

25.03.2026
Item No.02
Court No.12
CP/GB

MAT 2273 of 2025
with
CAN 1 of 2026
with
CAN 2 of 2026

Arnab Hazra & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Anindya Lahiri, Sr. Advocate
Mr. Anish Chakraborty
Mr. Subhomoy Paul

.....for the Appellants.

Mr. Amitabha Ghosh

...for the respondent/writ petitioner.

Mr. Jaharlal De
Mr. Shamim ul Bari

...for the State respondents.

CAN 1 of 2026 is an application for condonation of delay of 59 days in filing the appeal.

Mr. Ghosh, learned advocate for the respondent/writ petitioner, opposes the prayer for condonation of delay on the ground that the appellants were all along aware of the writ proceedings.

We find from the explanations that the appellants were unable to contact their learned advocate who was conducting the writ proceeding on their behalf and, as such, were unaware of the disposal of the writ petition. Upon coming to know of the same from their learned

advocate at a later date, steps were taken to file the appeal along with the prayer for condonation of delay. Accordingly, the explanation is satisfactory. The appellants have pleaded ill-health and ailments. Under such circumstances, we are satisfied that the delay has been explained properly. Accordingly, the delay is condoned.

CAN 1 of 2026 is allowed.

Let the appeal be regularized.

We have perused the stamp reporter's report. We are told that the Vakalatnama of the respondents was filed in the writ petition in court. Under such circumstances, the report may be ignored.

The appellants are aggrieved by an order dated September 24, 2025, passed by a learned Single Judge, wherein directions were passed that the mango tree and the coconut tree of the appellants which have been existing within the premises of the appellants for many years, should be felled in order to prevent damage to the property of the respondent no. 5. Such direction of Her Lordship was based on four reports which were called for one after the other from the Forest Department.

Her Lordship was of the further view that the appellants did not have any right to plant trees that would cause damage to the structure of their neighbours.

The concerned authority was directed to ensure that all necessary steps were taken by the appellants so that the structure of the respondent no. 5 would not be damaged. The respondent authorities were further directed to take remedial measures. As a consequence, the forest department has asked the appellants to apply for felling of their trees.

Mr. Lahiri, learned senior advocate for the appellants, submits that the trees are the property of the appellants. The trees have been planted within the boundary wall of the appellants. This fact is also available from the order impugned and the pleadings in the writ petition. The contentions of the writ petitioner were that, the distance between the mango and coconut trees of the appellant and the boundary wall of the writ petitioner's premises were minimum, i.e., 1.1 ft. and 2.2 ft. respectively.

Mr. Lahiri submits that none of the reports filed by the authorities would indicate that any damage had been caused at all to the structure of the writ petitioner/respondent no. 5. He submits that the reports indicate that the root of the mango tree had touched the wall of the septic tank, but there was no visible damage. The root was growing downwards inside the earth and not towards the septic tank. It was further emphasised by Mr. Lahiri that the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act,

2006, prohibited felling of trees. Permission to fell trees could only be granted under Rule 4 of the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Rules, 2007. Only if the tree caused serious inconvenience to any local resident or posed a threat to human life or building or property or disrupted public services, could permission for felling be granted.

Mr. Lahiri submits that the trees have been in existence for more than 30 years and no damage had been caused either to the building or the life and property of the writ petitioner. He draws the attention of the court to the final report filed by the Range Forest Officer, Barrackpore S.F. Range, dated September 16, 2025, which was in the nature of a communication to the Divisional Forest Officer, 24 Parganas (North) Division, Barasat. In the said report/communication, the Range Forest Officer acknowledged that he was unable to foresee the nature and direction of further undergrowth of the roots of the trees. Trimming of the roots would hamper the survival of the trees. However, the roots may damage to the property in future.

It is submitted further that a writ petition could not have been entertained with regard to the dispute involved. Mere reports of the Range Officer, who may not be an expert in the field, could not be the basis for deprivation of a right over the trees, which were within the property of the appellants.

