

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

**BEFORE:
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY**

WPO/205/2026

**EAST COAST FISHERIES PVT. LTD. AND ANR.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.**

For the Petitioners	:	Mr. Alope Kumar Ghosh, Adv. Mr. Manvendra Singh Yadav, Adv. Ms. Saswati Chatterjee, Adv.
For the KMC	:	Mr. Biswajit Mukherjee, Adv. Mr. Raja Bahaiyal, Adv. Mr. Rajarshi Ganguly, Adv.
For the Private Respondents	:	Mr. Arindam Banerjee, Sr. Adv. Mr. Sankarsan Sarkar, Adv.

Heard on : 18th June, 2026

Judgment on : 18th June, 2026

RAJA BASU CHOWDHURY, J.:

1. The present writ petition has been filed, inter alia, praying for a direction upon the respondents in effect not to pass any order or take any decision which might affect

the right of the petitioners at premises no. 35, Diamond Harbour Road, Kolkata, 700027 which has been leased out in favour of the petitioners vide a lease deed dated 9th August, 1989 and a sub lease dated 4th September, 2002.

2. The petitioner no. 2 claims to be a charitable trust while petitioner no. 1 claims to be a private limited company. According to the petitioners, Golok Lall Seal, Gagan Lall Seal (since deceased) and Gora Lall Seal were the owners in respect of the entirety of the premises no. 35 Diamond Harbour Road, Kolkata, 700027. It is the petitioners' case that by and under an Indenture of Lease dated 9th August, 1989, the said Seals granted lease in respect of 8,000 sqft. of land together with a 3-storeyed building thereon situated on a portion of the said premises together with unrestricted right of ingress and egress and passage in the map or plan annexed to the said deed of lease for a period of 30 years commencing from 20th February, 1990 in favour of M/s. Neptune Hotels Private Limited.
3. According to the petitioners, the said deed of lease dated 9th August, 1989 provides for a specific clause to the effect that the lessee shall have the option to renew the lease for a further period of 21 years on the same terms and conditions. In the interregnum the said M/s. Neptune Hotels Private Limited being the lessee, executed a registered deed dated 8th October, 1991 unto and in favour of the petitioners herein. The owners had joined the said document as confirming parties.
4. The petitioners claim that upon taking over the assignment as aforesaid and during the subsistence of the residual period of the lease, the petitioner no.1 executed a registered sub-lease on 4th September, 2002 in favour of one Rajpal

Khullar Memorial Trust, the petitioner no. 2 herein, in respect of the aforesaid 8,000 sqft. of land together with the 3-storeyed building excluding approximately 2,000 sqft. in the ground floor of the said building standing and forming part of the premises no. 35, Diamond Harbour Road, Kolkata- 700 027. According to the petitioners, at present the school by the name of 'Akshar', which is affiliated with the Council for the Indian School Certificate Examinations, is being run from the aforesaid premises. According to the petitioners, the petitioners, by invoking the renewal clause, had sought for renewal of the lease deed, the original owners, however, had sometime in the year 2016 transferred their interest in the said property unto and in favour of the respondent no. 6. Since, the aforesaid respondent no. 6 refused to accept and grant the renewal, a suit for specific performance has been filed by the petitioners before the learned 8th Court, Civil Judge (Senior Division) at Alipore, which has been registered as Title Suit No. 1264 of 2024. A Miscellaneous Appeal being no. 366 of 2024 is also pending and in connection therewith, an order of injunction dated 4th October, 2024 is still subsisting. The petitioners have reasons to believe that the respondent no. 6 would make a move to develop the said property by obtaining sanctioned building plan behind the back of the petitioners.

5. Mr. Ghosh, learned Advocate representing the writ petitioners, however, by placing a communication dated 15th June, 2026, would submit that the municipal authority already responded to the petitioners by the above communication and has noted therein that till date no building proposal has been submitted. However, if any proposal is submitted, the department will inform the petitioners. Having

regard thereto, he submits that at present the petitioners do not wish to proceed with the writ petition, however, the petitioners seek to reserve their rights to proceed afresh, if occasion arises.

6. Mr.Banerjee, learned senior Advocate representing the private respondents would submit that the petitioners do not have the legal right to call upon the municipal authority, to inform them as to whether the private respondents have applied for sanction or not. According to him, the petitioners have no right to be heard before a sanction is granted. In support of such contention, reliance has been placed on the judgment delivered by the Division Bench of this Court in the case of ***Kumuda Sundari Properties (Pvt.) Ltd. & Ors. v. Namdang Tea Co. Ltd.***, reported in **AIR 1986 Cal 266** and the unreported judgment delivered by the Division Bench of this Court in the case of ***The Bengal Bonded Warehouse Association v. The Kolkata Municipal Corporation & Ors.***, authored by Hon'ble Justice Tapabrata Chakraborty being APOT 242 of 2015 dated 28th April, 2017.
7. The municipality is represented by Mr. Mukherjee, learned Advocate.
8. Having heard the learned advocates for the respective parties, I find that though the petitioners have come up with an innocuous prayer and would insist for withdrawal, with liberty to proceed afresh, however, since the petitioners have sought to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, this Court has examined whether the petitioners have any legal right to approach this Court.
9. Without going into the contested status of the petitioners, I find on the basis of the disclosures made in the writ petition, the petitioners are occupiers of the said

