

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

WPA/281/2026

Smti. Annapoornam @ Poornam and Another

Vs

The Sub Divisional Magistrate and Another

Mrs. Anjili Nag, Sr. Adv.

Mr. Adarsh Ilango

... for the petitioners

Ms. Babita Das

... for the respondents

June 10, 2026

[AKB]

Item No.5

The petitioners are aggrieved by an order dated March 30, 2026 passed by the respondent No. 1 directing the petitioners to remove the cow shed along with the cows to ensure that the nuisance caused by such animals are not prolonged.

The matter rests on a short conspectus of facts.

The facts in a nutshell may be summarized as under :

- a. The petitioners are in occupation of a tract of land at Manglutan village under Ferrargunj Tehsil, South Andaman.
- b. The petitioners had been served a notice for eviction, which they had immediately challenged by filing a Title Suit before the Learned Civil Judge (Senior Division) at Port Blair being Title Suit No. 95 of 2016 for declaration of their right, title and interest in respect of the said property. The said suit is still pending adjudication.
- c. In view of Regulation 202 (8) of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 (hereinafter the said Regulations), the filing of a suit is sufficient to restrain the authorities from taking any further

steps to evict the concerned person, prior to the suit being decided finally.

- d. The respondent no. 2 had issued an eviction order on June 30, 2025, which was after filing of the suit, sometime in August, 2016.
- e. However, the said order was thereafter vacated on July 14, 2025 by the respondent no. 2 himself.
- f. It appears from the records that a complaint was filed by certain persons in the said village regarding the nuisance and illegal encroachment being caused by petitioner through their cows which were housed at the cow shed in the said premises.
- g. After the inspection and hearing were caused, a conditional order of July 17, 2025 was passed by the respondent no. 1 directing, *inter alia*, the petitioners to immediately remove the cow shed along with the cows without causing any damage to the adjacent properties within a period of three days from the date of the order and to report compliance by July 21, 2025.
- h. Pursuant to the conditional order, ostensibly issued under Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter Sanhita), the order was made absolute on March 30, 2026 by the respondent no. 1, directing the respondent no. 2 to execute the aforestated order immediately.

It is in these facts and circumstances as aforesaid that this order of March 30, 2026 has been assailed in this writ petition by the petitioners.

Mrs. Anjili Nag, Learned Senior Advocate appearing for the petitioners has made the following submissions:

- (i) The petitioners having filed the suit being Title Suit No. 95 of 2016, cannot under any circumstances be evicted by the authorities till the suit is finally decided.
- (ii) This process of the conditional order and the execution thereof are nothing but a mere ploy by the authorities to evict the petitioners in a circuitous manner, by passing the provisions of the said Regulations.
- (iii) Bereft of these, Section 156 of the Sanhita stipulates a particular procedure to be followed if an order under 152 is to be executed. This procedure contemplates identifying a nuisance causing denial or infraction of a public right.
- (iv) If the person concerned denies the commission of any nuisance or the infraction of any public right, it is incumbent on the Magistrate before initiating the process under Section 157 of the Sanhita, to inquire into the matter and upon such inquiry being done, to collate reliable evidence in the matter and only thereafter, to proceed under Section 157 of the Sanhita.
- (v) Since this inquiry has not been done as the petitioners have denied the factum of commission of any nuisance

or infraction of a public right, the entire process of making the order under 156 absolute and being executed under 157 is de hors the provisions of law and will necessarily have to be set aside.

Ms. Babita Das, appearing for the respondents has made the following submissions:

- (i) The petitioners had filed a suit seeking a declaration of their right, title and interest in the suit property. Hence, they are not being evicted in any manner whatsoever.
- (ii) The authorities are merely seeking to streamline the acts of commission and/or omission of the petitioners in dealing with their cow shed and the cows.
- (iii) The cows and the manner in which the petitioners have been dealing with them are causing a serious nuisance to the villagers and to others residing in the adjacent plots. The nuisance stems not just from the cows going astray into other peoples property, but also from the manure and the decaying carcass of a cow not being dealt with in a proper manner by the petitioner.
- (iv) It is for this purposes and to streamline this nuisance which is being caused by the petitioners, that the proceedings were undertaken under the under Section 152, 156 and 157 of the Sanhita.
- (v) There is a absolutely no ploy to cause any infraction of the petitioners' right by removing them from the said premise as urged by the petitioners and the conditional

order and the implementation/execution thereof are merely being done as mandated in the Sanhita.

