

Court No. 2
12.9.2024
(Item No. 36)
(AB)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 1947 of 2024

Bela Agarwal
VS
Siliguri Municipal Corporation & Ors.

Mr. Nigam Mittal
Mr. Kaushik Goyal
Ms. Meghana Joshi
Ms. Aayushi Agarwal
..... for the petitioner
Mr. Deborshi dhar
.... For Siliguri Municipal Corpn.

Affidavit of service filed in Court today is taken on record.

Upon urgency being shown that the writ petitioner has challenged an order for demolition of a structure, this writ petition has been upgraded Yesterday while the matter was mentioned and the same has been taken up today for consideration accordingly.

Mr. Nigam Mittal, learned advocate appearing for the petitioner.

Mr. Deborshi Dhar, learned advocate appears for respondents.

Through this writ petition the petitioner has challenged the impugned order of demolition passed by respondent No. 3 dated **August 17, 2024**. The relevant portion of the order is quoted below:

“ O R D E R E D

that as per the provisions laid down under Sub Rule 1 of Rule 11 of The West Bengal Municipal (Building) Rules, 2007 read with Section 266 of West Bengal Municipal Corporation Act, 2006, the Opposite Party is hereby directed to demolish the said newly constructed unauthorized portion of the building in question on or before 31st August '24 at his own cost, failing which Siliguri Municipal Corporation will demolish the said unauthorized construction after the expiry of the prescribed period and the cost will be borne by him.

A copy of the reasoned order be immediately sent to the concerned section/department and the necessary parties for immediate compliance.”

Considering the submissions made on behalf of the petitioner and upon perusal of the order impugned it appears to this Court that, the building is a very age old building and the petitioner has increased its height above the lintel level by a brick work along with some other deviations mentioned in the said impugned order.

At this juncture, to sub-serve justice, the Commissioner of Siliguri Municipal Corporation shall depute a competent authorized engineer who shall cause a physical inspection once again of the alleged unauthorized construction in presence of the petitioner at the subject premises on **September 23, 2024 at 12.00 noon**. This time and date for

inspection has been fixed by consent of the appearing parties.

Upon the said physical inspection being done the Commissioner Siliguri Municipal Corporation shall once again consider the case as to whether the unauthorized construction as alleged or any part of it can be regularized strictly in accordance with law. If such regularization is possible in law, then to that extent the construction shall not be interfered with and beyond that which is not regularizable shall immediately be demolished by the Corporation.

For considering the regularization issue, the Commissioner shall pass its reasoned decision positively within a period of **one working week** from the date of the said physical inspection to be taken place and the petitioner shall collect the reasoned decision of the Commissioner from his office immediately thereafter. No further hearing will be granted. If it is found that the unauthorized structure or any part of it can be regularized, the Corporation shall do the same immediately within a period of **two weeks** from its finding and if it is found the structure is not regularizable at all or to what extent it is regularizable the rest of the same shall be demolished as directed above.

It is made clear that, this order shall not create any right or equity in favour of the petitioner, if the

unauthorized construction alleged or any part of it is not regularizable strictly in accordance with law.

If the unauthorized construction is found or any part of it is found to be regularized, then the said reasoned decision of the Municipal Commissioner shall prevail upon the impugned order dated **August 17, 2024** and if the unauthorized structure as alleged is found not to be regularized at all strictly in accordance with law, the said impugned order dated **August 17, 2024** shall remain with its full force and effect.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition **W.P.A. 1947 of 2024** stands **disposed of**, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously, on compliance of usual legal formalities.

(Aniruddha Roy, J.)