

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 20056 of 2022

Haldia Municipality & Anr.

VS.

The State of West Bengal & Ors.

For the petitioners : Mr. Debajyoti Basu. Sr. Advocate,
Mr. S.M. Hassan,
Ms. Anupama Yasmin

..... advocates

For the State : Mr. Lalit Mohan Mahata, Ld. AGP,
Mr. Prasanta Behari Mahata

..... advocates

For the Respondent no. 9 : Mr. Partha Pratim Roy,
Mr. Salil Kumar Maity

..... advocate

Reserved on : 24.02.2026

Judgment on : 18.05.2026

Hiranmay Bhattacharyya, J.:-

1. The order of the District Magistrate, Purba Medinipur dated August 17, 2022 passed in Appeal No. 16(AO) of 2022 is under challenge in this writ petition at the instance of Haldia Municipality. By the said order, the Sub-Divisional Magistrate was directed to recover possession and remove encroachment from plot no. 751/1452 under the provisions of the West Bengal Highways Act, 1964 within a specified time limit.
2. Petitioner claims that the Panchayat authority constructed latrines and urinals on a part of LR Plot no. 751/1452. Pursuant to an order passed in

WPA 22242 of 2019, a proceeding under Section 10 of the West Bengal Highways Act, 1964 (for short “the 1964 Act”) was initiated and Sub-Divisional Magistrate passed an order dated April 8, 2022 under Section 10(3) of the 1964 Act directing the Assistant Engineer, Haldia Highway Sub-Division to recover possession and remove encroachment from plot no. 751/1452. Challenging the aforesaid order dated April 8, 2022, petitioner filed an appeal under Section 10(4) of the 1964 Act before the District Magistrate, Purba Medinipur being Appeal no. 16(AO) of 2022. The said appeal was disposed of by directing the Sub-Divisional Magistrate, Haldia to recover possession and to remove encroachment from plot no. 751/1452 under the provisions of the 1964 Act. Being aggrieved by the order of the District Magistrate, Purba Medinipur dated August 17, 22, petitioner has approached this Court.

3. Mr. Basu, learned Senior Advocate appearing in support of the writ petition contended that the Public Works Department vide Memo dated November 18, 1988 permitted the Haldia Notified Area Authority at present, Haldia Municipality to start construction works of office complex, public urinals over the land in question. He contended that pursuant to the said permission, constructions were raised and the same has been repaired and altered periodically. Mr. Basu placed reliance upon the provisions of the Government Buildings Act, 1899 (for short “the 1899 Act”) more particularly Section 3 thereof in support of his contention that the said Act provides an exemption to the local authorities in respect of construction of any building. He further contended that the writ petitioner being a legal authority is duty bound to make adequate arrangements for setting up of urinals and other amenities in discharge of its public duties. He further contended that since the writ petitioners were authorised to raise construction by virtue of the 1899 Act, the 1964 Act cannot have any manner of application in respect of construction made by the petitioner upon any land belonging to the Public Works Department. He further contended that since the provisions of Section 10 of the 1964 Act could not have been invoked in the case on hand, the orders passed in such proceedings are without jurisdiction.

4. Mr. Basu contended that since the construction of the urinal and latrine has already been completed, a direction for demolition of such building would not serve any public interest and in support of such contention he placed reliance upon the decision of the Hon'ble Division Bench in the case of **Sri Kamal Dey, Editor & Publisher of Barta Nyay vs. Director General, Archeological Survey of India, New Delhi & Ors.** reported at **2015 SCC OnLine Cal 6605**. Mr. Basu contended that upon the permission being granted in favour of the petitioner construction have been made and, therefore, the doctrine of promissory estoppel stands attracted to the case on hand. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in **Manuelsons Hotels Private Limited vs. State of Kerala and ors.** reported at **(2016) 6 SCC 766**. Mr. Basu contended that the municipality has to promote welfare of the people by protecting the right of livelihood, health and general wellbeing of all sections of the people of the society especially those who belong relatively to the weaker sections of the society. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Lala Ram (Dead) by Legal Representative and ors. vs. Union of India and another** reported at **(2015) 5 SCC 813**. Mr. Basu also placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Md. Zamil Ahmed vs. State of Bihar and ors.** reported at **(2016) 12 SCC 342** in support of his contention that the State is not entitled to take advantage of their own mistake.
5. Mr. Roy learned advocate appearing for the 9th respondent seriously disputed the submission of Mr. Basu. Mr. Roy contended that though the writ petitioner prayed for no objection from PWD (Road) Directorate as well as from the concerned District Magistrate for construction of the toilet and latrine but no permission was granted in favour of the Municipality. Mr. Roy contended that the petitioner has admitted that the construction had been made over the land of the PWD without the permission of the PWD. He further contended that since the encroachment upon the PWD Road is an admitted fact, the impugned order calls for no interference by this Court.

