

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

MAT 1466 of 2026

with
CAN 2 of 2026

Dipak Kumar Sarkar
vs.
The Secretary,
Hariharpara Thana Ferry Service
Co-operative Society Ltd. & Ors.

For the Appellant	: Mr. Sarwar Jahan, Adv., Ms. Iqra Rahaman, Adv. Ms. Shalini Sen, Adv. Ms. Sahina Parvin
For the Respondents No.1/ Writ petitioner	: Mr. Haradhan Banerjee, Sr. Adv., Mr. Suresh Chandra Manna, Adv. Mr. Suresh Kumar Sahoo, Adv.
For the State	: Mr. Souvik Nandy, Sr. Adv., Mr. Subhajit Das, Adv.
For the Respondent No. 6	: Mr. Shahan Shah, Adv.,
Judgment reserved on	: 11.09.2026
Judgment pronounced on	: 30.09.2026
Judgment uploaded on	: 30.09.2026

Shampa Sarkar, J.

1. The appeal arises out of an order dated July 31, 2026, passed by learned Single Judge in WPA 15822 of 2026. By the order impugned, the learned

Judge directed impleadment of one Barun Mondal as a respondent and service of the copy of the amended writ petition upon the added respondent. In addition to such direction, the learned Judge directed the state to submit a report on the adjourned date by responding to the contentions of the writ petitioner. Her Lordship directed that, the e-auction dated June 25, 2026 shall not be given effect to until August 21, 2026 or until further orders whichever was earlier. The appellant claims to be the successful bidder in respect of Malopara (Malopara) Ferry Ghat. He is aggrieved by the interim order passed in respect of the e-auction, behind his back.

2. Learned advocate for the appellant submitted that the appellant was intentionally not impleaded in the proceeding. A vested right had been created in favour of the appellant for grant of lease of the concerned ferry ghat and the writ petitioner was aware of the result of the e-auction. The appellant had already participated in the e-auction No. 03/HPS/FG/2026-27 held on July 27, 2026. He was declared the highest bidder in respect of his bid for a period of 3 years and he deposited the bid money for the first year. The writ petitioner being the unsuccessful bidder could not have been permitted to challenge the e-auction process.
3. It was further urged that the order of the learned Single Judge was contrary to the decision of the Division Bench of this court dated July 16, 2025, passed in M.A.T. No. 139 of 2025 (Nowda Thana Ferry Service Co-operative Society Ltd. Vs. State of West Bengal and Others). The Division Bench had conclusively held that Rule 281 of the West Bengal Land and Land Reforms Manual, 1991(hereinafter referred to as the Land Manual),

did not have any application in respect of settlement of ferry ghats which were under the management and control of panchayat bodies. Settlement of ferry ghats by open e-auction was the only mechanism as per the policy of the state Government for maximization of revenue. It was also urged that the provisions of the West Bengal Panchayat Act, 1973 and the West Bengal Panchayat (Panchayat Samiti Administration Rules, 2008) would override and supersede the provisions of the Land Manual. The writ petition should fail for non-joinder of necessary parties. Thus, the interim order could not have been passed by the learned court. It was further contended that the order did not record any reasons as to why an auction process which had taken effect should be stayed.

4. Mr. Haradhan Banerjee, learned Senior Advocate for the writ petitioner, submits that the Land Manual had statutory force. It had been incorporated into the provisions of the West Bengal Land Reforms Act, 1955 until rules were framed in respect of settlement and management of land within the state of West Bengal. It was contended by Mr. Banerjee that the order of the Division Bench that the Land Manual did not have any statutory force, was contrary to law. He next contended that the learned Single Judge had extended the interim order from time to time and subsequent extensions had not been challenged. Every order of extension of the interim order was a fresh order and each of such order would have to be challenged.
5. Mr. Banerjee urged that the writ petition was pending hearing before Her Lordship. The interim order did not call for any interference in this intra court appeal. The issue had not been finally decided. Her Lordship had

