

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

MAT No. 935 of 2026

+

CAN 1 of 2026

Haldia Municipality
Vs.
The State of West Bengal and others

For the appellant : Mr. Debajyoti Basu, Sr.Adv.,
Mr. S. M. Hassan,
Mr. Bhagirath Dey, Adv.

For the State : Mr. Indrajit Roy Chowdhury, AGP.,
Ms. Tanusree Ghosh, Adv.

For the respondent no. 9 : Mr. Partha Pratim Roy,
Mr. Salil Kumar Maiti,
Ms. Dolan Samanta, Adv.

Heard on : July 9, 2026.

Judgment on : July 9, 2026.

Sabyasachi Bhattacharyya, J.:

1. The supplementary affidavit filed by the appellant in Court today be kept on record.
2. The present challenge has been preferred against a judgment whereby the learned Single Judge affirmed the decision of the District Magistrate under Section 10(4) of the

West Bengal Highways Act, 1964 (in brief, “the 1964 Act”), whereby the District Magistrate confirmed the order of the Executive Magistrate directing removal of unauthorized encroachment by the appellant-municipality of PWD land under Section 10(3) of the 1964 Act.

3. Learned senior counsel appearing for the appellant argues that the provisions of the 1964 Act, which is a State Act, are not applicable in view of the bar under Section 3 of the Government Buildings Act, 1899 (hereinafter referred to as “the Act of 1899”), the latter being a Central Act.

4. It is contended that in terms of Section 3 of the Act of 1899, nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality shall apply to any building used or required for the public service or for any public purpose, which is the property, or in the occupation, of the Government.

5. Learned senior counsel submits that the subject property is being used by the appellant-municipality for the purpose of a public toilet, which comes within the purview of public utility service. As such, the bar of Section 3 of the Act of 1899 is attracted.

6. Learned senior counsel next argues that the learned Single Judge proceeded solely on the premise of previous orders passed by this Court, whereby the authorities were directed to initiate a proceeding under Section 10 of the 1964 Act, on a tentative finding that the occupation of the appellant on the subject land was an unauthorized encroachment. However, without any due adjudication under the provisions of Section 10 of the 1964 Act, the said finding of the writ court could not be held to be conclusive, justifying by itself an order of removal of the appellant’s structure on the premise that it is unauthorized.

7. Thirdly, learned senior counsel argues that permission was granted, in principle, by the respondent authorities for use of the said premise by the appellant-municipality for the purpose of setting up a public utility service by way of a toilet.

8. Learned senior counsel places reliance on documents annexed to the stay application filed in the present appeal, which were also produced before the learned Single Judge, in support of such contention.

9. Lastly, learned senior counsel appearing for the appellant-municipality places reliance on a judgment in the case of *Md. Zamil Ahmed Vs. State of Bihar and others* reported at (2016) 12 Supreme Court Cases 342 in support of his contentions.

10. However, in the said judgment, the Hon'ble Supreme Court was considering a case of compassionate appointment. In such context, it was observed that the Hon'ble Supreme Court did not find any justification on the part of the State to dig out the appellant's case after fifteen years of his appointment and terminate his services on the ground that as per the State policy, the appellant did not fall within the definition of the expression "dependant of deceased" to claim compassionate appointment.

11. Needless to say, the said context was entirely different from the present case.

12. In the circumstances of the reported judgment, a compassionate appointment had been given to the appellant, which was sought to be terminated fifteen years thereafter by the State.

13. However, in the instant case, the appellant has all along been found to be in unauthorized occupation of the subject property by different courts/fora and proceedings were initiated at the threshold of the complaint of the private respondent.

14. Even otherwise, we do not find any procedural error on the part of the respondent authorities in passing the order of removal of such encroachment.

15. It is trite law that the writ court does not interfere on merits with the outcome of an adjudication in accordance with law and only passes necessary directions in the event there is any patent procedural irregularity, which is conspicuously absent in the present case.

16. Thus, the said judgment does not come to the aid of the appellant.

17. Learned counsel appearing for the State as well as the private respondent/complainant opposes the submissions of the appellant.

18. It is submitted by the respondents in unison that the purported permission was being considered by the respondent authorities in the context of plot no. 1452, whereas the present dispute relates to plot no. 751/1452, which are different plots.

19. It is further argued that the provisions of Section 3 of the Act of 1899 are not applicable in the present context at all.

20. Even otherwise, learned counsel for the respondents argue that the procedure contemplated in Section 10 of the 1964 Act was fully complied with and as such, there is no scope of interference by this Court.

21. Insofar as the argument of the appellant-municipality regarding applicability of the Act of 1899 is concerned, the Court is unable to accede to such contention.

