

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 27705 of 2025

**Sri Manas Kumar Sengupta & Anr.
Versus
The Howrah Municipal Corporation & Ors.**

For the petitioners	:	Mr. Ayan Banerjee Mr. Suman Banerjee
For the respondent no.5	:	Ms. Shebatee Datta Ms. Poulami Roy
For the Howrah Municipality Corporation	:	Mr. Sandipan Banerjee Mr. Ankit Sureka
Heard on	:	19.01.2026.
Judgment on	:	19.01.2026

Raja Basu Chowdhury, J (Oral):

1. The writ petition has been filed, inter alia, challenging the order dated 24th November, 2025 whereby the petitioners' prayer for regularization dated 23rd April, 2025 has not been considered.
2. The matter has a checkered history.
3. Complaining of illegal construction at the behest of the writ petitioners in premises No. 87A, Mohiary Road, Jagacha, P.S. – Jagacha, Howrah – 711112, a writ petition was moved, which was registered as WPA 25522 of 2023. A Co-ordinate Bench of this Court

by order dated 29th July, 2024 by noting the submissions made by the parties including those made by the writ petitioners herein who were arrayed as respondent nos. 12 and 13 in such writ petition, that the alleged construction that had undertaken without permission from the Howrah Municipal Corporation, and that the corporation had already issued a notice dated 15th September, 2023 under the provisions of Section 177(1) of the Howrah Municipal Corporation Act, 1980 on the respondent nos. 12 and 13 as aforesaid, had directed the Assistant Engineer, in charge Building Department of Howrah Municipal Corporation to complete the proceedings within one month from the date of communication of the order after giving opportunity of hearing to all concerned.

4. In terms of the aforesaid order the Municipality/Corporation had held a joint inspection on 21st March, 2025 wherein the following points were noted:

(1) The building comprising in the captioned holding is now G+3 storied. But sanctioned was accorded for a G+3 building. It has been observed that the main entrance of the building lock and key, so the measurement work was done outside of the building. Deviation on all floors from ground floor to 3rd floor has been done. Comparative statement regarding sanctioned area and unauthorized areas (floor wise) is appended below.

(2) Constructed area of each floor = 74.865 Sq. m.

(3) Sanctioned area at each floor = 56.828 Sq. m.

(4) Deviated area at each floor = 18.037 Sq. m.

(5) Total unauthorized area more or less 72.148 Sq. m.

(6) Self Demolition Notice has already been issued, but alleged offender has not complied the Self Demolition Notice by himself till date.

5. Following the aforesaid, the Assistant Engineer-in-Charge, Howrah Municipal Corporation in terms of the order dated 29th July, 2024 by giving opportunity of hearing to the parties passed an order dated 9th April, 2025 thereby directing that the unauthorized construction being in violation of the Building Rules be demolished within 15 days from the date of such order.
6. After the aforesaid order was passed, the writ petitioners herein had applied for regularization of the minor deviation. According to the writ petitioners herein since, the application for regularization was kept pending, the writ petition being WPA 10642 of 2025 was filed. Independent of the above, challenging the demolition notice dated 25th March, 2025 and order dated 9th April, 2025 a writ petition being WPA 7973 of 2025 was filed. Both the writ petitions came to be disposed of by a common order whereby a Co-ordinate Bench of this Court without expressing any opinion on the merits as to whether the construction is capable of being regularized had directed the Commissioner of Municipal Corporation to take an independent

- decision strictly in accordance with law after affording opportunity of hearing to the petitioners as well as of other concerned parties.
7. Pursuant to the aforesaid the Assistant Engineer, in charge, Building Department, Howrah Municipal Corporation had conducted a hearing on 24th June, 2025 and by once again identifying the extent of deviation in each floor and noting the total unauthorized area to be 72.148 Sq.m rejected the prayer made by the petitioner nos. 1 and 2.
 8. The aforesaid order was challenged by the writ petitioners by filing a writ petition which was registered as WPA 19213 of 2025. By an order dated 3rd September, 2025, a Coordinate Bench of this Court had remanded the matter back to the Commissioner to decide the same afresh in accordance with law regarding regularization and in terms of the earlier order of the Court. Pursuant to the aforesaid order the matter was taken up for consideration by the Commissioner, Howrah Municipal Corporation on 24th November, 2025. The Commissioner, Howrah Municipal Corporation by noting the inspection report dated 31st October, 2025 had considered the deviation and following the aforesaid he directed the Howrah Municipal Corporation to demolish the unauthorized construction of the petitioners.
 9. Mr. Banerjee, learned advocate appearing on behalf of the writ petitioners would submit that the Commissioner, Howrah Municipal Corporation did not adhere to the directions of the Court and did not

