

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Shampa Dutt (Paul), J.

WPA 6087 of 2018

Goutam Saha

vs.

The State of West Bengal & ors.

For the Petitioner : Mr. Kallol Basu,
Mr. Farhan Ghaffor,
Mr. Zahaib Rauf.

For the Respondent : Mr. Rahul Karmakar,
No. 19 to 26 Mr. Sourav Guchhait.

For the KMC : Mr. Alak Kr. Ghosh,
Mr. Arijit Dey.

Hearing concluded on : 23.07.2025

Judgment on : 07.08.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for directions upon the respondents to demolish the unauthorized, illegal parts of the 9 nos. of shop room constructed in front of B-34/1, Bapuji Nagar, Raja S.C. Mullick Road, Kolkata-92 and to remove obstructions from in front of the petitioners house to have the free access from

the public road to his house and to enjoy his property freely and peacefully with his family members.

- 2.** The petitioner's case is that he is a co-owner of the property in dispute in this case which was settled upon the petitioners predecessors by the Government of West Bengal by a letter of authorization being no. 848 RC (DEV) dated 15.10.1966 to occupy plot no. E-1292. The predecessors of the petitioner then on building on the said plot of land, started residing therein. It is stated that subsequently the State decided to give the property alongwith homestead land, hereditaments and premises to the father of the petitioner on 02.12.2002.
- 3.** It is the case of the petitioner that some temporary structures, nine in numbers were erected on the public road in front of the petitioner's house, obstructing the egress and ingress to and from the petitioner's house despite protest by the petitioner's father.
- 4.** Subsequently, the temporary structures were converted into pucca structure with tin shed roof in the shape of shop rooms. Subsequently, four more pucca new shop rooms with tin shade were constructed by obstructing the public road/footpath and in spite of several complaints to the authority concerned, no action has yet been taken.
- 5.** The petitioner then approached several authorities for removal of the said obstruction and unauthorized encroachment of the said

nine pucca shop rooms which were severely affecting the petitioner's life in his house.

6. The petitioner then preferred a writ application alongwith a contempt application bearing nos. WP 15574 (W) of 2017 and CPAN 1392 of 2017. The High Court while disposing of all the above applications including the writ applications was pleased to pass an Order in Writ Petition being Number W.P.15574(W) of 2017, as set out hereunder:-

“By consent of the parties, the Writ Petition is treated as on day's List and is taken up for consideration.

Learned Advocate appearing for the Private Respondents submits that, the Undertaking recorded on October 25, 2017 be suitably modified to read that the Private respondents will not construct any further save and except if permitted by law to do so. Such request being reasonable, is accepted. The Undertaking recorded is modified accordingly.

In view of the directions and observations made therein is no point in keeping the writ petition pending.”

7. **Subsequently, in pursuance of the High Court's Orders passed from time to time, the Corporation in presence of the Police Authorities, demolished part of the nine illegal and unauthorized shop rooms on the public road, leaving other part**

untouched, claiming that it was within the jurisdiction of the PWD, Govt. of W.B.

8. It is stated that the encroachers, the respondents herein went ahead to cast concrete roof and the petitioner was compelled to file the contempt proceedings. In spite of giving an undertaking before the Court not to make further constructions, the respondent encroachers continued to construct permanent structures over the parts not demolished, without any sanction and there was total inaction on the part of authorities being the Corporation and the Officer-in-Charge of Jadavpore Police Station.
9. The petitioner then filed a representation dated 17.01.2018 but no adequate steps or action was taken on such representation.
10. During the course of hearing of the writ application, the Kolkata Municipal Corporation has filed several reports and exceptions to such reports are on record. Parties have also filed their written notes and affidavits, as directed.
11. In the **report dated 07.01.2023** filed by the Kolkata Municipal Corporation it is stated that:-

“.....regarding the encroachment of footpath by construction of nine illegal and unauthorized shop rooms on public road in front of the premises in question being the CME(Civil) and SWM Departments, KMC being the related departments, has been informed to undertake the matter from their ends, as per

Municipal Commissioner's Circular no. 07 of 2019-2020 dated 23.04.2019.....”

