

18.03.2025  
Sl. No.5  
Ct. No.15  
S.A.

**WPA 15877 of 2024  
with  
CAN 2 of 2024  
CAN 4 of 2025**

**Amrit Kumar De  
-vs-  
The Midnapore Municipality & Ors.**

Mr. Kallol Bose  
Mr. Dyutiman Banerjee  
Mr. Atreya Chakraborty  
...for the petitioner  
Mr. Santanu Kumar Mitra  
Mr. Amartya Pal  
...for the State  
Mr. Sujay Bandyopadhyay  
Mr. Jagajyoti Das  
...for Medinipur Municipality

The facts pertinent to this writ petition have been recorded in the order dated January 6, 2025.

The relevant part of the order is quoted below:

*“The petitioner apprehends that the relevant B+G+5 storied building constructed on a 3 Cottah land may collapse at any point of time and damage the life and property of the petitioner and his family members. The building, however, appears to have been raised after an agreement was entered into between the petitioner and respondent nos.6 to 8 on August 30, 2022.*

*This Court is inclined to appoint an independent structural engineer to assess the structural stability of the building in question.*

*The report filed by the Municipality before this Court today suggests that such a building is approved in terms of Rule 53 of West Bengal Municipal (Building) Rules, 2007.*

*List this matter on January 13, 2025 under the heading “To Be Mentioned” when the parties will suggest the name of a competent engineer.”*

It is necessary to quote the aforementioned rule:

**“53. Tall buildings** (exceeding fourteen and a half meters in height).—(1) In Municipality the building height shall not normally be more than 14.50 meters (fourteen and a half meters). But in the case of any building exceeding 14.50 meters in height, the Board of Councillors, for reasons to be recorded in writing and with the previous approval of the Superintending Engineer of the Municipal Engineering Directorate, Government of West Bengal, having jurisdiction over the concerned municipal area may sanction those schemes as special cases if not otherwise covered by any law for the time being in force.

(2) The Superintending Engineer will make his recommendation on the basis of Structural Stability Certificate given by the empanelled LBA or Structural Engineer or Geo-technical Engineer and he will also consult the Land Use and Development Plan, if any, of the concerned municipal area before giving such approval. In such cases, the following shall be applicable in addition to other rules under the Act.

The certificate of structural stability is to be furnished in the following manner by the empanelled LBA, Structural Engineer and Geo-technical Engineer:—

#### **Certificate of Structural Stability**

We hereby certify that the foundation and superstructure of the building proposed for construction on Plot .....Street.....  
.....Ward No.....  
have been so designed by me/us will make such foundation and superstructure safe in all respect including the consideration of bearing capacity and settlement of soil etc.

.....  
Signature of LBA  
(Name, Address and Empanelment No.)  
.....

Signature of Structural Engineer  
(Name, Address and Empanelment No.)  
.....

.....  
Signature of Geo-technical Engineer

(Name, Address and Empanelment No.)

*Note.*—All such technical personnel are required to be empanelled with the concerned Municipalities. In case, the system of empanelment has not been introduced in any particular Municipality, the requisite certificate from the empanelled Structural Engineer and Geo-technical Engineer under Kolkata Municipal Corporation or any other Municipality may be asked for:

(I) No building exceeding fourteen meters and a half in height shall be allowed on private or public street of not less than 10.00 meters in width;

(II) there shall be a minimum front open space for every category of tall building at its narrowest part, as per provisions of sub-rule (2) of rule 50;

(III) there shall be a minimum front open space for every category of tall building along the entire width of the building forming an integral part of the site, as per provisions of sub-rule (2) rule 50;

(IV) there shall be minimum open spaces on both sides for every category of tall building at its narrowest part, as per provisions of sub-rule (2) of rule 50;

(V) (a) in case the whole of one side or part of at least two sides of every room excepting bath, water-closets and store-room, is not abutting either the front open space, rear open space or side open space, it shall abut an inner courtyard whose minimum width shall be 30% of the height of the building or 3 meters, whichever is more;

(b) for ventilating water closet in bathroom, such water closet or bathroom or kitchen or any room not intended for human habitation, if not opening on to front open space, rear open space, side open space or interior open space, shall be opened up to a ventilation shaft, the size of which shall be as per provisions incorporated in Tables under rule 50;

(VI) (a) for every building exceeding fourteen meters and a half, the Floor Area Ratio shall be as specified in the table below:—

