

Item no.7  
22.04.2024  
Saswata

**Calcutta High Court  
In the Circuit Bench at Jalpaiguri  
Constitutional Writ Jurisdiction**

**WPA 836 of 2024**

**Beni Prasad Batu  
-versus  
Siliguri Municipal Corporation & Ors.**

Mr. Subham Ghosh  
Mr. Mayank Roy

...For the Petitioner.

Mr. Deborshi Dhar

...For the Corporation

1. The instant writ application has been filed, inter alia, challenging the notices dated 28th December 2023 and 29<sup>th</sup> March 2024 issued under Section 268 of the West Bengal Municipal Corporation Act, 2006<sup>1</sup>.
2. It is the petitioners' case that the petitioners are recorded tenants in respect of holding no. 226 in ward no. 8. Mr. Ghosh, learned advocate appearing for the petitioners, by drawing attention of this Court to the notice at page 36 of the writ application submits that although the petitioners are occupiers in respect of premises no. 226 under ward no. 8, no notice has been served on the petitioners, despite proceedings having been initiated for demolition of the aforesaid holding under Section 268 of the said Act.

3. It is still further submitted that despite the fact no inspection had been carried out at the petitioners' holding no. 226, by a notice in writing dated 29<sup>th</sup> March 2024 the Municipal Commissioner has claimed that the holding in question is in ruinous state. Such finding has been reached by the Commissioner without going into the representations made by the petitioners.
4. By drawing attention of this Court to the provisions of Section 268 of the said Act, it is submitted that before any order of demolition of any building is passed by invoking the powers provided in the said Section, not only the owner but the occupier of such building is entitled to notice. In this case, no notice had been served on the petitioners. As the entire proceedings are being proceeded with in colourable exercise of power, this Hon'ble Court may be pleased to quash the same.
5. Mr. Dhar, learned advocate appearing for the Corporation on the other hand submits that steps have been taken by the respondents in accordance with law. Due show cause notice under Section 268 of the said Act had also been issued in the name of the recorded owner. Rent

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<sup>1</sup> Hereinafter referred to as the "said Act"

receipts relied upon by the petitioners would demonstrate that such rent receipts pertain to the year 2015. It is submitted that in any event, the petitioners at this stage ought not have approached this Court, since no final decision has been taken.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record.
7. It is noticed that the Municipal Authorities had proceeded to issue a notice under Section 268 of the said Act. No final decision has been taken by the Municipal Authorities as yet. It, however, appears that the petitioners had made representations before the Municipal Commissioner. Taking note of the grievances of the petitioners, I am of the view that justice will be sub-served if the respondents are directed to consider the petitioners' representations and dispose of the representations by treating the same to be a response under Section 268 of the said Act, in accordance with law, after giving an opportunity of hearing to the petitioners.
8. The entire decision with regard to disposal of the proceedings under Section 268 of the said Act must be taken within a period of three

months from the date of communication of this order.

9. Since, I have not called for any affidavits, the allegations made in the instant writ application are deemed not to have been admitted by the respondents.
10. With the above observations and directions, the writ application being WPA 836 of 2024 is disposed of without any order as to costs.
11. Urgent Photostat certified copy of this order, if applied for be given to the parties on priority basis upon completion of requisite formalities.

**(Raja Basu Chowdhury, J.)**