

WBCHCA0573542026



Item No.1
Ct. No.8
PG/KS

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

MAT 1881 OF 2026

with

I.A. No. CAN 1 of 2026

**THE SUPERINTENDENT OF POLICE,
BONGAON POLICE DISTRICT & ANR.
VERSUS**

COMMUNIST PARTY OF INDIA (MARXIST)& ors.

in

WPA29837 OF 2026

**COMMUNIST PARTY OF INDIA (MARXIST) & ANR,
Versus
THE STATE OF WEST BENGAL & ORS.**

Appearance:

Mr. Billwadal Bhattacharyya, Ld. AAG

Mr. Anindya Basu

Mr. Arkaprava Sen

Mr. Pratip Mukherjee

Mr. Srijib Chakraborty

Mr. Bikash Kumar Sriwastav

Ms. Tamoghna Pramanick

.....Advocates for the Appellants

Mr. Samim Ahammed

Mr. Siddhartha Sankar Mondal

Ms. Ambiya Khatun

Mr. Asif Iqbal Baidya

Md. Nasirul Haque
Ms. Reshma Khatun

.....Advocates for Respondents
Writ Petitioners

**CORAM: RAVINDRA VITHALRAO GHUGE,
CHIEF JUSTICE**

&

MD. SHABBAR RASHIDI, J

Date: October 16, 2026

Order (Per Court)

1. The parties before us in this Intra-Court Appeal, were before the learned Single Judge in WPA 29837 of 2026. By an order dated 14.10.2026, the learned Single Judge had passed the following order:

“1) By presenting this writ petition, a particular political party and petitioner no. 2, inter alia, have prayed for directions which would permit petitioners to erect book stall beside Jessore Road at Bongaon, North 24 Parganas for selling books.

2) At the threshold, Mr. Mitra, learned Advocate General in reference to a document at page 23 of writ petition dated 1st October, 2026 submits that on behalf of petitioner no.1 political party prayer was made before the Sub-Divisional Officer, Bangaon Sub-Division, North 24 Parganas for according permission to erect temporary book stall. It is further contended that on PWD road book stall is proposed to be erected which bereft of permission of PWD authorities, is impermissible. In addition thereto, point is raised regarding jurisdiction as per roster of this Court to take up this matter since according to State respondents issue raised in this writ petition pertains to land.

3) On the contrary, Mr. Ahamed, learned advocate representing petitioners submits that such book stall is being erected for several years during durga puja days in front of party office of petitioner no. 1 but in this year they are obstructed from raising temporary structure for housing book stall but others are raising bamboo structure for running stalls in same area during durga puja days.

4) Question arises for consideration if others are permitted to raise temporary bamboo structure to run stalls or other units then why petitioners will be deprived of.

5) Petitioners are granted liberty to file a supplementary affidavit bringing on records relevant facts and documents in order to demonstrate that though petitioners are prevented from raising temporary stall but others are being permitted.

6) Inspector-in-Charge of Bangaon Police Station being respondent no. 4 is directed to cause an enquiry in course of this day and submit a report by tomorrow, 15th October, 2026, whether others excluding petitioners have put up stalls on PWD road at the locale without permission of PWD authorities/other concerned authorities or not.

7) List the matter under the same heading for further consideration tomorrow, 15th October, 2026.”

2. An intra-Court Appeal, MAT 1868 of 2026, was brought before the Appeal Bench by the Respondent. Considering that the learned Single Judge had listed the matter for a hearing, on 15.10.2026, the Appeal Bench, which was dealing with the intra-Court Appeal on the very same date, therefore, passed the following order:

- “1. This matter was heard briefly.
2. Considering the submissions of the learned Advocate General along with Additional Advocate General for the Appellant, as well as, for the Proforma Respondents and Shri Bhattacharya, learned Senior Advocate appearing on behalf of the Original Petitioner before the learned Single Judge and the law laid down by the Hon’ble Supreme Court in **Asma Lateef & Anr. vs. Shabbir Ahmad, (2024) 4 SCC 696** and **Garden Reach Shipbuilders and Engineers Limited vs. Grse Limited Workmens Union, 2025 SCC OnLine SC 582**, we are of the view that the learned Single Judge can deal with the issue as to whether the Writ Petition filed by the Petitioner, it is within its Roster Assignment/Determination.

3. *Both the sides agree to address the Learned Single Judge on this aspect.*

4. *We appreciate the fairness shown by the learned senior advocates for both the sides before us.*

5. *Let these parties address the learned Single Judge on the said aspect. We make it clear that we have not expressed any view or opinion on the said issue.*

6. ***In view of the above, the Appeal, as well as, the Civil Application (I.A. No. CAN 1 of 2026) stand disposed off.”***

3. As such, the pending proceeding before the learned Single Judge was taken forward and which has resulted in an order passed on 15.10.2026. While passing the impugned order, the learned Single Bench, after considering the submissions of the parties, recorded a finding in paragraph nos. 20 to 25, as under:

“20. It is submitted on behalf of State respondents that no such report is ready and same is not filed today. Therefore, at the time of deciding this writ petition it is not on record before this Court that apart from petitioners other stalls or temporary bamboo structure are not erected at the place in question and those who have erected stalls have obtained permission from PWD/ Government authority. Court finds that petitioner no.1 organization has become victim in the matter of erecting book stall whereas others have been permitted. Such situation is not countenanced when a case is made out that petitioner no.1 organization for a long period of time have been erecting book stall during Durga Puja days and selling books.