rightly stayed the e-auction process till final decision in the writ petition. If further rights were created in the meantime and the writ petitioner was ultimately successful in proving the illegality in the e-auction process, the situation would become irreversible. According to Mr. Banerjee, the decision of the Division Bench was also distinguishable on facts. In the said matter, the writ petitioner as the existing operator, had received settlement of the ferry ghats pursuant to auctions. Moreover, the writ petitioner was not the only co-operative society of hereditary Patnis. In the present case, the writ petitioner was the sole cooperative society within the gram panchayat and its members were local boatmen from the backward classes. They were continuing with the ferry service on the basis of settlements and not lease. The livelihood of the members of the community depended on the income derived from such service. They were all hereditary Patnis. The Land Manual was amended and Rule 281(iii) had been incorporated with a specific legislative intent to support poor local boatmen, belonging to backward classes. The Land Manual categorically provided that preference should be given to cooperative societies comprising of local boatmen who were hereditary Patnis. If there was only one cooperative society in the locality, settlement was to be given to such cooperative society at the rent to be determined by the Collector, on the basis of 10 % of the average of net income of preceding three years. No tender should be invited in such situations. As the e-auction notice impugned in the writ petition violated the provisions of the said Rule, the writ petition was filed and rightly entertained by Her Lordship. It was contended by Mr. Banerjee that the increased rates in the rent, as per the

resolutions of the Panchayat Samiti were being paid regularly. He referred to some of the rent receipts which were annexed to the writ petition.

6. Mr. Banerjee relied on the following decisions:-

(a) *Raj Kumar and Ors. vs Shakti Raj and Ors.* reported in (1997) 9 SCC 527;

(b) *Shah Babulal Khimji vs Jayaben D. Kania and Anr.* reported in AIR 1981 SC 1786.

7. Considered the rival contentions of the learned Advocates for the respective parties.

8. The subject matter of challenge before the learned writ court were the e-auction notices issued by the Executive Officer, Hariharpara Panchayat Samiti, dated June 25, 2026, in respect settlement of 13 ferry ghats. Separate notices were issued by the said Samiti, inviting bona fide individuals, firms, cooperative societies and companies, for grant of lease for a period of 3 years, with enhanced lease rate at the rate of 5% per annum. The bidding process was online. The terms and conditions of participation were clearly stated in the said notice. The eligibility criteria of the bidders were also mentioned. The appellant, the writ petitioner and the respondent No. 6 participated in respect of Malopara (Malopara) ferry ghat. The appellant became the successful bidder and deposited the lease rent for the first year after receiving the letter of acceptance from the Executive Officer of the Samiti.

9. The learned Judge passed the interim order staying the e-auction process initiated by the notices dated June 25, 2026. We are of the view that probably, Her Lordship was not informed that the writ petitioner had

participated in the e-auction. The writ petitioner took a chance and submitted a bid. Upon being unsuccessful, the writ petition was moved and an interim order was obtained not only behind the back of the successful bidder, but also by misrepresentation. The issue actually raised in the writ petition was that the representation filed by the writ petitioner for extension of the settlement for another year was kept pending and notices of e-auction had been illegally issued. Whereas, we find that the appellant was all along interested to participate in the e-auction process and had done so. With regard to the contention of Mr. Banerjee that the interim order has been extended from time to time and as such, every extension should have been challenged in a separate appeal, we restrict this appeal to the first order under challenge dated July 31, 2026. The subsequent orders are mere extensions of the first order, which is as follows:-

“Let the matter appear under the same heading on 17th August, 2026.

The e-auction dated 25th June, 2026 shall not be acted upon till 21st August, 2026 or until further orders, whichever is earlier.”

10. Before the learned Single Judge could grant an interim order, prima facie case, balance of convenience and inconvenience and irreparable loss and injury in not granting the interim order prayed for, should have been discussed.
11. Her Lordship did not discuss whether the writ petitioner had a, prima facie case, which would require an interim protection. On the other hand, the e-auction process had been concluded and a letter of acceptance had been granted to the successful bidder. The balance of convenience was in

favour of not granting any injunction on the process after the same had concluded. Moreover, the right of the writ petitioner to challenge the e-auction process was not discussed. The Panchayat Samiti was not heard.

12. With regard to the other contention of Mr. Banerjee, as to the applicability of Rule 281 (iii) of the Land Manual, we refer to Section 52(4) of the West Bengal Land Reforms Act, 1955 which has been relied upon by Mr. Banerjee, in support of his contention that the Division Bench wrongly held that the Manual did not have any statutory force. The said provision is quoted below:-

“52. Management of lands:- (1) All lands to which this Act applies shall be deemed to have been held under the State on such terms and conditions as may be prescribed.

