Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 29490 of 2026
Kartikk Ghosh & Ors.
Versus
The State of West Bengal& Ors.

For the petitioners	:	Mr. Subhabrata Dutta Mr. Pritam Chowdhury Mr. Debashis Sarkar Mr. Asumdipta Santra Mr. Safik Dewan Mr. Saikat Gayen
For the State	:	Mr. Manmohan Vyas Mr. Akash Adak
For theKMC	:	Mr. Biswajit Mukherjee Mr. Debanjan Mukherjee Ms. Rupsa Sreemani
Heard on	:	15.10.2026
Judgment on	**:**	**15.10.2026**

Raja Basu Chowdhury, J (Oral):

1. The instant writ petition has been filed, *inter alia,* challenging the show cause notice and the impugned notice dated 29th August, 2026. The petitioners claim to be persons who have constructed their shop rooms since 1985 on the lowland between the wall of 24B, Bagmari Road and 25 feet wide Bagmari Road. The petitioners claim that for their livelihood the petitioners had developed the land, and constructed shop rooms as aforesaid. According to the petitioners, since inception of such shop rooms, there is no obstructionof the public thoroughfare. The petitioners claim that they did not intend to create any hindrance towards egress and ingress of the owner or any men and agents of the owner of 24B, Bagmari Road, Kolkata.

2. According to the petitioners, on 23rd September, 2026, the respondent no. 4 through their men had pasted a notice of removal on the shop rooms under Section 371 and 516 of the Kolkata Municipal Corporation Act, 1980 and upon enquiry the petitioners were made known about another notice dated 29th August, 2026 which

was said to have been pasted earlier in a non-notifiable place and the said notice dated 29th August, 2026 directed the petitioners to vacate the place and demolish the shop rooms within 15 days from date. Such notices have been enclosed with the writ petition.

3. When the matter was taken up for consideration on 14th August, 2026, considering the case made out and noting the prayer made on behalf of the KMC to accommodate, this Court directed the matter to appear today.

4. Pursuant to the aforesaid direction, the municipality has filed a report which is signed by the Executive Engineer (Civil) Borough-III and is dated 14th October 2026.

5. According to the report,previously a writ petition was filed before this Court by the co-owners of the premises no.24B, Bagmari Road (in short, the "said property") which was registered as WPO 1088 of 2024. The said writ petition was filed inasmuch as the entire footpath adjacent to the road side wall of the said property was blocked by unknown persons who had made construction of masonry structures and tin sheds and multiple encroachments made on the entire length of the present boundary wall on the roadside being the northern wall of the premises.

6. Records reveal that even prior to the aforesaid writ petition, a further writ petition was filed before this Court which was registered as WPO 1619 of 2023. The said writ petition was disposed of by a Coordinate Bench of this Court by order dated 26th September, 2023 directing the Executive Engineer (C), Building Department, Borough – III to consider and dispose of the objection (in effect representation) of the petitioner thereindated 10th August, 2023 in accordance with law after giving a reasonable opportunity of hearing to the petitioner therein and all other necessary parties. Though, a joint spot inspection upon prior notice to the parties was directed to be conducted by the above order, despite the aforesaid order dated 26th September, 2023, being communicated, the respondents did not dispose of the said objection. No inspection was carried out. It is in those facts, a contempt application being CC 23 of 2024 was filed. When the contempt application came up for hearing, a report was filed by the contemnors/respondents dated 26th April, 2024. Though the contempt

application was disposed of with liberty to the petitioner therein to approach Civil Court as regards the encroachment of the petitioner's land, insofar as shop rooms on the boundary wall of the premises are concerned, the petitioner therein was directed to move the SWM department.

7. Records reveal an appeal had been filed in connection with the aforesaid writ petition being APOT 260 of 2024. Such appeal came to be disposed of by order dated 9th September, 2024. By the aforesaid order, the Hon'ble Division Bench of this Court noting that the Learned Single Judge had disposed of the contempt petition for permitting the appellant to approach the Civil Court insofar as encroachment is concerned, was of the view that the direction does not alter the earlier order in any way and that it merely clarifies that the encroachment interfering with the egress and ingress to the property may be addressed before the Civil Court and it was open to the appellant to avail such remedy in accordance with law, if so advised.

8. However, insofar as the shop rooms on the boundary wall of the premises is concerned, it was observed that the appellant was directed to move the SWM Department and CME (Civil) Department for appropriate action which was not interfered with.

9. Pursuant to the aforesaid direction, the co-owner of the said property had approached the SWM Department and CME (Civil) Department on 3rd May, 2024 and following the above, a joint-inspection was conducted on 9th May, 2024 in presence of the Assistant Director of SMW Department and the Executive Engineer, CMEof the municipality.

10. In the inspection report it was observed that permanent structures are existing on the foot path outside the boundary of 24B, Bagmari Road occupying a part of KMC's recorded road width. The report filed by the municipality and the inspectionreport recorded the extent of illegal encroachment at 24B, Bagmari Road. The report further records that though initially, the mater was placed before the Town Vending Committee, however, subsequently, the Municipal Secretary by an office note held that most of the stalls were permanent structures and had been present for over

5 years. It was further noted that the same was not a hawker related matter and accordingly the issue was placed under miscellaneous items and in the said meeting the same was not discussed.

11. Having regard to such disclosure, this Court by order dated 25th August, 2026 in WPO 1088 of 2024 had directed the municipality to make the public road encroachment free and dispose of the petitioner's representation on expeditious basis. Following the above, steps have been taken by the municipality. Though, Mr. Dutta, learned advocate appearing for the petitioners by placing before this Court a judgment delivered in the case of ***Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.***,reported in **(1985) 3 SCC 545** would seek to contend that the petitioner's right cannot be taken away as the same is protected under Articles 21 and 19(1)(g) of the Constitution of India, and the petitioner has a right to be heard, I am of the view that the petitioners cannot have any right to carry on business on public road. The case of ***Olga Tellis***(supra) dealt with the rights of pavement and slum dwellers. Such is not the case here.

12. The right to life cannot include the right to interfere with the public convenience. This apart, the present writ petition has been filed by suppressing material facts, there is no reflection with regard to the above proceedings in the writ petition. Photographs disclosed in the writ petition would demonstrate that some of the shops are being used and utilized as godowns and some of them are being used and utilized as meat shops and barbar shops. Those are not ordinary structures. Furthermore, by an undated letter addressed to and received by the Executive Engineer (Civil) Borough -III, KMC on 6th October, 2026 would show that the petitioners have only sought for postponement of the demolition work and undertook to vacate the shop rooms by 14thNovember,2026.

13. In the peculiar facts, this Court is not inclined to entertain the matter in exercise of its extraordinary jurisdiction and the writ petition is dismissed without any order as to costs.

14. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)