21. When others are selling different items by erecting stalls during puja days at the locale then petitioner no.1 organization ought not to be prevented from selling books by erecting stalls. Question would have been different if no stalls are permitted to be erected. Before parting with, it needs to be

observed that dissemination of different political thoughts and ideologies is welcome in democracy since it makes the democracy fruitful, deep-rooted and matured. It is expected of present ruling dispensation to create an atmosphere where persons owing allegiance to different political ideologies will not hesitate to express their views.

22. Superintendent of Police, Bongaon Police District being respondent no.3 and Inspector-in-Charge, Bongaon Police Station being respondent no.4 are directed to maintain public order and peace which would enable the petitioner no.1 organization and its members to erect book stall within 100 meters from the place where they intended to erect book stall and sell their books during Durga Puja days.

23. Aforesaid police authorities are also directed to depute police personnel to prevent others from disturbing members of petitioner no.1 organization to run book stall and sell books during Durga Puja days.

24. Respondent no.3 is directed to file a report disclosing steps taken in terms of order passed today.

25. List the matter under the heading "To Be Mentioned" on 23rd November, 2026 for further consideration."

4. This Special Bench hearing has been convened in view of the Vacation Bench having been constituted by the Chief Justice of the Calcutta High Court. The intra-Court Appeal is brought to this Court by the State of West Bengal through its officers.

5. The thrust of the submissions of the Appellants before us is on the ground of whether the learned Single Judge could have entertained the Writ Petition under Group-IX determination and whether the Petition would have been maintained before the Court assigned with the Group-I determination. For the sake of clarity, we are reproducing the Group-I and Group-IX determination, hereunder:

“Group-I.- Matters relating to land laws and orders and direction relating to land (including land revenue) may be classified under the following sub-heads:

- (a) Dispute about ceiling,*
- (b) Dispute about recording of barga,*
- (c) Dispute about preparation of record of rights in general,*
- (d) Grant and cancellation of pattas,*
- (e) Requisition and acquisition proceedings,*
- (f) Dispute relating to tenancy laws and eviction proceedings,*
- (g) Mines and minerals including minor minerals,*
- (h) Land Development and planning.*
- (i) Tank improvement and settlement of ferries and fisheries,*
- (j) Restoration of alienated land,*
- (k) Dispute as to land revenue,*
- (l) Miscellaneous.”*

“Group IX.- Residuary matters.”

6. The matters relating to those subjects falling under Group-I and Group-IX are, therefore, crystal clear before us.

7. The Original Writ Petitioner had to put forth prayers before the learned Single Judge, which can be summarised as under:

- (a) Command Respondent Authorities to make adequate arrangements for protection and maintenance of peace and public order and ensure the peaceful and lawful establishment and conduct of a book stall erected by Petitioner No. 1 in the front-yard of its office besides Bongaon Jessore, Bongaon, North 24- Parganas, for the period from 16.10.2026 to 21.10.2026.
- (b) Issue a Writ of Mandamus to command the Police to grant adequate Police protection for peacefully erecting the said book stall.
- (c) Issue a Writ of Mandamus commanding the Police to restrain forcible obstruction and physical threats held out against the Petitioner No. 1, while erecting the stall.

Thereafter, there is a long list of prayers put forth by the Original Writ Petitioners, all intended to seek directions from the Police Authorities to protect them while erecting their book stall.

8. We find from the averments in the Writ Petition that the Writ Petitioner did not even whisper in the extensive Petition laid before the

learned Single Judge, as to whether the Petitioner had moved any application for seeking permission to erect such a book stall. So also, though prayer clauses (a) to (m) have been put forth, there has not been a whisper as to whether any application is pending and whether a direction be issued to the competent authority to decide the pending Application seeking permission to lawfully erect a book stall. In prayer clause (b), the Original Petitioner has specifically averred that protection should be granted to the Petitioner by the Police *“to ensure the peaceful and lawful establishment and conduct of the book stall”*.

9. In view of the above, it pre-supposes that the Petitioner admits that a book stall could be erected, only lawfully and if such a lawful erection of a book stall is fructified, a lawful conduct of the book stall will have to be protected.

10. The above aspect brings us to the core issue that was raised before the learned Single Judge as to whether the Petition preferred by the Petitioners would fall under Group-I determination in relation to the Land matters or whether it would fall under Group-IX determination pertaining to matters relating to Police Inaction.

11. The learned Single Judge was impressed by the Petitioners that the subject of the Writ Petition would fall under Group-IX. However, today, under instructions, the learned Advocate for the Original Petitioners has tendered a print out of the e-mail dated 6.10.2026, addressed by the Petitioners to the Executive Engineer, National Highway Division-V, Public Works (Roads) Directorate, wherein the Communist Party of India (Marxists), Bongaon Town Area, was intimating the erection of a book stall during Sharad Utsab 2026, on the premises in front of the CPIM Party Office. The said e-mail was simply an intimation to the Executive Engineer, National Highway Division-V, PWD. No specific permission was sought by the Petitioners from the said authority to erect the stall.

