IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Sudip Deb

MAT No. 459 of 2026
With
CAN No. 1 of 2026
(Assigned)

Pulak Ghosh
-Vs-
The State of West Bengal & Ors.

For the Appellant	: Mr. Biswaroop Mukherjee Mr. Partha Banerjee
For the State	: Mrs. Manju Agarwal, Ld. AGP Mr. Ranchandra Agarwal
For the Panihati Municipality	: Mr. Soumyajit Bhattacharya
Heard on	: 16.11.2026
Judgment on	: 27.11.2026

Sudip Deb, J.:-

1. This intra-Court appeal arises out of a judgment and order dated 12th February, 2026, whereby the Learned Single Judge dismissed the writ petition filed by the appellant herein. While dismissing the said writ petition the Learned Single Judge, inter alia, held that there was no scope for the Court to enquire into the plan which had been admittedly sanctioned by the municipality.

2. The Learned Single Judge also held that, since there had been allegations of certain interpolations in the sanctioned plan, the Court cannot on the basis thereof call the State machinery to act. While dismissing the writ petition, the Learned Single Judge further held that the provisions of Section 217 of the West Bengal Municipal Act, 1993 (hereinafter referred to as "the said Act") made adequate provision for cancellation of permission on the ground of misrepresentation. The Learned Single Judge also held since the matter is *sub-judice* in the Municipal Appeal and the Learned Court is in *seisin* of the matter, the issue of interpolation of the document can be considered by the appeal Court at the time of hearing of the appeal.
3. Being aggrieved by the said order, the appellant has filed the instant appeal.
4. The Learned counsel for the appellant submitted that the Learned Single Judge has erred in law while dismissing the writ petition. According to the Learned counsel for the appellant, the Learned Single Judge ought to have passed an order directing the Commissioner of Police, Barrackpore Commissionerate, who has been impleaded as respondent no. 5 herein, to enquire about the purported building plan which had been allegedly sanctioned on 8th August, 2022, by the Chairman of Panihati Municipality (the respondent no. 3 herein).
5. As such, it is argued that the instant appeal should be allowed directing the respondent no. 5 to enquire about the genuineness of the alleged sanctioned plan dated 8th August, 2022, and if interpolations are found,

the said sanctioned plan dated 8th August, 2022, be set aside and/or quashed.

6. The Learned counsel for the municipality submitted that there was no plan sanctioned by the Panihati Municipality being the respondent no. 3 herein. In this regard, he has relied on a report which was filed before this Court in the form of an affidavit pursuant to an earlier direction of this Court. The Learned counsel has referred to paragraph no. 3 of the said report and submitted that the municipality has categorically stated that there is no existence of the plan in the municipality as annexed in the writ petition vide plan no.838 dated 8th August, 2022, appearing at the page 103 of the writ petition.
7. He further submitted that an appeal filed by the appellant challenging the order of the Board of Councillors is still pending, and that the instant appeal should accordingly be dismissed.
8. Heard the Learned counsel for the parties and perused the record.
9. The issues that fall for consideration in the instant appeal are firstly, whether the Learned Single Judge has erred in law while dismissing the writ petition on the ground that the issue relating to the alleged interpolations in the sanctioned plan dated 8th August, 2022 can be urged in the Municipal Appeal which is still pending. Secondly, whether there is any scope for the Court to make an enquiry into the plan for alleged interpolations of the sanctioned plan dated 8th August, 2022. Thirdly, in absence of any sanction plan, what would be the fate of the unauthorized construction.

10. Before deciding the aforesaid issues, it is important to ascertain the facts of the case which are narrated hereinafter.

11. The appellant before us, along with his mother, namely, Mala Ghosh, since deceased, jointly inherited 1/3rd undivided share lying and situated under Mouza- Panihati, J.L. No. 108, R.S. No. 32, Touzi No. 155, Khatian No. 186, Dag No. 118/841 along with the brick built structure thereon within the local limit of Panihati Municipality under Ward No. 3, Holding No. 54 being the Premises No. 138, Thakur Nitya Gopal Road, Post Office- Panihati, Police Station- Khardah, District- North 24 Parganas, Kolkata- 700114, which is hereinafter referred to as "the said premises". The appellant along with his mother, since deceased, on 12th December, 2012, entered into a development agreement with respondent no. 4 herein for construction of G+3 storied building on the said premises. Thereafter, on 13th December, 2013, the appellant and his mother, since deceased, executed a power of attorney in favour of the respondent no. 4 herein, namely, M/s. Shibham Construction. According to the appellant, the other co-sharers of the said undivided and un-demarcated land had also entered into separate development agreement with separate power of attorney in favour of the respondent no. 4 in connection with the remaining 2/3rd share in the said premises for the same purpose.

