

27.02.2026
SL No.25
Court No.6
(gc)

**CO 3365 of 2025
CAN 1 of 2026**

**Prasanta Kumar Bajaj & Ors.
Vs.
The Chairman, Dum Dum Municipality & Ors.**

Mr. Syamal Kumar Das,
Mr. Pronojit Roy,
Ms. Bushra Nesat

.....for the Petitioners.

Mr. Dipankar Aditya,
Mr. Prasanta Kumar Das,
Ms. Aishwarya Priya Raha

...for the Opposite Parties Nos.2 & 3.

1. Despite service, none appears for the Municipal Authorities.
2. The petitioners are aggrieved by the order dated August 19, 2025 passed by the learned Civil Judge (Junior Division) at Bidhannagar, District 24 Parganas (North) in Municipal Appeal No.07 of 2025. The appeal was filed challenging an order of demolition passed by the Chairman, Dum Dum Municipality dated July 11, 2024. The Court was of the view that the appeal was belated and the petitioners had not satisfactorily explained the delay of 429 days in preferring the appeal.
3. It appears from the application under Section 5 of the Limitation Act filed by the petitioners that, after the order of demolition, the petitioners had sought clarifications from the Municipality as to how the said order was issued without any inspection of the property

in question. It is further submitted that the petitioners attempted to reach out for a settlement with the parties involved in the proceeding and upon failure to do so, the Municipality verbally informed the petitioners that the Municipality would proceed with the demolition at the earliest. The learned Court rejected the application, inter alia, holding that the appeal could not be entertained as the explanation was insufficient. Accordingly, the Municipal Appeal No.07 of 2025 was dismissed.

4. The learned Advocate for the petitioners submits that Section 218(3) of the West Bengal Municipal Act, 1993 (hereinafter referred to as the said Act) provides a statutory remedy by way of an appeal from the order of Board of Councilors. Such right of appeal does not have to be exercised within a particular period of limitation. The provision of Section 218(4) of the said Act was deleted. In the absence of any prescribed period of limitation, the residuary clause under Article 137 of the Limitation Act will be applicable. The Court ought to have taken into consideration such provisions.
5. The learned Advocate for the opposite parties Nos. 2 and 3 submit that the Municipality had directed the petitioner to demolish the unauthorized construction within 30 days. Thus, the appeal should have been filed within 30 days. Moreover, the order of demolition

was passed pursuant to a direction of the High Court. The Division Bench also did not interfere with the order. The Division Bench recorded that the demolition had taken place. Under such circumstances, there can be no reason for the petitioners to prefer an appeal, as the issue had been finally decided by the High Court. The Municipality had also taken steps to demolish the structure.

6. Heard the parties. I find from the records that the Writ Court directed the Municipality to act and proceed in accordance with law and decide whether there had been any unauthorized construction. The Municipality passed the demolition order with details. The order of the Single Bench was challenged in the Division Bench and the Division Bench dismissed the appeal.
7. The order passed by the Municipality is an appealable order. The petitioners have a right of statutory appeal to challenge the order of demolition. Even if demolition had taken place, the petitioners cannot be precluded from availing of their remedy of appeal under the special statute. If the petitioners are in a position to show that the demolition was wrongly done, the petitioners have a remedy in damages against the opposite parties. Thus, the statutory right of appeal cannot be taken away. The Act does not provide for a

time limit within which the appeal should be filed. Thus, the appeal should be filed within reasonable time, and as the same was delayed, an application for condonation of delay was filed.

8. It appears from the averments in the application explaining the delay, that sufficient time had been consumed when the petitioners were proceeding with the appeal from the order of the learned Single Bench before the Hon'ble Division Bench. The Division Bench disposed of the appeal being **MAT 1404 of 2024 (Prasanta Kumar Bajaj & Ors. Vs. Subrata Dutta & Ors.) dated September 25, 2024**, which is reproduced hereinbelow:-

- “1. Having considered the averments made in the application for condonation of delay, delay in preferring the appeal, is condoned.
2. CAN 1 of 2024 is allowed.
3. By order dated 30.9.2022 the Hon'ble Single Judge directed respondent no. 3 to consider the representation and take necessary steps with regard to unauthorized construction alleged in the writ petition.
4. By the impugned order no legal right was finally decided and the matter was remitted to respondent no. 3 to take appropriate decision. We are informed pursuant to the said order hearing was conducted and demolition order has already been passed. Hence, nothing survives in the appeal.

5. It is open to the appellant as well as the respondent no. 1 to take necessary steps with regard to such decision in accordance with law, if so advised.

6. *With the above directions, appeal is disposed of.”*

9. The Division Bench permitted the petitioner to challenge the order of demolition, in accordance with law, but did not stay the order of demolition. Consequently the appeal was filed under Section 218 (3) of the said Act.

10. The order impugned is set aside. The appeal be admitted. The learned Court is directed to at least hear out the application for stay passed in Municipal Appeal No.07 of 2025 within a period of 8 weeks from the date of communication of this order, without being influenced by this order. This court has not gone into the merits of the order of demolition.

11. The demolition order will be stayed for 8 weeks.

12. Accordingly, the revisional application and the connected application are disposed of.

13. There shall be no order as to costs.

14. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)