12. We have taking the print out of the said e-mail on record, which is marked as 'X-1' for identification.

13. 'X-1' was shown to us after we repeatedly called upon the Original Petitioners to convey to us as to whether it has sought any permission to erect the bookstall. On the basis of the material available and on instructions, the learned counsel for the Original Petitioners submitted that no permission to erect a

bookstall has been sought by the Petitioners, save and except, the intimation to the National Highway Division, vide 'X-1'.

14. We find that the e-mail 'X-1' addressed to the National Highway Division prima-facie indicates that the police authorities have no jurisdiction to deal with an application for permission to erect a bookstall on a State highway. This *prima facie* view is based on the material available before us today. There is no dispute that the location of the Petitioners' office is on a State Highway and the Indo – Bangladesh Border is around 5 to 6 kilometers away. 'X-1' was made to the Public Works (Roads), Directorate.

15. It is a matter of serious circumspection as to why 'X-1', which is an e-mail dated 06.10.2026, was not cited before the learned Single Judge. This document would have enabled the learned Single Judge to assess whether any intimation or permission was required from the P.W.D. Department. If that would have been shown, it would have been open to the learned Single Judge to decide whether the jurisdiction would lay before the Court entrusted with the Group – I Determination. This amounts to suppression of material information.

16. In *Kishore Samrite Vs. State of Uttar Pradesh & Ors.* reported in (2013) 2 SCC 398 and *Bhaskar Laxman Jadhav Vs. Karamveer Kakasaheb*

Wagh Education Society, (2013) 11 SCC 531, the Hon'ble Supreme Court has concluded that it is not for a litigant to filter information while approaching the Court seeking protection or relief on the principle of equities. It is held that it is incumbent on a party to divulge the entire material before the Court and leave it to the Court to assess the material in accordance with law. Holding back information amounts to suppression of material information and even if a litigant has a good case, the Court should refuse relief even to such a litigant and deal with such a litigant sternly.

17. *Prima facie*, we find that '**X-1**' was a document, which would have shed light before the learned Single Judge in order to decide whether it had jurisdiction. Had '**X-1**' been cited, the learned Single Judge could have decided the issue of jurisdiction, more advantageously, in the light of our observation in Paragraph 2 of the order dated 15.10.2026 (reproduced above) considering the law laid down by the Hon'ble Supreme Court in *Asma Lateef (supra)* and *Garden Reach Shipbuilders (supra)*.

18. In view of the above, **by way of interim relief, the impugned order stands stayed.**

19. The Original Petitioners have taken up an issue before us, which was also brought to the notice of the learned Single Judge, that Respondent No.5 (before the learned Single Judge) has erected a stall right in front of the office of the Original Petitioners. Respondent No.5 was not before the learned Single Judge since, the party was not served.

20. Though, we are dealing with a Letters Patent Appeal, if we notice that an illegality, we can pass an order to undo the injustice. The Respondent No.5 is said to have erected a stall in front of the office of the Original Petitioners. It would not impress us if it is canvassed, as is canvassed by the Original Petitioners, that for the last 50 years, a roadside bookstall during Sharodotsav/Durga Puja was never a subject matter of permission, even if, any party did not seek a permission to erect a bookstall and resort to a commercial activity.

21. The Learned Additional Advocate General has taken instructions from a concerned officer related to the police station, that they would find out whether Respondent No.5 was given the permission to erect the bookstall, now that the stall has already been erected and which is visible in pictures placed before us. We, therefore, expect the learned Additional Advocate General to

ensure that the concerned police authorities would investigate into whether Respondent No.5 has the permission to erect a bookstall and if no such permission is sought and granted, immediate steps would be initiated to remove the said bookstall. We also record that any party, who approaches the Court, will have to be first establish whether the said party has a permission for erecting a stall.

22. Considering the impugned order of the learned Single Judge, which we have stayed in the peculiar facts and circumstances recorded above and since, the learned Single Judge has practically taken a final view and has kept the Petition alive only for recording compliance, we put all the parties to notice that this Bench would decide the aspect of jurisdiction addressed to us, concerning the cause of action *qua* Group – I or Group – IX Determination. Needless to state that the observations made by the learned Single Judge in Paragraph 21 of the impugned order, would also be a subject-matter of adjudication while deciding the Letters Patent Appeal finally.

23. **Issue notice for a final hearing, to the Respondents** returnable on **21st January, 2027**. Learned counsel representing Respondent Nos.1 and 2

waives service of notice. The learned A.G.P. waives service of notice on behalf of Respondent Nos.4 and 5.

24. The Registry of this Court would ensure service of notice for final hearing on Respondent No.3, through all permissible modes of service.

25. The Office objection at Serial No.3 stands waived. Liberty granted to remove the remaining office objections, on or before 15th December, 2026.

(MD. SHABBAR RASHIDI, J.)

**(RAVINDRA V. GHUGE)
CHIEF JUSTICE**