- 12.** The next report is dated **22.02.2023**, submitted as per direction of the High Court. In the said report, the authorities concerned gave the following findings:-

“.....earlier on receiving Hon'ble High Court order dt. 13.01.2023, all the related Departments of K.M.C. identified the encroached part of the shops in question on the K.M.C. Road/Footpath on 03.02.2023 and the same were removed by the Shopkeepers.

Pursuant to the above order dt.10.02.2023 passed by the Hon'ble High Court in the above mentioned case, it is kindly be stated that after receiving final report from The Chief Valuer & Surveyor Department, K.M.C. with endorsement of B.L.& L.R.O. drawing on 16/02/2023 wherein the report they stated that the status of land, at which the shops in question exist, cannot be ascertained by this department.

Accordingly, Building Department prepared Demolition Sketch plan and Infringement statement and placed before the Municipal Authority and as per order of D.G. (Building) K.M.C. dt.17/02/2023 initiated demolition proceedings u/s 400(1) of KMC Act 1980 vide Demolition Case no. 111-D/Br-X/2022-2023. And relevant file is placed before the Special Officer (Building), K.M.C. and date of hearing fixed on 27/02/2023.

**Sd/
Executive Engineer (Civil)/Bldg.**

Borough no. -X, K.M.C."

- 13.** The report of the Chief Valuer and the Surveyor of the Kolkata Municipal Corporation is enclosed to the report dated 22.02.2023 wherein the specific finding is as follows:-

"it is found on 03.02.2023 that no construction has been made at the ground level on the above stated recorded road width. However, some projected portion of tin sheet at roof level of the shops in question were found during the joint inspection.

The status of land, at which the shops in question exist, cannot be ascertained by this department."

- 14.** It appears from the map enclosed with the said report that the inspecting authorities on physically inspecting the premises, gave the following report dated 03.02.2023, which is on record:-

".....the measurements of road width taken during site inspection is found in order with the record provided by B.L.& L.R.O. ATM, Kasba in front of the B/34/1, Bapuji Nagar, Raja S.C. Mullick Road, thus no ground encroachment on road found at both end.

Enclosure: Drawing as provided by BL & LRO, ATM, Kasba....."

- 15. Map cum report dated 03.02.2023 has the endorsement:-**

"Encroachment identified being inspection of KMC property has shown above (Red colour of extended roof sheet). No ground encroachment has been mocked by the Ch. V & S Deptt in front of Premises B/34/1, Bapuji Nagar."

- 16.** An Exception was filed to the said report denying the findings of the Officers of the authorities concerned. The exception was accompanied with a photograph of the said encroachment. The

specific objection taken by the petitioner in paragraph 7 of the
Exception is as follows:-

“7. Therefore, in the light of the above matter of records, I make the following submissions:

a. The detailed survey map of the Raja S.C. Mallick Road, attached to the petitioner's premises, is been transferred to the K.M.C. by the PWD, however the K.M.C., during the physical inspection, relies on the BL & LRO'S drawn sketch of the ROAD, but not the said survey map, thereby cannot confirm whether the captioned report corroborates with the said detailed survey map.

b. The petitioner's co-owned land's site map, as originally planned and stamped by the state, stands elevated in authenticity and admissibility from such drawing sketches, that shows that no land exists between the petitioner's land and adjoined ROAD, therefore, the claim of the existence of unidentified land between the petitioner's Land and ROAD, is egregious invention/innovation which may not be relied upon.

c. The street alignment, established by the footpath lying in front of land no - E.P. No-1292 (the neighboring land of the petitioner's land), shows that the same footpath should have continued along with the same line, in front of the petitioner's premises, as corroborated by the petitioner's co-owned land's site map, but it has not, because of the encroachments/said shoprooms, and when such street alignment is extended in front of the petitioner's premises, and definition of the public street is applied, the shop rooms are shown to be standing on the public street, attached to the petitioner's premises.

d. The Chief Valuer and Surveyor, K.M.C's conclusion that the shoprooms are standing on the unidentified land, therefore, does not corroborate with matter of record, vetted by the state, and therefore, is perfunctory and the approach of the inspection, is not in accord with the solemn expectation expressed by the orders, passed by this honorable court.

e. I submit that the drawing sketch of the public street, provided by BL&LRO, mismatches with the drawing

sketch thereof, made by the K.M.C, therefore, the claim of the K.M.C. that the width of the ROAD, found on a physical inspection by them, is in accord with the ROAD's Width, recorded by the BL &LRO, is incorrect.

f. Thus, for the reasons mentioned above, the captioned report dated Feb. 22, 2023, may not be relied upon."