(2) Any land belonging to the State or land which is at the disposal of the State Government or held under the State by virtue of the provisions of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act i of 1954), or this Act or any other law in force shall, unless the State Government otherwise directs by any general or special order, be managed, in such manner as may be prescribed, by the Collector of the district under whose jurisdiction the lands are situated [subject to the control of the State Government, particularly determination of terms and conditions of lease as may be specified in the lease deed and fixation of annual rent with or without premium.]

(3) If the State Government is of opinion that different sets of rules are necessary for the management of different classes or descriptions of lands or lands of different areas, it may make different sets of rules ' under this section.

(4) Until rules made under this section come into operation, management of any land covered by this Act shall continue to be made in accordance with the existing law or rules or manual or principles, whichever may apply.]”

13. Section 52 deals with management of lands. According to the said Section, until and unless Rules governing operation and management of lands covered by the provisions of the West Bengal Land Reforms Act, 1955 were promulgated, the Manual would apply. He further relied on

Rule 28A of the West Bengal Land Reform Rules, 1965 which is reproduced below:-

28A. Management of land and estate belonging to the State Government in accordance with sub-section (2) of section 52.-□

Without prejudice to the provisions elsewhere contained in these rules, all lands and all interests therein belonging to the State Government shall be managed and shall be deemed to have been managed by the Collector of the district under whose jurisdiction the lands are situated in accordance with the West Bengal Land and Land Reforms Manual, 1991, published by the Board of Revenue, West Bengal, being the rules for the time being in force for the management of Government lands and estates subject to such directions, as may, by general or special order, be issued from time to time by the State Government in this behalf:

Provided that the State Government may entrust' the management of a land belonging to it in any area to a local body or to an authority constituted by or under any law for the time being in force on such terms and conditions as the State Government may specify from time to time.

14. The said Rule provided that all lands and interests belonging to the state government would be managed or deemed to be managed by the collector of the district under whose jurisdiction the land was situated, and in accordance with the Land Manual. We are not in agreement with Mr. Banerjee for the simple reason that, the Land Manual will have application in respect of management and operation of lands and ferry ghats covered by the West Bengal Land Reform Act, 1955, which vested in the State. These ferry ghats are operated and managed by the panchayat samiti upon being duly vested with such right.
15. The West Bengal Panchayat Act, 1973 hereinafter referred to as the said Act, came into operation with effect from January 17, 1974. Rule 266 of the Land Manual provides for handing over to the panchayat institutions, land and interest belonging to or at the disposal of the state government.

Management of Ferries, fisheries, tank with water area up to 5 acres and other interest had been transferred to the panchayati raj institutions as per Rule 266(2) of the said Land Manual. The provision is quoted below:-

“266. Handing over to Panchayat Institutions.-

(2) The management of ferries, fisheries each with water area up to 5 acres, tanks each with water area up to 5 acres and other interests have been transferred to Panchayats with the following exceptions:

- (i) Rivers;
- (ii) Big water areas (above 5 acres);
- (iii) Riverine fisheries;
- (iv) Part vested water areas;
- (v) Ferries declared as public ferries under the Bengal Ferries Act, 1885, as subsequently amended; and
- (vi) Where the Panchayat cannot conveniently take over management of the same.”

16. Rule 266(C) of the Land Manual provides that tanks and other interest transferred to panchayats would be leased out to the functional fishermen’s cooperatives, fish production groups or self-help groups or individuals, by a tendering committee constituted as per guidelines of the Panchayats and Rural Development Departments, in the manner provided under Rule 272 to 275.
17. Thus, when the ferry ghats were handed over to the panchayati raj institutions, such institutions would get exclusive power and authority to grant lease in respect of ferry ghats. The Land Manual, in our prima facie view, covers the whole spectrum of activities of the officials and functionaries at various levels of the Land and Land Reforms Department. The Manual lays down the principles and procedures to be followed by such officials and functionaries, in matters relating to land and land reforms. It embodies the government's policy in matters relating to

management, use and settlement of government lands. The Manual does not have an overriding effect over the Panchayat Act, 1973.