12. However, the respondent no. 4 herein constructed a G+4 building on the said premises instead of G+3, in violation of the terms and conditions contained in the development agreement and the power of attorney. The appellant had raised objection to the aforesaid wrongful and illegal acts of the respondent no. 4.

13. Thereafter, the respondent no. 4 completed the construction and delivered a flat measuring about 600 Square feet to the appellant from the land owners' allocation and the appellant along with his mother took possession of the said flat for their residential purpose.

14. Thereafter, in 2015 the appellant on finding that the respondent no. 4 was erecting a wall at the common space in the said premises, lodged a written complaint before the respondent no. 3 herein, namely, Chairman, Panihati Municipality.

15. Since the respondent no. 3 did not take any step even after the appellant and his late mother lodged a complaint, the appellant was compelled to file a writ petition being WP No. 7256 (W) of 2016 before this Hon'ble Court.

16. Thereafter, the said writ petition was finally disposed of on 18th July, 2016, directing the Board of Councillors to take appropriate steps in terms of section 218 of the said Act strictly in accordance with the procedure laid down in the law.

17. After receiving the said order, the Board of Councillors had initiated a proceeding under Section 218 of the said Act and issued notice to the respondent no. 4 but in spite of receiving the notice, the respondent no. 4 did not participate in the proceeding. Thereafter, the Board of Councillors had passed an order on 29th August, 2016, directing the respondent no. 4 to demolish the unauthorized construction made in the said premises within 15 days.

18. Subsequently, the said order dated 29th August, 2016, was recalled and the Board of Councillors passed a fresh order on 7th September, 2016,

again directing the respondent no. 4 to demolish the unauthorized construction made in the said premises within 15 days.

19. Being aggrieved by the said order, the respondent no. 4 herein had filed a Municipal Appeal before the Learned Civil Judge (Junior Division) at Sealdah being Municipal Appeal No. 1 of 2016 (as averred in the writ petition) and obtained an *ad interim ex parte* order of *status quo*. Thereafter, the appellant filed another writ petition being WPA 14015 of 2021 before this Hon'ble Court and by an order dated 16th September, 2021, a Co-ordinate Bench of this Court had directed the Board of Councillors to proceed afresh in accordance with law by initiating a proceeding under section 218 of the said Act.

20. Pursuant to the said order, the Board of Councillors initiated a *de novo* proceeding and after hearing the parties, had passed an order on 5th August, 2022, directing the respondent no. 4 to remove the unauthorized construction mentioned in the said order within 15 days.

21. Even after the said order, since the respondent no. 4 did not remove the unauthorized construction, the Board of Councillors by way of another order dated 28th February, 2023, directed the Public Works Department to carry out the said order dated 5th August, 2022.

22. Thereafter, the respondent no. 4 filed a Municipal Appeal being no. 6 of 2022 challenging the said order of demolition dated 5th August, 2022 before the Learned Civil Judge (Junior Division), 2nd Court at Barrackpore.

23. During the pendency of the said appeal, the respondent no. 4 without making the petitioner a party also filed a civil suit being Title Suit No. 76

of 2023 along with an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure before the Learned Civil Judge (Junior Division), 2nd Court, Barrackpore on the self-same cause of action. The prayers made therein are identical to the prayers made in the Municipal Appeal being Appeal No. 6 of 2022. However, the Learned Trial Judge did not grant any *ad interim* protection. Thereafter, the respondent no. 4 preferred an appeal challenging the order of refusal of the Learned Trial Judge and obtained an order of *status quo* from the appeal Court. The said appeal was numbered as Misc. Appeal No. 27 of 2023.

24. Thereafter, on 16th March, 2023, the appeal being Misc. Appeal No. 6 of 2022 came up for hearing and the Appellate Court fixed a date for hearing of the said appeal. According to the appellant the alleged sanctioned plan which was produced before the Appellate Court has been interpolated. Challenging the interpolation the appellant had filed the writ petition, inter alia, praying for an enquiry to be made through respondent no. 5 or by an authorized officer not below the rank of Superintendent of Police relating to the alleged sanctioned plan dated 8th August, 2022.

25. As stated hereinabove, the Learned Single Judge dismissed the writ petition on the grounds set out in the impugned order and summarized in the preceding paragraphs.

