

06.03.2024
SL.28, Ct.2
AJ.

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
(Appellate Side)**

WPA 2163 of 2023

**Jaykishan Agarwal & Anr.
-Vs-
Kalimpong Municipality & Ors.**

Mr. Bikramaditya Ghosh,
Ms. Supriya Singh,
Mr. Rajan Raj.
...for the petitioner.

Mr. Ujjwal Luksom,
Mr. Sumit Kumar.
...for the respondent
nos.1 to 3.

Affidavit-in-opposition to the writ
petition was invited from the respondents
vide order dated September 20, 2023.

In compliance with the said order Mr.
Ujjwal Luksom learned advocate for the
Kalimpong Municipality files the affidavit-in-
opposition, let it be kept with the record.

Mr. Ghosh, learned Advocate for the
petitioners submits that the petitioner no.1
during the pendency of the writ petition has
died but before death he had transferred his
interest in the subject property i.e. Holding
No. 250 of the Kalimpong Municipality in
favour of the petitioner no.2, as such, the
heirs and legal representatives of the

deceased petitioner no.1 are not necessary parties to the proceeding.

He prays that the name of the deceased petitioner no.1 be expunged from the record.

The prayer is allowed.

The department is directed to amend the cause title of the writ petition accordingly.

The Municipal Authority by its impugned resolution dated August 03, 2023 has refused to sanction the building plan in respect of the aforementioned holding.

It appears from the order impugned that the said refusal is under Rule 21 of the West Bengal Municipal (Building) Rules, 2007. The said rule prescribes the procedure of sanction of building plan and permission to execute work.

On the contrary Section 210 of the West Bengal Municipal Act, 1993 lays down the grounds on which the prayer for sanction of building plan may be refused.

The order impugned does not disclose any reason far less compliance of the provision of aforesaid Section 210 of the said Act of 1993 as such is set aside.

The concerned Municipal Authority is directed to reconsider the prayer of the petitioner no.2 for building sanction plan in respect of the said holding in accordance with law after giving the petitioner no.2 or his authorized representative opportunity of hearing.

Entire exercise in this regard is required to be completed within a period of six weeks from the date of communication of this order.

Mr. Ghosh submits that though his client intends to use a reply to the affidavit-in-opposition of the Municipal Authority filed today but the matter since has been remanded back to the Municipal Authority his client to avoid delay is refraining to use such reply, however denies the allegations of the said affidavit-in-opposition.

W.P.A. 2163 of 2023 is disposed of with the above terms, there shall be however no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)