Mr. Ghosh, learned advocate for the writ petitioner/respondent no.5 submits that, if the trees caused damage to the property of the respondent no.5, the said respondent had every right to file a writ petition seeking directions upon the appellants to comply with the law and also upon the respondent authorities/forest department to ensure safety of the structure by felling the trees, which were likely to cause damage to the structure of the respondent no.5.

Heard the parties. The first report prepared by the Range Officer and forwarded to the Divisional Forest Officer on June 10, 2025 indicates that no damage was caused by the subject trees to the writ petitioner's construction. The roots touched the walls of the septic tank but no damage was visible on the surface. A possibility of damage to the said septic tank in future has been mentioned. In the second report prepared by the Range Officer, Barrackpore SF Range, filed before the Divisional Forest Officer again, it had been reiterated that the roots were entering the premises of the writ petitioner/respondent no.5 and touched the septic tank but, they were growing inwards into the earth. The roots of the coconut trees were also growing inwards, but barely touched the wall of the reservoir. However, in both cases, no sign of visible damage either to the septic tank or reservoir were evident and there was no foul smell or water leakage. This indicates that

the walls of the septic tank and the reservoir were intact.

On July 23, 2025, another report was prepared by the Range Officer, Barrackpore SF Range which indicates that although the roots of the trees were touching the wall of the septic tank and the reservoir, no damage either to the septic tank or the reservoir was evident. Parties were present during such inspection by the Range Officer. The pictures annexed to the report show that thin roots from the mango tree had touched the wall of the septic tank, but those roots do not visibly appear to be destructive and our observation is also supported by the report of the concerned authorities. In the last report prepared by the Range Officer dated September 16, 2025, it has been categorically stated that the roots of the mango tree were touching the wall of the septic tank and were growing downwards and not towards the septic tank. The roots of the coconut tree were touching the wall of the reservoir but, also going downwards into the earth.

The Act of 2006 was promulgated to prevent felling of trees in non-forest areas and to encourage and promote plantation of trees. Conservation and protection of trees is the mandatory duty of the authority under the Act. Under the Rules of 2007, felling can be allowed when such tree can cause damage to human life and property.

The law as it stands today is that, unless absolutely necessary for protection of human life or protection of a building or a property of an individual, felling of tree is barred. None of the reports of the forest department indicate that they had come to a conclusion that, felling would be necessary to protect the property of the respondent No. 5. Rather, in all the reports it has been categorically stated that damage was not visible and the roots although touching the wall of the septic tank, were growing downwards and not towards the building or the construction.

On the basis of vague reports and apprehension that the roots may cause damage in future, a direction to fell the trees could not have been passed. There are no statutory infractions by the authorities, that would give rise to a cause of action to file a writ petition. Thus, the order impugned is set aside. All the said order are set aside.

However, as a citizen, the appellant has a fundamental duty to ensure that his neighbour is not caused any inconvenience on account of the trees and as such, the trees will be kept adequately trimmed and dressed, so that they do not disturb the daily living of the respondent no.5. With regard to the worry as to what would happen in future if there is further damage to the septic tank and water reservoir, we are of the view that a writ petition cannot be futuristic. In any event,

apprehension cannot be a cause of action to maintain a writ petition. The dispute appears to be private in nature.

The respondent authorities have clarified that the law prohibits felling and only a person who owns the trees can approach the authority for permission to fell the trees, if such felling is necessary to protect the life and property of any individual. The issue raised by the writ petitioner is to be finally adjudicated in an appropriate proceeding on the basis of evidence. Expert opinion from a civil engineer and a botanist would be required to assess the nature of the roots, the probable damage that the roots can cause, the nature of the construction and the extent of damage such construction might suffer.

Under such circumstances, this enquiry is not possible in a writ proceeding. We leave it open to the writ petitioner to take steps, in accordance with law, before the appropriate forum.

Accordingly, the appeal is disposed of. The connected application being CAN 2 of 2026 is also disposed of.

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

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)