IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION
CIRCUIT BENCH AT PORT BLAIR
****

PRESENT: HON'BLE JUSTICE UDAY KUMAR

WPA/550/2026

SHRI. SAMIR BISWAS ***... PETITIONER***

VERSUS

THE LIEUTENANT GOVERNOR (ADMINISTRATOR) AND OTHERS ***... RESPONDENTS***

For the petitioner	: Ms. G. Mini
For the respondent Nos. 1 to 5	: Mr. Rakesh Kumar
Heard on	: 26.11.2026
Judgment on	: 27.11.2026

UDAY KUMAR, J.

1. By way of the instant writ petition under Article 226 of the Constitution of India, the petitioner, Samir Biswas, calls into question the legality and validity of the order passed in August, 2026 by the Second Appellate Authority, namely the Hon'ble Lieutenant Governor, Andaman and Nicobar Islands, under Clause 32.12 of the Port Blair Municipal Council Building Bye-Laws, 1999, whereby the statutory appeal preferred by the petitioner was dismissed and the demolition proceedings initiated by the municipal authorities stood

affirmed. Simultaneously, the petitioner assails the consequential execution order bearing No. 4640 dated 18th November, 2026 issued by the Secretary, Sri Vijaya Puram Municipal Council, directing the petitioner and all occupants to vacate the building standing on Survey No. 127/1 at Ward No. 4, Junglighat, and ordering demolition of the alleged deviated portion from 26th November, 2026 onwards.

2. The factual matrix leading to the present *lis* reveals a protracted history of municipal proceedings and successive rounds of litigation. The petitioner is the recorded tenant of a parcel of land measuring 94 square metres under Survey No. 127/1 situated at Junglighat, Prem Nagar, Port Blair, having obtained sanction for construction of a double-storied residential building vide Approval No. 5681 dated 22nd August, 2018.

3. Subsequent to the commencement of construction, upon a complaint lodged by an adjoining landholder Mr. Ujjawal Kumar Bardhan alleging encroachment, revenue demarcation conducted by the Tehsildar confirmed that the construction fell within the petitioner's recorded holding; however, the Municipal Council independently detected deviations from the sanctioned building plan and issued a stay order bearing No. 6813 dated 14th October, 2019.

4. Thereafter, following directions passed by this Court in WP No. 73 of 2020, a violation notices dated 16th March, 2020 under Section 168(d) of the Andaman and Nicobar Islands (Municipal) Regulation, 1994, a provisional demolition order bearing No. 3542 dated 22nd October, 2020, and a final demolition order bearing No. 2855 dated 1st July, 2021 came to be issued, culminating in Order No. 1147 dated 7th March, 2022 directing demolition of the violated portion.

5. The petitioner carried the matter in statutory appeal before the First Appellate Authority, the Deputy Commissioner, South Andaman, which came to be dismissed by a reasoned order dated 3rd October, 2024 in F. No. 34/WPA/LC/2024/4554.

6. Aggrieved thereby, the petitioner preferred a Second Appeal before the Hon'ble Lieutenant Governor on 25th October, 2024, during the pendency whereof this Court in WPA No. 715 of 2024 granted interim protection against demolition until disposal of the said appeal. Ultimately, the Second Appellate Authority dismissed the appeal in August, 2026 and vacated the interim protection, pursuant to which the Municipal Council issued the impugned Execution Order No. 4640 dated 18th November, 2026 fixing demolition from

26th November, 2026. An earlier writ petition being WPA No. 505 of 2026 was withdrawn with liberty to assail the supervening order dated 18th November, 2026 along with the earlier proceedings, giving rise to the present application.

7. G. Mini, Learned Counsel appearing for the writ petitioner vociferously submits that the impugned appellate order as well as the consequential execution order suffer from patent violation of the principles of natural justice and non-compliance with the binding directives of the Hon'ble Supreme Court. she contended that on 24th February, 2026, being the date fixed for personal hearing before the Second Appellate Authority, an application seeking adjournment was duly submitted on account of the personal engagement of the petitioner's learned advocate before this Court, yet no fresh date of hearing was ever notified and the appeal came to be disposed of behind the back of the petitioner, causing grave prejudice to his valuable rights.

8. Learned Counsel further argues that the petitioner possesses a valid sanctioned plan (**Approval No. 5681 dated 22nd August 2018**) on his recorded land land measuring 94 sq. metres in Survey No. 127/1, and was never furnished with any certified inspection report or measurement sheet

segregating the sanctioned structure from the alleged unauthorized deviations during the adjudicatory stages.

9. Referring to the supervening Order No. 4640 dated 18th November, 2026, it is urged that the authorities have for the first time introduced unverified numerical measurements while purporting to re-invoke Clause 32.9 after appellate finality, ordered total eviction and disconnection of essential utilities without any finding of structural instability, and fixed demolition within a span of merely eight days from 18th November, 2026 to 26th November, 2026, in teeth of the mandatory fifteen-day notice window and pre-demolition inspection safeguards laid down by the Hon'ble Supreme Court in *In Re: Directions in the Matter of Demolition of Structures* (2024 INSC 866).

10. On the other hand, Mr. Rakesh Kumar, Learned Counsel appearing for the Respondent Municipal Council has entered appearance upon service and placed on record written submissions resisting the writ petition. He submits that the construction in question was raised in blatant contravention of the sanctioned building plan (**Approval No. 5681 dated 22.08.2018**) in violation of the Municipal Building Bye-Laws read with Section 168 (d) of the Andaman and Nicobar Islands (Municipal) Regulation, 1994, and the

Master Plan. Despite Stay Order No. 6813 dated 14.10.2019, violation notice dated 16.03.2020, Provisional Order No. 3542 dated 22.10.2020, Demolition Order No. 2855 dated 01.07.2021, and Order No. 1147 dated 07.03.2022, the petitioner has systematically prolonged the proceedings over six years through successive rounds of litigation through multiple writ petitions (WP No. 73 of 2020, WPA No. 266 of 2021, WPA No. 862 of 2023, WPA No. 715 of 2024, and WPA No. 505 of 2026), to frustrate the rule of law.

