned she received the article before 30th December, 2024. Minakshi Barik received the communication on 4th January, 2025.

8. The inspection was, however, held as scheduled on 30th December, 2024, and after holding of such inspection copy of the engineer's report was circulated and was served on Bariks' by cover letter dated 16th January, 2025. By such communication Bariks were further notified that a final hearing shall be scheduled on 24th January, 2025 at 3.p.m. It is also a matter of record that after receiving the aforesaid communication only Manju Rani Barik had responded to the same by a letter in writing dated 18th January, 2025. She claims since, her daughters did not have adequate notice, the inspection that was rescheduled and had taken place on 30th December, 2024 was not in accordance with the directives issued by the Coordinate Bench of this Court. It was also further stated that the

allegations in the report that she had obstructed the engineer with other hooligans are incorrect and according to her the report is false and a biased report. Following the above, the matter was heard by the Board of Councillors wherein the Board of Councillors had identified three several points for determination:

“1. Whether the constructions made by the respondents to the extent of ground floor over plots no.957/1519 & 958 and first floor over plot no.957/1591 & western part of plot no. 958 is legal or unauthorized one?

2. Whether the disputed plan submitted by the respondents before the Hon’ble High Court is issued from the Contai Municipality? If issued, then as to whether the first floor constructed before or after the issuance of disputed plan?

3. Whether the construction, if any, standing over the disputed plots required to be demolished in terms of Section 218 of WB Municipal Act and as per direction of the Hon’ble High Court.”

9. Although, the learned advocate for Manju Rani Barik would contend that the above order is biased since the same was based on a biased report, I find that the municipality had framed 3 several issues as noted hereinabove. I find that Manju Rani Barik has chosen not to prefer an appeal from the order impugned instead has applied before this Court challenging the inspection report and the order passed by the Board of Councillors.

10. Insofar as the other two daughter of Manju Rani Barik are concerned there is no challenge to such inspection report or the order at all.

11. Before proceeding further it may be noted that in a writ petition under Article 226 of the Constitution of India the Court

while examining the report or order prepared by the executive engineer, does not act as an appellate authority but only exercises the powers of judicial review. While exercising such jurisdiction the Court only considers whether there had been violation of principle of natural justice; whether the order can be said to be perverse or based on no evidence and the proportionality of the punishment, if any, inflicted in certain cases. The Court, however, in such circumstances is precluded from re-examining the evidence adduced. In this case I find that based on the documents already on record the municipality upon scrutinizing the evidence and the inspection report as noted above has recorded that there is an existing G+1 construction over the disputed plot no.957/1519 western part of plot no.958.

12. Though the advocate for Manju Rani Barik would contend that since the daughter of Manju Rani Barik did not have adequate notice of inspection, that same stands vitiated by reasons of violation of natural justice, I, however, find that the two daughters of Manju Rani Barik have not come forward, to challenge the report or the order as such no reliance can be placed on the same. From the opinion of the Engineer, the said construction to the extent of the 1st floor, was erected very recently. The same further records that as per the available records in the municipality since 2nd February, 2022 no application in the name of the respondents, i.e., Manju Rani

Banik and the other Baniks were found for erecting the 1st floor of the building at plot nos.957, 957/1519 and the western part of the plot no.458. Record would also reveal that the application for post facto sanction of the building plan was, in fact, rejected by the Board of Councillors on 3rd July, 2024.

13. The Board of Councillors of the municipality has also rendering the finding that since the 1st floor construction is without any sanction, it is irrelevant to consider whether the 2nd floor was constructed prior to 19th April, 2024. Accordingly, it was held that the disputed building plan dated 19th April, 2024 handed over to the learned advocate representing the Contai Municipality is declared fictitious and illegal and void ab initio further and other directions to dismantle the building are also made thereat. The above cannot be said to be a decision which is based on no evidence.

14. Although, the learned advocate representing Manju Rani Banik strenuously argued that there is institutional bias, this Court has not been impressed that such submission in light of the fact that no documents could be disclosed by the petitioner to substantiate the same. The petitioner in fact had been waiting and watching the proceedings. Notwithstanding having filed the previous writ petition had sought for an adjournment in the matter in WPA 1910 of 2025. After the present writ petition, seeking implementation of the order had come up, he had

attempting to delay the hearing of the writ petition by claiming the matter filed at his instance had been fixed for hearing in the month of March 2025 as such both the matter should be taken up in March. Such attempt, however, did not succeed as this Court has taken up hearing of both the matters.

15. Accordingly, I am of the view that nothing survives in the writ petition. Accordingly, WPA 1910 of 2025 is dismissed.

16. The challenge to the order passed by the Board of Councillors is dismissed.

17. Insofar as WPA 14729 of 2025 is concerned, there being no impediment the municipality is directed to implement the order in accordance with law. The above order shall, however, be subject to the outcome of the statutory appeal, if any, filed by the Bariks. The above order shall also not take away the statutory right of the Bariks to file appeal/appeals.

18. Accordingly, WPA 14729 of 2025 is disposed of.

19. Urgent Photostat certified copy of this order, if applied for, be supplied upon compliance of all formalities.

(Raja Basu Chowdhury, J.)

Sayandeep
A.R. (Court)