

October 17, 2023

ARDR (20)

**WPA 2046 of 2023**

Mou Chowdhury

Vs.

Siliguri Municipal Corporation & ors.

Adv. Sanjay Mazoomdar,

Adv. Sukanya Adhikary,

..for the petitioner.

Adv. M. Chakraborty,

...for the private respondent no.5.

Adv. Deborshi Dhar,

...for the SMC.

Report in the form of affidavit filed by the respondent no.2 is taken on record.

This writ petition has been filed by the writ petitioner alleging that the private respondent no.5 was/is making unauthorized construction by erecting a building encroaching a public road, which is subject matter of this writ petition.

After hearing, vide order dated 20<sup>th</sup> September, 2023 directed the respondent no. 2 to make an inspection within two weeks from the date of order and file a report within a period of two weeks thereafter.

Today, the respondent no.2 filed the report along with inspection notice dated 21.09.2023, Site Inspection report, the notice of appearance of private respondent no.5 dated 10/6/2022. Second notice dated 11/8/2023, attendance sheet for site inspection held on 22.09.2023, and final notice for demolition of unauthorized construction dated 3/10/2023 issued by the Commissioner, Siliguri Municipal Corporation.

Upon perusal of the said report with all annexures, it appears that after site inspection and considering the documents available with the parties, the Commissioner, Siliguri Municipal Corporation found illegal construction is going on at the site as such the Commissioner has directed the private respondent no.5 to dismantle the unauthorized constructions within seven days from the date of issue of notice vide memo no.150/SMC/N/Bldg/2023-2024 dated 3<sup>rd</sup> October, 2023, in terms of Section 287 of the West Bengal Municipal Corporation Act, 2006 (hereinafter referred to as the said Act of 2006) failing which said unauthorised construction will be demolished by the corporation without any further intimation or notice.

Learned advocate appearing for the Siliguri Municipal Corporation submits that in spite of such notice no unauthorised construction has been demolished by the private respondent no.5.

On the other hand, learned appearing for the private respondent no.5 submits that there is no new construction made by her in the land in question and the structure standing therein is for more than sixty years old. So the question of unauthorised construction does not arise at all. She also filed several representations before the Commissioner, but her representations have not been considered as yet. She

may be given some opportunity to file her documents in support of her claim.

Learned advocate appearing for the petitioner also filed supplementary affidavit on earlier occasion appending some photographs of unauthorised construction made by the private respondent no.5.

Heard the learned advocates for the parties and on perusal of the materials available on record as well as the report filed by the Commissioner, Siliguri Municipal Corporation, it appears that the Commissioner has given ample opportunities to the private respondent no.5 to ventilate her grievances, but she failed to produce valid document for such construction and finally the Commissioner being respondent No.2 passed the final notice for demolition dated 3<sup>rd</sup> October, 2023 under Section 287 of the said Act of 2006 directing to demolish the unauthorised construction within seven days from the date of notice subject to the condition that if the respondent no.5 fails to demolish the unauthorised construction, the corporation will demolish the same without any further intimation or notice.

It appears from the notice and other documents that the private respondent no.5 was given ample opportunities of hearing under Section 287 of the said Act of 2006 before issuing the final notice for

demolition. So, I do not find any illegality in passing such demolition notice.

In view of the above facts, the writ petition is not required to be kept pending. However, respondent no.2, the Commissioner, Siliguri Municipal Corporation, Siliguri, District: Darjeeling is directed to take future course of action to dismantle the illegal unauthorized construction in accordance with law.

Accordingly, the writ petition is thus, disposed of.

There shall be, however, no order as to costs.

Since no affidavit exchanged between the parties the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

**(Ajay Kumar Gupta, J.)**