26. On perusal of the record, we find that the Learned Single Judge has recorded that the municipality being the respondent no. 3 herein has sanctioned a building plan for construction in the said premises. However, when a report was called for from the municipality in the form of an affidavit by this Court, the municipality has categorically stated that

there is no existence of any plan in the municipality as annexed with the petition being plan no. 838 dated 8th August, 2022. Therefore, from the report itself it is clear that the municipality being respondent no. 3 has never sanctioned any plan on 8th August, 2022. It is also important to mention that the respondent no. 4 even after obtaining leave from this Court to file an exception to the said report, had not filed the same.

27. We are, therefore, of the considered view that since no sanctioned plan is shown to exist, the Appellate Court seized of Municipal Appeal No. 6 of 2022 shall proceed strictly in accordance with law.

28. Section 217 of the said Act also empowers the Board of Councillors to cancel permission on the ground of material misrepresentation by the applicant.

29. Section 217 of the said Act is quoted hereinbelow:-

> ***"217. Power to Board of Councillors to cancel permission on the ground of material misrepresentation by applicant. –*** *If, at any time, sanction or provisional sanction to erect any building has been given and the Board of Councillors is satisfied that such sanction was given in consequence of any material misrepresentation or fraudulent statement contained in the plans, elevation sections or specifications or land or any material particulars submitted in respect of such building, it may cancel such sanction, and any work done thereunder shall be deemed to have done without sanction."*

30. Section 218 of the said Act is also quoted hereinbelow:-

> ***"218. Order for demolition or alteration of buildings in certain cases. –****(1) If the Board of Councillors is satisfied –*
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> *(a) that the erection of any building –*
>
> *(i) has been commenced without obtaining sanction or permission under the law, or*

(ii) is being carried on or has been completed otherwise than in accordance with the particulars on which such sanction or permission was based, or after such sanction or permission has been lawfully withdrawn, or

(iii) is being carried on or has been completed in breach of any provision contained in this Act or in the Schedule or in any rules or regulations in this behalf, or

(b) that any building or projection exists in violation of any condition, direction or requisition lawfully given or made under this Act or the rules or the regulations made thereunder, or

(c) that any material alteration of, or addition to, any building has been commenced or is being carried on or has been completed in breach of any provision contained in this Act or the Schedule or in any rules or regulations in this behalf,

it may, after giving the owner of the building a reasonable opportunity of being heard, make an order directing that such erection, alteration, addition or projection, as the case may be, or so much thereof as has been executed unlawfully, be demolished or altered and, upon such order, it shall be the duty of the owner to cause such demolition or alteration to the satisfaction of the Board of Councillors within such period as may be fixed in this behalf. In default, such erection, alteration, addition or projection, as the case may be, may be demolished or altered by the Board of Councillors at the expense of the said owner.

(2) The procedure relating to the opportunity of hearing to be given to the owner of the building under sub-section (1) shall be such as may be prescribed.

(3) An appeal against an order made by the Board of Councillors in this behalf shall lie with the Court having jurisdiction.

[(4) Omitted.]

(5) Notwithstanding anything contained in the foregoing provisions of this section or elsewhere in this Chapter, if the Chairman-in-Council is of opinion that immediate action is necessary in respect of any building

being constructed, or any work being carried on, in contravention of the provisions of this Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith."

31. Therefore, according to us, the appellant may approach the Board of Councillors by making necessary representation for alleged interpolations made in the sanctioned plan dated 8th August, 2022 and is not without remedy. It is also equally important to note that the Board of Councillors have adequate power under section 217 of the said Act to pass an appropriate order for cancellation of such sanction.

32. In view of the foregoing, we are of the considered view that there is no necessity of passing any order of enquiry for ascertaining the genuineness of the alleged sanctioned plan dated 8th August, 2022.

33. It is also an admitted position that there is no sanctioned plan as is evident from the report of the municipality filed in the Court. However, since the issue of demolition is pending before the Appellate Court, we do not wish to adjudicate the issue of demolition in this appeal. Since, the Appellate Court is in *seisin* of the matter, we direct the Appellate Court to dispose of the appeal being Municipal Appeal No. 6 of 2022 pending before it positively within six weeks from the date of communication of this order without being influenced by any of the observations made herein.

34. The appellant is also permitted to take appropriate steps strictly in accordance with law relating to his allegation of interpolation in the document, namely, the sanctioned plan dated 8th August, 2022 before the appropriate authority and if steps are taken, the appropriate authority shall consider the same and shall pass a detailed reasoned order within

four weeks from the date of taking such steps after giving an opportunity of hearing to the appellant as well as to the other concerned parties.

35. With the aforesaid observations, the instant appeal stands disposed of. Nothing survives in CAN No. 1 of 2026 and the same is also disposed of accordingly.

36. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the all necessary formalities.

I Agree.

(Rajarshi Bharadwaj, J.) **(Sudip Deb, J.)**