18. Thus, even assuming Mr. Banerjee's contention that the Manual has a statutory force to be correct, the same would only apply to settlement of lands and ferries exclusively within the control of the State Government. The concept of Panchayati Raj and incorporation of the three tier system of governance was introduced by the 73rd amendment of the constitution, which was brought in 1992. Part IX of the Constitution deals with creation of powers and functions of panchayats. Article 243-G(b) of the Constitution of India empowers the panchayats to implement their schemes for economic development and to secure social justice. Entry 13 of the 11th Schedule deals with ferry ghats. The fact that 13 ferry ghats had vested in the Panchayat Samiti is not in dispute. This is available from the very fact that the settlement in favour of the writ petitioner for the past years had been made by the Panchayat Samiti itself. Devolution of powers and responsibilities on Panchayati Raj Institutions was the main objective of the amendment. Article 243-G is quoted below:-

“243G. Powers, authority and responsibilities of Panchayats

Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

19. Rule 31 of the West Bengal Panchayat (Panchayat Samiti Administration)

Rules, 2008, empowers the Artha, Sanstha, Unnayan O Parikalpana

Sthayee Samiti of the Panchayat Samiti to deal with, manage and control

ferries assigned by the government. The Rule is quoted below:-

31. Subjects and functions assigned to different Stayee Samitis.-

The Sthayee Samiti specified in the entries in column (1) of the Table hereunder shall deal with and formulate and execute schemes relating to the subjects specified in the corresponding entries in column (2) of the Table.

TABLE				
Artha	Sanstha	Unnayan	O	(1) Finance, (ii) Budget, (iii) Accounts, (iv) Audit, (v) Levying of rates, fees, duties and toll charges, (vi) Mobilisation of resources, (vii) Administration and establishment, (viii) Co-ordination and monetary supervision of activities of different Sthayee Samitis including the schemes assigned by different departments of Government, (ix) Preparation and implementation, monitoring and evaluation of Panchayat Samiti plans, (x) Employment generating programmes, (xi) Small savings, (xii) Preparation of resource inventory and data base of Panchayat Samiti planning, (xiii) <u>Management of hat, bazaar, ferry assigned by Government to Panchayat Samiti</u> , (xiv) Issue of licences on behalf of the Panchayat Samiti, (xv) Preparation of socio economic database in a decentralized manner, (xvi) Organizing and managing training of members and functionaries of Gram Panchayat and Panchayat Samiti, (xvii) Any other function not specified for any other Sthayee Samiti, (xviii) Any other matter as may be assigned from time to time, (xix) Implementation of Right to Information Act.
Parikalpana	Sthayee Samiti			

20. Thus, the Constitution of India and the Panchayat Act, 1973 both empowered Panchayat Samitis to establish, control and manage ferry ghats, collect tolls and maximize revenue for the best interest of the said Samiti. The Land Manual cannot have an overriding effect over the above provisions. E-auction ensures maximization of revenue.
21. It has been specifically contended that the writ petitioner has been running the ferry ghats for a couple of decades at minimum price, which has caused huge loss of revenue to a public authority. We also find that the Department of Panchayats and Rural Development adopted the procedure of e-auction and e-tender by issuing specific notifications. Thus, the Panchayat Samiti was within its power to issue the e-auction notices and settle the ferry ghats by granting lease. It is also well settled that properties belonging to the government or public authorities, cannot be leased out, except by holding an auction. The process should be transparent and encourage fair competition. Every eligible bidder must be allowed to participate. Every eligible bidder is entitled to get a level playing field. The writ petitioner cannot keep on extending the settlement year to year by way of a private arrangement with the Panchayat Samiti. The Panchayat Samiti was not bound by the provisions of Rule 281(iii) of the Manual. Rule 281 (iii) is quoted below:-

“281. Public ferries and non-public ferries.-

(iii) Concession to *hereditary patnis*.- Preference should be given for settlement of ferries with local Boatmen’s Co-operative Society or partnership concern formed of local boatmen and hereditary patni. If there is only one such co-operative society or partnership concern in the locality, settlement shall be made with such co-operative society or partnership concern on the basis of economic rent to be determined by the Collector on the basis of 25% of the average of net

income of preceding three years and in such event no tender needs be invited.”