Mr. Roy further contended that though Section 3 of the 1899 Act gives relaxation relating to construction but it does not authorise making construction over any land of the PWD in respect of which no permission has been obtained by the Municipality. Mr. Roy placed reliance upon a decision of a co-ordinate bench in the case of **Ashis Kumar Dey and another vs. State of West Bengal and others** reported at **(2019) Supreme (Cal) 147** in support of his contention that an encroachment upon the Government land should be demolished.

6. Mr. Roy learned advocate appearing placed reliance upon an order passed by the Hon'ble Division Bench on 09.11.2022 in the case of **The District Magistrate, Hooghly District and ors. vs. Sri Ashis Kumar Dey & Ors.** in **MAT 302 of 2019** in support of his contention that even a department of the Government of West Bengal could not have put up construction without the permission of the Highway Authority.
7. Mr. Roy also placed reliance upon on a decision of the Hon'ble Supreme Court in the case of **Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation and Ors.** reported at **AIR 2013 SC 927** in support of his contention that prompt action should be taken to demolish the illegal construction.
8. Mr. Mahata learned Additional Government Pleader contended that the land in question whereupon construction has been made by the Haldia Municipality is under the control and possession of the PWD and no construction could have been made upon such property without obtaining permission from the PWD. He further contended that no permission was granted in favour of the Haldia Municipality to raise construction on the plot in question. Mr. Mahata contended that the Sub-Divisional Magistrate and the appellate authority after considering the materials on record passed orders directing removal of encroachment from the land belonging to the PWD and, therefore, the said orders do not call for any interference by this Court under Article 226 of the Constitution of India.
9. Heard the learned advocates for the parties and perused the materials placed.

10. The 9th respondent lodged a complaint before the respondent authorities alleging that the Haldia Municipality unauthorisedly encroached upon the land belonging to the PWD just in front of his raiyati property being plot no. 751 and 752, JL No. 88 within Mouza Sutahata in the District of Purba Medinipur.
11. Alleging inaction on the part of the respondent authorities, the 9th respondent filed a writ petition being WPA no. 22242 of 2019. The Assistant Engineer, Haldia Highway Sub-Division, P.W. Roads Directorate by a letter dated 04.12.2019 directed the Block Land and Land Reforms Officer, Sutahata, Purba Medinipur to demarcate the Government land in front of the Raiyati Plot no. 752 and 751 which belongs to the Public Works (Roads) Department and to submit a sketch map of such demarcation. The Block Land and Land Reforms Officer, Sutahata, Purba Medinipur under Memo dated 06.12.2019 forwarded the report as well as the sketch map. The said report states that plot no. 751/1452 belongs to the Development Department and a building comprising an area of 1377.6 Sq. Ft. (approximately) over the said plot is being constructed by Haldia Municipality which is proposed to be used as urinal and lavatory for common people.
12. The co-ordinate bench appointed a Special Officer in WPA 22242 of 2019 and the Special Officer had submitted a report on 10.02.2021. Though liberty was granted to the petitioner herein to file objection to the said report but the petitioner herein did not file any objection to the said report within the time limit fixed by the co-ordinate bench.
13. After going through the report of the Special Officer, the co-ordinate bench recorded in the order dated 15.02.2021 that it is abundantly clear that the petitioner who was the 8th respondent in the said writ petition has encroached upon the concerned highway which is maintained by the PWD of the State of West Bengal by constructing a two storeyed public toilet at the location in question. It has been further recorded in the said order that it appears from the Special Officer's report that by reason of the impugned construction, the ingress to and egress from the property of the 9th

respondent, who was the petitioner in the said writ petition has been substantially obstructed. Since encroachment had been made on State Highway which is maintained by the PWD of the State of West Bengal, the co-ordinate bench, in the order dated 15.02.2021, after holding that the provisions of the West Bengal Highway Act 1964 will apply directed the Executive Engineer, Tamluk Highway Division, Public Works Department (Road), Government of West Bengal to initiate proceedings under Section 10(1) of the 1964 Act for removal of the impugned encroachment.

14. Being aggrieved by the order dated 15.02.2021 passed in WPA 22242 of 2019, the petitioner preferred an intra Court appeal being MAT 622 of 2021 which stood dismissed by the Hon'ble Division Bench by an order dated 10.12.2021. The Hon'ble Division Bench held thus-

"It is admitted that the Municipal Authority had made construction over the land of the PWD without the permission of the PWD. The said illegal construction is restraining the ingress and egress of the writ petitioner. The Report of the Special Officer supports the contention of the writ petitioner as well as the PWD.

The Hon'ble Single Judge by considering the report of the Special Officer has only directed the authority to initiate proceeding under Section 10 of the Highways Act for removal of the impugned encroachment over the property in question.