property. Let it be made clear that the status of the petitioners are not being decided inasmuch as a substantive suit is pending consideration before a competent Civil Court. However, the question that falls for consideration is whether the petitioners have a legal right so as to enforce such right through the writ petition. I find that Mr. Ghosh by placing reliance on Section 393 of the Kolkata Corporation Act, 1980 (hereinafter referred to as the “said Act”), rule 4 and rule 142 of the Kolkata Corporation Building Rules, 2009 (hereinafter referred to as the “said rules”), has submitted that having regard to the fact that an application for obtaining sanctioned plan for alteration and/or construction of a building is required to be made as per Schedule I of the said rules and accordingly, appropriate disclosure is required as to whether the property is tenanted or not. On the basis of the above disclosure to be made, according to him, it is the obligation of the municipality to intimate the tenants and/or occupiers of the premises in question of a subsisting proposal for consideration of a building plan and accordingly, has approached this Court. In this context, it is relevant to note that ordinarily for obtaining sanction, one has to apply by a notice in writing. Chapter XXII, Section 393 of the said Act deals with the same. To morefully appreciate the scope of Section 393 of the said Act, the relevant Section is extracted below ----

“Section 393:- Erection of building:-

(1) Every person who intends to erect a building shall apply for

sanction by giving notice in writing of his intention to the Municipal

Commissioner in such form and containing such information as may be prescribed.

(2) Every such notice shall be accompanied by such documents and plans as may be prescribed.”

10. As it would appear from the above, the said Section does not provide for an opportunity of hearing to a tenant or an occupier of the premises prior to sanctioning of a building plan. Although, lot of stress has been laid on rule 4 and Schedule I of the said rules, I find that the aforesaid issue has already been adjudicated by the Division Bench of this Court in the case of ***The Bengal Bonded Warehouse Association*** (supra). In the said case, the point that fell for consideration was whether in terms of the provisions contained in the said Act and the rules framed thereunder, the tenants and occupiers are required to be heard by the municipality while considering an application for grant of sanction of a building plan. While deliberating on the same, the Hon'ble Division Bench had considered Chapter XXII of the said Act and the details of the procedure to be adopted for obtaining sanction.
11. The Court also deliberated on Section 393, rules 4(2) and Schedule 1 of the rules for ascertaining the nature of notice required to be issued. The Court after considering the same had concluded that perusal of Schedule I of the rules would reveal that for erection or alteration of a building the person has to answer the queries, inter alia, as to whether the premises is tenanted. Rule 142 details the relaxation which would be available for construction of a building in place and stead of existing buildings after demolition and for availing relaxation of building

rules in terms of rule 142(3) the application has to be accompanied with documentary evidence of the tenants of the existing building signifying their consent to the demolition thereof. Accordingly, upon deliberating on the same, the Hon'ble Division Bench of this Court in no uncertain terms has rendered the finding, that from the statutory provisions it is explicit that grant of any pre-decisional hearing to the tenants pertaining to the issue of sanction of a building plan is not a mandatory statutory requirement. The judgment delivered by the Hon'ble Division Bench of this Court in the case of **Kumuda Sundari Properties (Pvt.) Ltd. & Ors.** (supra) dealt with the rights of a tenant to pray for cancellation of a sanctioned building plan upon such plan being issued without notice to the tenant and/or occupier. The Division Bench of this Court presided over by Hon'ble Justice Chittotosh Mukherjee while considering the above in no uncertain terms concluded that the monthly tenants under the relevant rule of the said Act were not entitled to receive any notice of hearing. There is no requirement to serve any notice of hearing on the tenant. The provisions of the said Act did not require giving of any notice or opportunity of hearing to a monthly tenant of a premises in case the owners or the landlord of the premises applies for a sanction of a plan for building, re-building and/or addition or alterations. In the aforesaid judgment, in paragraph 8, the Division Bench while considering the scope of maintainability of a writ petition on the issue of locus of a writ petitioner to challenge the same, in no uncertain terms has returned the finding that as would appear from the above, since the petitioner did not have any right of a pre-decisional hearing, the petitioner had no locus to maintain the writ petition.

12. In the instant case, I find that the writ petition has been filed on the basis of a mere apprehension. This apart, in my view, the petitioners hopelessly failed to establish any legal right for issuing mandamus upon the municipal authorities to serve a notice upon the petitioners. It is well-settled that no mandamus can be issued in absence of any legal right or a duty conferred on any authority, in favour of the petitioners. Since, in this case, the petitioners could not demonstrate that there was any obligation cast on the municipality to notify the petitioners upon receipt of an application for consideration of a proposal of a building plan, the writ petition is not maintainable.
13. Accordingly, the instant writ petition stands dismissed.
- Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

[RAJA BASU CHOWDHURY, J.]

S. Seal