11. Adverting to the proceedings before the Second Appellate Authority, Learned Counsel points out that in compliance with the notice issued by the appellate forum, the petitioner had duly entered appearance and filed exhaustive written objections/submissions on 1st April, 2025, placing every factual and legal contention on record. It is submitted that the impugned appellate order was passed only after careful consideration of all points urged in the petitioner's written submissions and the official records, affirming the concurrent findings of the First Appellate Authority. According to the respondents, there is no procedural irregularity or jurisdictional error on the face of the record warranting interference by a Writ Court, and the

present petition is nothing but a dilatory tactic to stall lawful execution.

12. I have given my anxious consideration to the rival submissions advanced by Learned Counsel for the respective parties and have meticulously perused the materials placed on record. At the outset, it is well settled that in exercise of judicial review under Article 226 of the Constitution of India, this Court does not sit as a further court of appeal to re-appreciate disputed questions of fact or substitute its own findings for the concurrent factual determinations arrived at by two statutory appellate authorities regarding deviations from a sanctioned building plan. As regards the petitioner's grievance of denial of opportunity before the Second Appellate Authority, the record unmistakably demonstrates that the petitioner was duly served with notice, participated in the appellate proceedings, and submitted comprehensive written objections on 1st April, 2025 setting out his entire defence. A plain reading of the impugned order passed by the Second Appellate Authority reveals that the contentions raised by the petitioner were duly taken into account before affirming the reasoned order dated 3rd October, 2024 of the Deputy Commissioner, South Andaman. Once a party has availed himself of the opportunity to submit detailed written

pleadings and the authority has adjudicated the issues on merits, mere non-grant of a further oral adjournment cannot by itself vitiate the order unless demonstrable prejudice on merits is established, which is conspicuously absent in the present case. Consequently, I find no cogent ground to interfere with the concurrent findings affirming the existence of unauthorized deviations beyond Approval No. 5681 dated 22nd August, 2018.

13. However, the matter does not rest there. While the substantive liability for removal of unauthorized deviations has attained finality, the mode and manner in which the municipal authorities propose to execute the demolition under Order No. 4640 dated 18th November, 2026 must strictly conform to the rule of law and the binding guidelines laid down by the Hon'ble Supreme Court. It is an admitted position on record that the petitioner's residential building was not raised entirely without sanction; rather, it originated under a valid building permit bearing Approval No. 5681 dated 22nd August, 2018 upon his recorded holding in Survey No. 127/1. Where a structure comprises both a duly sanctioned portion and an unauthorized deviated portion, execution of a demolition order cannot be left to unguided field discretion so as to endanger or demolish the lawful,

sanctioned part of the residential dwelling. Furthermore, in *In Re: Directions in the Matter of Demolition of Structures* (2024 INSC 866), the Hon'ble Supreme Court has categorically mandated that prior to carrying out any demolition, a detailed inspection report identifying the specific offending portion must be prepared and a clear window of at least fifteen days must be afforded to the owner or occupier to either remove the unauthorized construction voluntarily or avail of judicial remedies. In the instant case, Order No. 4640 was issued on 18th November, 2026 fixing demolition from 26th November, 2026, thereby affording barely eight days' time and falling short of the mandatory fifteen-day period, while simultaneously directing total vacation of the building without physically demarcating on-site the exact walls, slabs, or portions corresponding to the excess area.

14. In view of the foregoing discussion, keeping the instant writ petition pending would serve no useful purpose, and the ends of justice would be best sub served by disposing of the same while balancing the imperative of enforcing municipal building regulations with the procedural safeguards mandated by the Hon'ble Supreme Court.

15. Accordingly, without interfering with the substantive findings contained in the order dated 3rd October, 2024 passed by the First Appellate Authority and the order passed in August, 2026 by the Second Appellate Authority, the Respondent Municipal Council is directed to defer coercive demolition pursuant to Order No. 4640 dated 18th November, 2026 for a period of three weeks from date.

16. Within seven days from today, the competent technical officers of the Sri Vijaya Puram Municipal Council shall, upon prior notice to the petitioner, conduct a joint site inspection, prepare a clear demarcation report physically identifying and marking on-site the exact unauthorized and non-compoundable portions of the structure in deviation from Approval No. 5681 dated 22nd August, 2018, and hand over a signed copy thereof to the petitioner.

17. Upon receipt of such demarcated report, the petitioner shall be at liberty to voluntarily dismantle and remove the identified unauthorized portions within a period of fifteen days thereafter.

18. In the event the petitioner fails to remove the demarcated offending portions within the aforesaid stipulated period of fifteen days, the Respondent Municipal Council shall be at liberty to proceed forthwith with

demolition strictly in accordance with Clause 32.14 of the Building Bye-Laws, 1999, confined solely to the demarcated unauthorized portions, at the cost and risk of the petitioner, taking due care to ensure that the sanctioned residential structure is not unnecessarily damaged and that disconnection of essential utilities is resorted to only to the extent strictly necessary for safe execution.

19. With the above observations and directions, the writ petition stands disposed of. There shall be no order as to costs.

20. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(UDAY KUMAR, J.)