The PWD had acted upon the order passed by the Hon'ble Single Bench. This Court has not found any illegality with the order passed by the Hon'ble Single Judge and there is no merit in the appeal filed by the appellant.

Hence, MAT 622 of 2021 with CAN 2 of 2021 is dismissed."

15. Record reveals that a notice under Section 10(1) of the West Bengal Highways Act, 1964 dated March 23, 2021 was issued to the Chairman, Haldia Municipality directing him to remove/demolish the structure/obstruction to the satisfaction of the Highway Officer within the time limit indicated therein. Since the encroachment was not removed, the matter was referred to the Sub-Divisional Magistrate under Section 10(2) of the 1964 Act. The Sub-Divisional Magistrate passed an order under Section 10(3) of the 1964 Act on 08.04.2022 directing the Assistant Engineer, Haldia Highway Sub-division Public Works (Roads) Department, Chaitanyapur to

recover possession and remove encroachment from plot no. 751/1452 and the Officer-in-Charge in Sutahata Police Station was directed to render necessary and lawful assistance in that regard.

16. Petitioner preferred an appeal under Section 10(4) of the Highways Act challenging the order dated 08.04.2022 of the Sub-Divisional Magistrate, Haldia. The District Magistrate, Purba Medinipur by an order dated August 17, 2022 affirmed the order dated 08.04.2022 passed by the Sub-Divisional Magistrate, Haldia and directed the said authority to recover possession and remove encroachment from plot no. 751/1452 under the provisions of the 1964 Act within the time limit indicated therein.
17. At this stage it would be relevant to point out that during the pendency of this writ petition, the petitioner preferred a review application to review the order passed by the Hon'ble Division Bench in MAT 622 of 2021 along with an application under Section 5 of the Limitation Act praying for condonation of delay of about 1357 days. The Hon'ble Division Bench dismissed the review application as time barred by an order dated February 6, 2026. Thus, the petitioner was unsuccessful in its attempt to modify the order of the Hon'ble Division Bench dated 10.12.2021 in MAT 622 of 2021 wherein it was recorded that it is admitted that the municipal authority had made construction over the land of the PWD without permission of the PWD.
18. Mr. Basu learned Senior Advocate for the petitioner would strenuously contend that the petitioner made construction on the land in Dag no. 1452 with the permission of the authorities of the Public Works (Roads) Department and in support of such contention he placed strong reliance on the Memo dated 18.11.1988. After going through the Memo dated 18.11.1988 it is evident that permission was granted to make construction on 1336.5 Sq. meter of land in Dag Nos. 144, 145, 146, 149 and 779 under Mouza Durga Chowk but no permission either in respect of Dag No. 1452 or 751/1452 within Mouza Sutahata was granted in favour of the petitioner. Therefore, the said Memo cannot come to the aid of the petitioner.
19. That apart, the order recording the admission of the Municipal Authority in the order dated 10.12.2021 passed in MAT 622 of 2021 that the

Municipality had made construction over the land of PWD without any permission of the PWD has already attained finality.

20. Mr. Basu would strenuously contend that the Haldia Municipality is exempted from taking any permission for construction and can construct on the land of PWD in view of the provisions laid down under the Government Buildings Act, 1899.
21. Government Buildings Act, 1899 was enacted to provide for exemption from the operation of municipal building laws of certain buildings and lands which are the property, or in the occupation of the Government and situated within the limits of a municipality.
22. Section 3 of the 1899 Act grants exemption to the State Government from complying with the provisions contained in the municipal laws regulating the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality when the Government constructs building on its own land or in the land occupied by the Government.
23. 1899 Act, however, does not empower the Municipality to make any construction upon the land of the PWD without obtaining permission from the PWD, Government of West Bengal.
24. The Hon'ble Division Bench in **Kamal Dey** (supra) held that service of notice upon the municipal authority before commencement of work as contemplated under Section 3 of the 1899 Act is mandatory and any contrary interpretation would render the modalities framed under Section 4 of the said Act will become unworkable. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
25. In **Lala Ram** (supra), the order passed by the Railway Administration enhancing the license fee for use of the railway property was under challenge. The Hon'ble Supreme Court after observing that the welfare State must serve larger public interest and must not grant unwarranted favour(s) to a particular class of people without justification at the cost of others held that the enhanced license fee is not unreasonable or arbitrary. The said decision being distinguishable on facts cannot assist the petitioner.