I have heard the Learned Advocates appearing for the parties at length and gone through the records of the case.

There are two aspects of the matter which require to be addressed.

The first is in respect of an attempt by the authorities to evict the petitioners from the said premise, possession whereof is protected by Regulation 202 (8) of the said Regulations, till the suit filed by the petitioners has been finally decided.

Second, whether the authorities are empowered to initiate proceedings under the Sanhita for protection of rights of other persons, in the event the petitioners are causing any infraction of any public right by their acts of commission and/or omission. In so far as the first issue is concerned, I am not impressed with the arguments made by the petitioners. It cannot be said that the authorities have adopted a ploy to implement the order of eviction in a circuitous manner, though the conditional order and the order seeking execution which is being assailed dated 30.03.2026 leave room for question. The order of 30.03.2026 makes certain incorrect recording starting from the fact "that a writ petition has been filed before the Learned Civil Judge" and "that the order of stay of the eviction order of the Tehsildar was for a limited period of six weeks, which had expired".

The conditional order dated July 17, 2025 and the order impugned of 30.03.2026 passed by the respondent no. 1 cannot

be said in any manner to be an order of eviction against the petitioners and therefore cannot be construed to be in violation of Regulation 202 (8) of the said Regulations. In no uncertain terms, the aforestated orders relate to curbing the nuisance created by the petitioners, if at all on account of their shoddy treatment of the cows and the cow shed within the premises. Thus, there is no question of the authorities seeking to evict the petitioners as urged by Mrs. Nag.

It is the second issue which is of some concern.

It is not in dispute and is indeed indisputable that an authority has a right to issue a notice under Section 152 of the Sanhita and under 156 of the Sanhita which can be executed under Section 157 of the said Sanhita.

There are however a certain benchmark parameters which have been laid down in the Sanhita itself for activating the provision of Sections 156 and 157.

The conditional order under 152 is to curb any nuisance, as specified. Section 156 of the Sanhita speaks of implementation of certain orders, with the parameters as stated hereinafter:

(a) a public right has to be violated,

(b) the public right could be violated in a public premise, or in the the premise of the people at large by the errant persons,

(c) if the infraction of such right is denied by such errant persons, it is incumbent on the Magistrate to cause an enquiry

and to collate the evidence gathered upon such inquiry and to give a hearing to the errant persons to deal with such evidence.

These aforestated conditions may be construed as the *sine qua non* for any action to be initiated under the aforestated provisions and particularly before executing the conditional order under Section 157 of the Sanhita.

The petitioners have denied creating any nuisance. Thus it was incumbent on the authority to cause an inspection and collect the requisite evidence. The authority if satisfied with the evidence that nuisance had indeed been caused, ought to have given the petitioners a hearing before passing an order for execution of the order.

The order assailed of 30.06.2026 is ominously silent about any such investigation, inspection or any evidence having been collected and collated by the Magistrate before passing the executory order under challenged in this writ petition.

It is true that there has been an investigation and a hearing prior to the order under Section 152 being passed by the respondent no. 1. It is equally true that there is no evidence on record to show that the order under Section 156, dated 30.03.2026 was passed upon any inspection being done or collection and collation of evidence and indeed no opportunity was granted to the petitioners herein to deal with such evidence if the same had been collected.

In view of the aforestated findings, it is clear that the order of 30.03.2026 does not conform to the bench mark

parameters set for in the Sanhita and therefore has to necessarily be set at rest.

In view of the aforestated finding, I have no hesitation in setting aside the order of March 30, 2026.

However, setting aside the said order will not prevent the authorities to renew and reassess the conditional order in accordance with law and upon fulfilling all benchmark parameters as set forth in the said Sanhita.

With the aforesaid directions, the writ petition is allowed.

There shall be no order as to costs.

Since no affidavits have been called for, the allegations contained in the petition are deemed to be denied.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Reetobroto Kumar Mitra, J.)