22. A meaningful reading of Rule 281(iii) of the Manual would indicate that settlement of ferries were to be made to the sole cooperative society or partnership concern without calling any tender on the basis of the economic rent to be determined by the collector. In this case, the records reveal that the rent payable by the society was determined by the Samiti itself. All the documents relied upon by the writ petitioner/ society indicate the same. We find it prudent to refer to the memorandum No. 484 dated June 22, 1987, issued by the Government of West Bengal Land and Land Reforms Department, which states as follows:-

Government of West Bengal
Land & Land Reforms Department
Land Reforms Branch
Notification

No. 484. Ref
22nd June, 1987

Dated Calcutta, the

In exercise of the power conferred by section 13 of the West Bengal Estates Acquisition Act, 1953, (West Bengal Act I of 1954), read with rule 12 of the West Bengal Estates Acquisition Rules, 1954 the Governor has been pleased to order as follows :-

1. All the khas and vested tanks and ferries belonging to the State shall, subject to the directions issued, or may be issued, by the Government from time to time, be managed by the Gram Panchayats under whose respective jurisdictions the said tanks and ferries are located. In case a khas or vested tank or ferry falls under the jurisdiction of more than one Gram Panchayat, the same shall be managed by the Panchayat Samity under whose jurisdiction it falls, and in case such a tank or ferry falls under the jurisdiction of more than one Panchayat Samity, the same shall be managed by the Zilla Parishad.

2. The khas and vested tanks and ferries which are under valid lease or license granted by the Collectors, shall be managed by the Gram Panchayats, Panchayat Samities or Zilla Parishads, as the case may be, on expiry of the existing term of said lease or license.

3. The khas and vested tanks and ferries which were handed over by the Collectors to the Gram Panchayats Panchayat Samities or Zilla Parishads, as the case may be, in pursuance of the memo no.2634 (15)-GE(M) dated 7th March, 1979 of the Board of Revenue,

Government of West Bengal, Shall be deemed to have been always managed, and shall continue, to be managed, by the respective Gram Panchayats, Panchayat Samities or Zilla Parishads on and from the date on which the said tanks and ferries were handed over to them by the Collectors.

By order of the Governor,
Sd/-B.C. Mukherjee,
Secretary to the Govt. of West Bengal."

23. It is also pertinent to mention that Section 41(ha) of the Specific Relief Act, 1963, prohibits interim orders of such nature. Courts should not pass injunctions in respect of projects or tenders which involve public interest. In this case, ferry services are provided to villagers of the locality, multiple times a day, to cross the river Jalangi for their business, livelihood, education and other purposes. Natural resource cannot be alienated by way of state largesse. There must be a reciprocal consideration either in the form of earning revenue or to subserve the common good, or both. The endeavour must be maximization of revenue returns. Reference is made to the decision of **Goa Foundation v. M/s Sesa Sterlite Ltd. & Ors.** reported in **(2018) 4 SCC 218**. In **Centre for Public Interest Litigation vs Union of India** reported in **(2012) 3 SCC 1**, the Hon'ble Apex Court held that, whenever a contract was awarded or a licence was granted, the public authority should adopt a transparent and fair method for making selections, so that all eligible persons could get a fair opportunity of competition.
24. The decision in **Raj Kumar (supra)** does not apply to the facts of the present case. Only if the illegality in the selection process goes to the very

root and if the petitioners come to know of the illegality later, a writ is maintainable at the instance of an unsuccessful candidate.

25. The decision in ***Shah Babulal Khimji (supra)*** was relied on by Mr. Banerjee on the principle of a presumption that a discretionary order always correct. In our view the order impugned was passed without reasons as to why the entire e-auction process should not be given effect to, at the instance of a unsuccessful bidder.
26. The writ petitioner could not make out a, prima facie, case for grant of the interim order. The effect of setting aside the first order will consequentially follow. The order impugned is set aside. The authority is free to proceed on the basis of the auction. All steps taken, shall abide by the result of the writ petition.
27. We have given our reasons for setting aside the order impugned, insofar as the grant of ad interim order is concerned. The appellant will be added as a party respondent in the writ petition. The writ petition will be heard upon exchange of affidavits. All the respondents and the panchayat samiti will file their opposition within the time fixed by the writ court. The writ petition will be heard on the basis of the pleadings and prayers.
28. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)

I Agree.

(Arjun Ray Mukherjee, J.)