OD-18

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/278/2026

REKHA KUNDU AND ANR.
VS
THE STATE OF WEST BENGAL AND ORS

BEFORE :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY
Date: 8th October, 2026.

Appearance :
Mr. Anirban Roy, Adv.
Mr. Sayan Das, Adv.
...for the petitioners.

Mr. Alak Kr. Ghosh, Adv.
Ms. Gulnaz Quarashi, Adv.
...for KMC.

Mr. Amit Chakraborty, Adv.
Mr. Subhankar Chattopadhyay, Adv.
Mr. N. G. Khaitan, Adv.
...for State.

Mr. Ashis Kr. Chowdhury, Adv.
Mr. B. B. Bera, Adv.
Mr. Rohan Paul, Adv.
Mr. Sudip Jana, Adv.
...for private respondent no. 5.

The Court :- 1. On 1st July, 2026, this Court was pleased to pass the following order:-

> "1. *The present writ petition has been filed, inter alia, complaining inaction on the part of the municipal authorities to remove the illegal and unauthorised construction of a two-storeyed building carried out by the respondent no.5 at premises no.20/28A, Biplabi Barin Ghosh Sarani, P.S. Manicktala, Kolkata – 700067. The petitioner is the owner of the adjacent land and had previously instituted a suit which was registered as*

T.S/281/2015. The said suit has since been decreed in favour of the petitioner and the petitioner has been able to raise boundary wall in and around the premises.

2. The private respondent is represented. It is submitted by the learned

advocate for the private respondent that the order was passed behind the back of the private respondent and as such an application under Order XI Rule 13 of the Code of Civil Procedure has been filed. He, however, submits that the decree in question is yet to be recalled.

3. The municipal authorities are represented and have filed a report. From the report filed by the State, it is apparent that the petitioner's property has not been interfered with by the private respondent and still lying vacant. In so far as the report of the municipality is concerned, it would transpire that the municipality has found a two-storeyed building in the name of Murari Pukur Jubak Sangha Club and on the basis of the local enquiry the municipality has been able to ascertain that the said building exists for more than 50 years. According to the report, there is no ongoing construction. The report of the Executive Engineer (C), Building Department, Borough III, Kolkata Municipal Corporation is taken on record.

4. Having regard to the submissions made by the respective parties and considering the materials on record, I find that the report filed by the municipality has been prepared in the most reckless manner. The municipality instead of relying on its own records has relied on hearsay evidence from the locality. It is unfortunate that an Executive Engineer did not consult his records while preparing a report.

5. Having regard to the aforesaid, I direct the Executive Engineer to file an affidavit before this Court and explain the circumstances under which he had prepared the report

without consulting the records. The Executive Engineer is also directed to disclose in his affidavit as to whether there is any sanctioned building plan in respect of the premises which is standing in the name of the club and the approximate age of the building must be ascertained by the Executive Engineer based on the materials available and not from hearsay evidence from the locality.

6. List this matter for further consideration under the same heading on 22nd July 2026."

2. Pursuant to the direction, an affidavit has been filed. In paragraph 6 of such affidavit, the Municipality has identified the structure of Murari Pukur Jobak Sangha Club. The affidavit would also reveal that there has been no sanction granted by the municipal authorities in respect of the building of the Murari Pukur Jobak Sangha Club.

3. Having heard the learned Advocates appearing for the respective parties and having considered the materials on record, I am of the view that since the municipal authorities have been able to identify the building of the Murari Pukur Jobak Sangha Club as having been constructed without any sanctioned building plan, appropriate proceeding must be initiated in accordance with the provisions of Section 400 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as 'the said Act') to deal with such unauthorized construction.

4. It is expected that the proceeding should be brought to a logical conclusion on an expeditious basis, preferably within a period of twelve weeks from the date of communication of this order.

5. It must be noted that the private respondent has raised an objection as regards the maintainability of the petition and has claimed that since a suit

is pending, the Municipality should not proceed. I am of the view that the cause of action for the Municipality to proceed, is based on illegal constructions, the same cannot be saved by pendency of any suit or miscellaneous case.

6. Accordingly, WPO No. 278 of 2026 stands disposed of.

(Raja Basu Chowdhury, J.)

KB
AR (CR)