

10.02.2026
Item No.04
Ct. No.15
Suman

WPA 26108 of 2025

Smt. Namita Sarkar
-Vs-
The State of West Bengal and Ors.

Mr. Raghunath Chakraborty
Mr. Syed Nasirul Hossain
Mr. Md. Jalaluddin
..for the petitioner

Mr. Debjit Mukherjee
Mr. Kaustav Bhattacharya
Ms. Priyanka Jana
..for respondent nos. 10 and 11.

Mr. Sibojyoti Chakraborti
Ms. Riya Ghosh
..for Howrah Zilla Parishad

Mr. Lalit Mohan Mahata, AGP
Mr. Rudranil De
...For the State

The petitioner seeks demolition of an alleged unauthorized construction on a plot of land bearing L.R. Dag No. 3078, Khatian Nos. 728, 5168, 14416, 14417, J.L. No. 111, Bally, Howrah, measuring about 4 kottah.

It appears that the petitioner purchased a small portion of the said plot, measuring approximately 99 square feet, from the landlord by a sale deed dated September 24, 2018. The petitioner thereafter constructed a shop room on the said portion of the plot. Subsequently, the landlord of the plot entered into a joint venture agreement with respondent nos.

10 and 11 for the construction of a G+4 storied building.

A sanctioned plan was accordingly granted by the Howrah Zilla Parishad on March 9, 2022. It is pertinent to note that the petitioner's possession of the shop room was not interfered with or dispossessed. Following the sanctioned plan, respondent nos. 10 and 11 constructed the G+4 storied building in January 2023, without demolishing or interfering with the petitioner's shop room.

Thereafter, the petitioner filed Title Suit No. 1548 of 2023 before the learned Civil Judge (Junior Division), 6th Court at Howrah, inter alia challenging the sanctioned plan as well as the development agreement. It is not in dispute that the Civil Court, by an order dated October 9, 2023, restrained respondent nos. 12 to 17 in the present writ petition from disturbing the peaceful possession of the petitioner's shop room and also passed an order of status quo.

Subsequently, the petitioner has filed the present writ petition before this Court, alleging unauthorized construction by respondent nos. 10 and 11. The writ petition, however, does not specify the exact nature of the alleged unauthorized construction.

Learned Advocate Mr. Raghunath Chakraborty, appearing for the petitioner, submits that the building has been constructed in violation of the sanctioned plan, alleging that respondent nos. 10 and 11 added an additional floor. He relies upon a judgment of a Single Bench of this Court reported at **2005(3) CHN 282 (Mohanlal Mitra Vs. Kolkata Municipal Corporation)**.

Paragraph 22 of the said judgment is quoted below:

“22. The fact that the respondent no.6 did not complain to the respondent authorities with regard to the said unauthorised construction for a long time would make no difference at all as there is no estoppel against law. By the acquiescence of the respondent No.6 the unauthorised construction does not become authorized it continues to remain unauthorised unless sanctioned by law.”

He places reliance on the Supreme Court judgment in **Special Leave to Appeal (C) Nos. 12199–12200/2025** dated April 30, 2025, to argue that courts must deal sternly with unauthorized construction and that no laxity or indulgence should be shown where construction is undertaken without proper authorization.

He has further relied upon the judgment reported at **2024 SCC OnLine Cal 12033 (Sonali Kumar Vs. State of West Bengal)** to contend that an unauthorized construction cannot be

regularized under Rule 15 of the Howrah Zilla Parishad Bye-laws, 2005, which permits the Howrah Zilla Parishad to regularize unauthorized constructions only in certain exceptional circumstances.

Learned Advocate Mr. Debjit Mukherjee, appearing for respondent nos. 10 and 11, submits that the petitioner has filed this writ petition belatedly, after completion of the construction in 2023. Having already approached the Civil Court challenging the sanctioned plan as well as the development agreement, the petitioner cannot maintain a writ petition seeking similar relief before this Court.

It is pointed out that the writ petition does not specify the exact nature of the alleged unauthorized construction. Only vague allegations have been made, without indicating in what manner the building is unauthorized. It is emphasized that the building has been constructed in accordance with the sanctioned plan granted by the Howrah Zilla Parishad. It is further submitted that only a hall without sanction has been constructed on the fifth floor, and a representation has been made for revising the plan under Rule 15A of the Howrah Zilla Parishad Bye-laws, 2005.

Mr. Mukherjee submits that the judgment reported at **2005(3) CHN 282 (*Mohanlal Mitra Vs. Kolkata Municipal Corporation*)** is not applicable to the facts of the present case. By emphasizing the words “unless sanctioned by law” as appearing in paragraph 22 of the said judgment. It is submitted that in the present case, the respondents have prayed for sanction of the alleged hall room, which is under consideration by the Howrah Zilla Parishad. Accordingly, the judgment has no applicability, as the Howrah Zilla Parishad is competent to consider the regularization of the said hall under Rule 15 of the Howrah Zilla Parishad Bye-laws, 2005.

Learned Advocate representing the Howrah Zilla Parishad submits that the authority shall deal with the alleged unauthorized construction, if any, in accordance with law.

I have heard the parties at length. It is noted that this Court had encouraged the parties to arrive at an amicable settlement, which, however, could not be achieved.

It appears that the petitioner has already availed of remedy before the Civil Court challenging the development agreement and the sanctioned plan. She has also prayed for declaration of her right, title, and interest over the shop room in

question. Having done so, the petitioner cannot now seek to impart a public law character to a dispute that is essentially civil in nature, particularly at this belated stage. The writ court cannot be used as an alternative forum to secure indirectly what could not be obtained directly in civil proceedings.

The allegation regarding the violation of the sanctioned plan is inextricably intertwined with the underlying civil dispute and appears to have been raised merely to lend a semblance of public law character to what is fundamentally a private conflict.

In view of the foregoing, this Court finds no reason to entertain the writ petition. There is no dispute with regard to the propositions of law as laid down in the judgments relied upon by the petitioner. However, those judgments are not applicable in the facts and circumstances of the case.

This Court has not considered the question of regularization of the alleged unauthorized construction. The Howrah Zilla Parishad shall be at liberty to deal with the matter in accordance with law.

It is further clarified that the observations made in this order shall have no bearing on the

pending civil suit. The learned Civil Judge shall proceed with the civil suit in accordance with law, uninfluenced by any observations made in this writ petition.

Accordingly, **W.P.A. 26108 of 2025** is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)