22. Section 3 of the Act of 1899 incorporates a *non obstante* clause only in respect of statutes “to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality”.

23. A bare perusal of the objects and purpose as well as the preamble and the provisions of the 1964 Act clearly indicates that the said Act is a special statute relating to State Highways, operating in a different sphere altogether and is by no stretch of

imagination a statute to regulate the erection, re-erection etc. in respect of the buildings situated within the limits of any municipality.

24. Thus, the bar under Section 3 of the Act of 1899 is not attracted to a proceeding under Section 10 of the 1964 Act.

25. Insofar as the purported permission obtained by the appellant is concerned, we find even from the documents relied on by the appellant-municipality that those, at best, relate to plot no. 1452. Although initially such permission was accorded in respect of other plots than plot no. 1452, as apparent from body of the said communication, giving the benefit of doubt to the appellant since the caption of the communication included plot no. 1452 and there were subsequent correspondence whereby it was *prima facie* indicated that the respondent authorities had the intention to handover the said plot to the appellant-municipality, we may assume, without conclusively holding so, that there was some primary discussion regarding handing over the said plot to the appellant.

26. However, all such correspondence relates to plot no.1452, and not plot no. 752/1452, which is the subject-matter of the present *lis*. The argument of the appellant-municipality that plot nos. 751/1452, which the subject plot, is a “*bata*” plot (sub-plot) carved out of plot no. 1452, is not tenable in the eye of law.

27. It is common knowledge that when sub-plots are carved out of a parent plot, the figure in the numerator of the fraction denoting the sub-plot is the number of the parent plot.

28. In the present case, however, the parent plot was 1452, whereas the subject plot is 751/1452. Since the number “1452” comes in the denominator portion of the fraction denoting the subject plot, the same could be a sub-plot (or *bata* plot) of parent plot no. 751 but not a sub-plot carved out of the parent plot 1452.

29. That apart, nothing has been produced before any of the forums, the learned Single Judge, or even before this Court, to indicate that the said sub-plot was carved out of plot no. 1452 and/or that the two plots are identical.

30. Hence, as regards the argument as to permission having been granted in respect of plot no. 751/1452, the same can be ruled out.

31. We find from the previous rounds of litigation that there was an earlier direction by a learned Single Judge directing the respondent authorities to initiate a proceeding under Section 10 of the 1964 Act on the *prima facie* finding that the appellant-municipality is in unauthorized occupation of the subject property.

32. A Division Bench, while affirming such judgment, observed, *inter alia*, that a Special Officer appointed by the Court had submitted a report on February 10, 2021, to which the appellant had not filed in any objection.

33. It was recorded that the said report of the Special Officer indicated that the appellant-municipality had made construction over the subject land belonging to the PWD, without approval of the PWD, and also blocked the ingress and egress of the then writ petitioner (present respondent).

34. After going through the report, the Hon'ble Division Bench found that the learned Single Judge had passed an order directing the Executive Engineer to initiate proceeding under Section 10(1) of the 1964 Act for removal of the illegal construction. Such order was accordingly affirmed by the Division Bench.

35. Hence, although the finding as to the construction being unauthorized was passed in the writ petition and the appeal in connection therewith, and not in a Section 10 proceeding, in the absence of any further challenge to the contested order of the

Division Bench, the appellant-municipality cannot now resile from such position and argue that it had duly obtained permission to construct on the said plot.

36. Even otherwise, by arguing that the permission was given to the appellant-municipality by the respondent authorities for construction of the unauthorized structure on the property, the appellant-municipality has, by implication, admitted that the land belongs to the PWD and not the appellant-municipality.

37. The plinth of the appellant's defence in the Section 10 proceeding was that permission had been granted to make such construction by the PWD, which has been belied by the materials on record, as discussed above.

38. Even before the Executive Magistrate, as well as the District Magistrate, no document was produced to indicate any such permission having been granted regarding plot no. 751/1452. The learned Single Judge, in the impugned order, proceeded on such premise and came to the conclusion that the authorities had not committed any error in directing the removal of the encroachment.

39. It is well-settled that the scope of an intra-court appeal is limited only to patent irregularities/perversities and in a Letters Patent Appeal/Mandamus Appeal, the appellate Bench does not readily interfere with the exercise of discretion by the learned Single Judge.

40. In the present case, since we do not find any error of law or fact and/or perversity in the impugned judgment, there is no scope of interference in the appeal at all.

41. Accordingly, MAT No. 935 of 2026 is dismissed on contest, thereby affirming the impugned judgment dated May 18, 2026 passed in WPA No. 20056 of 2022.

42. Consequentially, CAN 1 of 2026 is also dismissed.

43. There will be no order as to costs.

44. Urgent certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

D/L 4.
MNS.