decide on the application filed by the petitioners for regularization. According to Mr. Banerjee, the inspection report dated 31st October, 2025 based on which the above order was passed was also not made over to the petitioners. Accordingly, the above would constitute violation of principles of natural justice. The order cannot be sustained and should be set aside.

10. When the matter came up for consideration on 17th December, 2025 this Court by noting that the inspection report had not been supplied to the petitioners had by the above order directed service of the inspection report on the petitioners. In terms of the above direction, the inspection report has been disclosed in the present case and made over to the advocate for the petitioners. On 9th January, 2026 when the matter came up for consideration, having regard to the disclosures made by the Municipality the advocate for the petitioners had sought for an adjournment to take appropriate instruction in the matter. Today Mr. Banerjee, learned advocate appearing for the petitioners would submit that since the inspection report had not been supplied before the order was passed, the order should be set aside and the matter be remanded to the Municipality. According to him, the prayer for regularization was also not considered. The order impugned cannot be sustained in law and should be set aside.

11. Ms. Datta, learned advocate appears for the respondent no.5, while Mr. Banerjee, learned advocate appears for the Municipality.

12. Having heard the learned advocates appearing for the respective parties, I find that though the petitioners had claimed that the inspection report had not been supplied to the petitioners, a copy of the inspection report had been made over, pursuant to orders passed by this Court. The petitioners had not objected to the contents of the inspection report by filing any exception to the same.

13. To more fully appreciate the relevant inspection report, the same is extracted hereinbelow:

HOWRAH MUNICIPAL CORPORATION
BUILDING DEPARTMENT (4th Floor)
4, MAHATMA GANDHI ROAD, HOWRAH - 711 101
Phone : 033 2638 3211/12/13, Fax : 033 2641 0830
WEBSITE: www.mhmc.in, EMAIL: wdg.hmc@gmail.com

No. 1824 Bldg. A.E./25-26 Date: 31/10/2025

Inspection Report:

In the context on the basis of High Court Order against WPA No. 19213 OF 2025 by his Lordship The Hon'ble Justice Ravi Krishan Kapur on dated 03/09/2025 and order of The Commissioner, HMC after preliminary joint hearing on dated 13/10/2025, a joint inspection was done on 31/10/2025 at 12.00 noon to 1.00 P.M. at 87/A, Mahatma Road, W-47. (Attendance Sheet and one photograph enclosed)

In presence of :

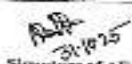
1. Sri Biplob Roy (A.E. & In-charge of Building Dept)
2. Sri Abhijit Dutta (A.E. & In-charge of Building Dept)
3. Sri Goutam Ghosh (S.A.E Building Dept)
4. Rupam Mariani (S.A.E Building Dept)
5. Manas Sengupta and Anika Sengupta as petitioners.
6. Sanat Sengupta as present as respondent.

Now following points were observed during the inspection:-

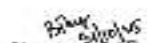
1) Construction has been carried out in the building up to 3rd floor level, no additional floor has been constructed. Many internal & external deviation were noted. The deviations are being reported in tabular form below.

Road Width- 4.95m.