26. In ***Md. Zamil Ahmed (supra)***, the younger brother of a deceased employee was given appointment on compassionate ground. After 15 years of satisfactory duty, the service of the appellant therein was terminated on the ground that his appointment on compassionate ground was illegal and against the policy. The Hon'ble Supreme Court held that the decision for giving appointment was a right decision taken by the State as a welfare State to help the family of the deceased at the time of need of the family and there was no justification on the part of the State to wake up after lapse of 15 years and terminate the services of the appellant therein on such ground. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
27. There is no quarrel to the proposition of law laid down in ***Manuelsons Hotels Private Limited*** (supra) that where the Government makes a promise knowing or intending that it would be acted upon by the promisee and in fact the promisee acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee. It was further clarified that the doctrine of promissory estoppel could have no application if no definite promise was made by or on behalf of the Government.
28. In the case on hand, petitioner Municipality failed to demonstrate that permission to make construction was accorded in favour of the Municipality and, therefore, the question of acting upon any promise by the Government does not and cannot arise. Thus, the said decision also cannot come to the aid of the petitioner.
29. West Bengal Highways Act, 1964 was enacted to provide for the maintenance and control of highways, the prevention of encroachment thereon and the removal of encroachments therefrom, and for certain other matters connected therewith.
30. The expression "encroachment" has been defined in Section 2(b) of the 1964 Act to mean any occupation or use of any highway or part thereof by any

unauthorized person and includes any projection on, over or under such highway.

31. Section 10 of the 1964 Act casts an obligation upon the Highway Authority to remove encroachment made by any person. It also lays down the procedures for such purpose as well as the forum before which an aggrieved person responsible for encroachment can prefer an appeal.
32. By laying emphasis on the expression “person” used in Section 10 and “unauthorized person” used in Section 2(b) of the 1964 Act, Mr. Basu would contend that any alleged encroachment made by a local authority would not fall within the scope of the 1964 Act.
33. The word “person” has not been defined in the 1964 Act. Therefore, this Court has to consider the dictionary meaning of the word “person”.
34. In Black’s Law Dictionary the word “person” has been defined to also include an entity (such as a corporation) that is recognised by law as having the rights and duties of a human being.
35. The relevant portion of the Black’s Law Dictionary is extracted hereinafter.

“person. 1. A human being. **2.** An entity (such as a corporation) that is recognized by law as having the rights and duties of a human being. **3.** The living body of a human being < contraband found on the smuggler's person>.”

So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition.” John Salmond, Jurisprudence 318 (Glanville L. Williams ed., 10th ed. 1947).

36. Haldia Municipality has been vested with certain legal rights and duties that of a human being.
37. This Court is, therefore, of the considered view that Haldia Municipality which is a body corporate with perpetual succession and a common seal and may by its name sue and be sued though in real terms may not be a human being but in legal parlance shall squarely fall within the expression

“person” used in Section 10 and the provisions of Section 10 shall stand attracted in case a Municipality is found to have made an encroachment upon the PWD land. If such authority is in possession of any property without lawful authority, such occupation shall be constructed to be an “encroachment” by an unauthorized person.

38. In ***Ashis Kumar Dey (supra)*** the State Government was putting up a construction on the PWD land which was admittedly a “highway” within the meaning of the West Bengal Highway Act, 1964. The Hon’ble Division Bench held that even the State Government has to act in accordance with the law and in compliance with the mandatory statutory requirements. It was further held that the department of the Panchayat and Rural Development, Government of West Bengal, which was responsible for the impugned construction, could not have put up the construction without the prior permission of the Highway Authority. By applying the proposition of law laid down by the Hon’ble Division Bench in ***Ashis Kumar Dey (supra)*** this Court holds that the Haldia Municipality also could not have put up any construction on the PWD land without prior permission of the Highway Authority.
39. For the reasons as aforesaid, this Court is not inclined to accept the contention of Mr. Basu that the provisions of the 1964 Act shall not apply to the case on hand.
40. The other limb of submission of Mr. Basu that Section 26 of the 1964 Act permits construction by the Municipality cannot be accepted by this Court for the reasons as stated hereinafter.
41. Section 26 of the 1964 Act enables the local authority to make any excavation for certain specific purpose. It also saves the right of any authority under any law for the time being in force to erect any support or make any excavation for certain specific purpose.
42. Construction of a two storeyed permanent structure by way of encroachment upon the land of PWD is neither permitted under the 1964 Act nor saved under Section 26 of the said Act.

43. In ***Dipak Kumar Mukherjee (supra)***, construction was made in violation of the sanction plan and illegal construction was done in spite of the decision of the Mayor in Council of the Kolkata Municipal Corporation as well as the order of the High Court. On such facts the Hon'ble Supreme Court directed that the illegal construction be pulled down without delay and in order to ensure the same, certain directions were passed. The said decision being distinguishable on facts cannot be applied to the facts of the case on hand.
44. The Sub-Divisional Magistrate and the concerned District Magistrate after considering the materials on record passed orders directing removal of encroachment from the Highway. There is no infirmity in the decision making process warranting interference under Article 226 of the Constitution of India.
45. Accordingly, the writ petition stands dismissed. There shall, however, be no order as to costs.
46. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)