17. The respondent nos. 19 to 26 have relied upon certain judgments viz. ***Kameshwar Narayan Singh vs. State of West Bengal & Ors., 2023 SCC OnLine Cal 3719*** and ***State of U.P. vs. Nawab Hussain, (1977) 2 SCC 806***, in support of their contention that the disputed questions of fact involved in the present case are to be adjudicated before a Competent Court and Writ Courts have not entertained such issues.
18. Considering the materials on record including the several reports filed by the Kolkata Municipal Corporation which includes specific reports on physical verification and inspection and the exception to the said report filed by the petitioner, it appears that the contention of the writ petitioner that there are illegal and unauthorized shop rooms constructed on the pavement in front of the petitioner's house is based on two pictures.
19. On placing the said pictures, it is shown that the neighbouring pavement is untouched and un-obstructed whereas the portion in front the petitioner's house is covered with a tin shade. Two pictures have been produced, which are pictures of the tin roofs

but no pictures of the said shop rooms as alleged to be in existence have been placed on record along with the Exception.

- 20.** Thus, taking into consideration the said two pictures placed in support of the contention of the unauthorized construction on the pavement, this Court relies upon the following specific report (relevant extract from the report filed by the Kolkata Municipal Corporation).

In the report dated 22.02.2023, it has been stated as follows:-

*“Earlier on receiving Hon'ble High Court order dt. 13.01.2023, all the related Departments of K.M.C. identified the encroached part of the shops in question on the K.M.C. Road/Footpath on 03.02.2023 and **the same were removed by the Shopkeepers.** The measurements of road width taken during site inspection is **found in order** with the record provided by B.L. & L.R.O. ATM, Kasba in front of the B-34/1, Bapuji Nagar, Raja S. C. Mullick Road. Thus, **no ground encroachment on road found at both end.** Drawing as provided by BL & LRO, ATM, Kasba.*

It is found on 03.02.2023 that no construction has been made at the ground level on the above stated recorded road width. However, some projected portion of tin sheet at roof level of the shops in question were found during the joint inspection.

- 21.** This clearly shows that some projected portion of tin shade at the roof level of the shop, in question, were found, on joint inspection, which is supported by the picture annexed to the exception.
- 22.** It is further noted that no construction has been made at the ground level on the above stated, recorded road. As such on seeing the pictures placed by the petitioners and the report of the Kolkata

Municipal Corporation, it is before the Court that **at present there are no shop rooms at the ground level on the said recorded road which were removed by the shop keepers as per direction of the High Court and only the projected portion of the tin shade at the roof level were found.** So, at present, the unauthorized shop rooms do not exist but only the tin shades at roof level are in existence.

23. Considering the said facts and the report of the Kolkata Municipal Corporation, the writ application is disposed of with a direction that the respondent Kolkata Municipal Corporation shall take necessary steps to remove the tin shades at the roof level which are still in existence as per the report of the Corporation within 30 days from the date of this order.
24. Considering the report of the Corporation that, at present, the encroached part of the shops identified by the Kolkata Municipal Corporation have been removed, the tin shades accordingly be removed as directed and regarding the part of the land which does not fall within the domain of the Kolkata Municipal Corporation, the petitioner is at liberty to approach the appropriate authority for necessary reliefs.
25. **WPA 6087 of 2018 stands disposed of.**
26. Consequently, connected applications, if any, also stand disposed of.
27. Interim order, if any, stands vacated.

- 28.** Urgent certified photostat copy of this Judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Shampa Dutt (Paul), J.)