Sl. No.	Description	As per KMC S/R 2009	As per Sanctioned plan	As per site visit	Deviation from sanctioned plan	Remarks in respect of KMC S/R, 2009
1	Ground coverage	60%	46.85%	69%	12.15%	Ok
2	Height of the building	12.5m	12.45m	12.45m	Nil	Ok
3	Constructed area at Ground floor	12.769 Sqm.	56.826sqm.	72.649 Sqm.	15.843 Sqm.	Ok
4	Total constructed area up to 3 rd floor	212.343 Sqm.	222.584Sqm.	384.676Sqm.	61.692 Sqm.	Not Ok
5	Front open space	1.2m	1.313m	0.74m	0.573m	Not Ok
6	Side-1 open space	1.2m	1.2m	1.2m(Av)	Nil	Ok
7	Side-2 open space	1.5m	1.50m	0.8m(Av)	0.7m	Not Ok
8	Rear open space	3.0m	3.0m	1.6m(Av)	1.4m	Not Ok


 Signature of A.E.
 (Abhijit Dutta)
 In charge of Building Dept.


 Signature of S.A.E.
 (Goutam Ghosh)


 Signature of A.E.
 (Biplob Roy)
 In charge of Building Dept.

14. Going through the inspection report, it would transpire that there are deviations not only in the area of frontal portion but also on the side and rear portions of the building.
15. Considering the above inspection report it would also transpire that the inspection was carried out in presence of the writ petitioners and also in presence of the private respondent. Though the report records that there has been no additional floor constructed, upon considering the inspection report it would transpire that the area otherwise permitted to be constructed at the ground floor was 56.828 Sq. m. while at the time of inspection the same has turned out to be 72.96 Sq. m. Therefore, on the basis of arithmetic calculation, the department has ascertained that there has been an additional construction of 15.83 Sq. m. in the ground floor itself and the deviation of the total constructed area upto the third floor, works out to be 69.69 Sq. m. which is approximately 611 Sq. ft. Therefore an additional 611 Sq. ft. has been constructed illegally by the respondents. Although, Mr. Banerjee would like to highlight the fact that the application for regularization of the deviations has not been considered at all, however, by noting the provisions of Section 177 of the Howrah Municipal Act, 1980 (hereinafter referred to as the "said Act") it would appear that the power had been conferred on the Commissioner to regularize certain unauthorized execution of work to the extent provided therein. To morefully appreciate the aforesaid,

scope of regularization of illegal construction by the Commissioner, the relevant provision is extracted hereinbelow.

“177. Order of demolition or stoppage of buildings and works.

(1)Where the erection of any building or the execution of any work in pursuance thereof has been commenced, or is being carried on, or has been completed without or contrary to the sanction or in contravention of any of the provisions of this Act or the rules and the regulations made thereunder, the Commissioner may in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be stopped or demolished or such addition or alteration thereto be made as the Commissioner considers necessary, by the person at whose instance the erection or the work has been commenced, or is being carried on, or has been completed :

Provided that no order under this provision shall be made unless such person has been given a reasonable opportunity of being heard in accordance with such procedure as may be prescribed.

[Provided also that the Commissioner may by order, on such terms and conditions and on payment of such fees as may be prescribed by regulations, regularize the minor unauthorized erection, or execution of any minor work without sanction under this Act, or minor deviation from the sanctioned plan or execution of any minor erection or work in contravention of any sanctioned plan under this Act or the rules or the regulations made thereunder, as the case may be:

Provided also that the Commissioner may, by order, delegate his powers and functions under the first and the second proviso of this sub-section to the Special Officers, appointed by the Commissioner with the approval of the State Government on such terms and conditions as may be determined by the Corporation, and the expenses for payment of such officers shall be borne on from the Municipal Fund.] [Added by Act No. 33 of 2017, dated 15.9.2017.] ”

16. Going through the 2nd proviso to Section 177 of the said Act, it is apparent and clear that regularization is only permissible in case of minor unauthorized construction and/or execution of any minor work without sanction.

17. In my view, the illegally constructed area of 611 sq. ft. does not appear to be a minor deviation. As such application for regularization was rightly not allowed. This apart the petitioners have also failed to identify how the petitioners were prejudiced in non-supply of the inspection report when the contents thereof were not contested by the petitioners. On such grounds, I am not inclined to remand the matter back to the Municipal Authorities. The writ petition fails and is accordingly dismissed.

18. There shall be no order as to costs.

19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)