Maximum Permissible Floor Area Ratios

| Width of Means of Access (meters). | Residential Building     |            | Institutional Business Building. |
|------------------------------------|--------------------------|------------|----------------------------------|
|                                    | Commercial Zone, if any. | Other zone |                                  |
| Above 14.50 to 20.00               | 2.25                     | 2.50       | 2.25                             |
| Above 20.00 to 24.00               | 2.50                     | 2.75       | 2.50                             |
| Above 24.00                        | 2.75                     | 3.00       | 2.75                             |

(b) While calculating the floor area under this Chapter, the following shall not be included:—

- (i) stair cover not exceeding 2.4 meters in height and stair case with landing upto the extent of the width of the stairway in each floor including ramp if there be any,
- (ii) lift machine room as per latest edition of the National Building Code. Lift Landing lobby with a maximum area of 6 sqm in all floors including roof, if any;
- (iii) roof tanks and their support, the height of support not exceeding 1 metre;
- (iv) chimneys, ventilating, air-conditioning and service equipment attached to the building:

Provided that the aggregate area of these structures mentioned at (i) to (iv) above shall not exceed one-third area of the roof upon which these are erected;

- (v) the actual area under covered car parking space and area of basement used for car parking only in accordance with the table in rule 52(B)(1) subject to a maximum permissible limit for one car parking space as 25 sq.m for ground floor and 35 sq.m other than ground floor inclusive of all circulation spaces and ramps. However, the area

actually covered by the car parking space may be allowed even if the same is more than mandatory requirement. But the covered car parking shall be within the permissible ground coverage;

- (vi) areas of loft, ledge or tand and areas of cupboards or wardrobes upto a maximum extent of 3% of total floor area but shall include the area of mezzanine floor;
- (vii) area of service floor as permitted in rule 67;
- (viii) the areas for garden covered with permeable material, pergola, expanded or similar other materials at the roof level, up to 5% of the total roof area or 10 sqm whichever is more, subject to adoption of adequate structural safety measures;
- (ix) in addition to the above provision, the exemptions in calculation of FAR shall also be permissible as per provision in rule 51.

(c) All steel towers above 14.5 metre height should be ground based ones. Minimum access to such structure should not be less than 5 metre on any part. No such structure should be constructed on the mandatory open spaces of any existing building.”

This Court also appointed an enlisted structural engineer from the Kolkata Municipal Corporation to submit a report regarding the structural stability of the building. The report was submitted on February 24, 2025, and a copy of the report was circulated to the parties. It is important to quote the relevant portion of the report, which states:

*“4. After going through the documents I planned a visit to the site, and informed a) The Midnapur Municipal Authority b) Sri Debraj Roy, owner of the said building c) Learned Advocate of the petitioner vide mail dated 11/2/25.*

*5. I visited the building in context on 12/2/25 and it has been found to be a [Basement+G+5] storied building.*

*During my inspection, Sri Debraj Roy, the owner of the building and Sri Tito Sengupta, S A E of Midnapur Municipality were present.*

*6. I inspected the structural parameters, e.g, Columns and Beams, and noted their dimensions, which were in some deviation from the sanctioned structural drawings.*

*7. Since there is no way to have a view of the foundation of the building, I have to take views and comments of the supervising Engineer, Sri Tarun Roy (as stated by the owner of the building in context). On telephonic conversation, Sri Tarun Roy described the details of the parameters of the foundation, which almost tallies with the sanctioned Structural Drawing.*

*8. In the context of some deviations, as executed, Influence area of the columns on the western side (Left hand side) of the building gets increased resulting in enhancement of load and moment, coming on these columns. While calculating the resultant impact, the existing structural parameters of the columns have been found safe, so far as the structural parameters are concerned.*

*9. Furthermore, no tilt of the building is marked.”*

Mr. Kallol Bose, the learned advocate appearing for the petitioner, challenges the report, arguing that the relevant engineer was unable to physically examine the foundation of the building. He contends that the engineer's opinion on the structural stability of the building should be disregarded. The petitioner was granted the opportunity to have the structural stability of the building re-examined by another specialist engineer at his own expense. However, Mr.

Kallol Bose, citing the petitioner's financial constraints, declined to accept the proposal.

A specialist engineer has already opined that the building is structurally stable. Moreover, it is important to note that the building was constructed in accordance with the agreement entered into between the petitioner and respondent No. 6 on August 30, 2022, as evidenced at page 47 of the writ petition.

The report filed by the Municipality is clearly against the petitioner.

The relevant part of the report is quoted below:

“1. That the Private Respondents, Debraj Roy & Ors. firstly, have constructed one B+G+3 storied building at the western side of Petitioner's house in terms of sanctioned building plan obtained through online Vide no. SWS-OBPAS/1607/2023/0315 on R.S. Plot no. 280(P) L.R. Plot no. 280(P), J.L. no. 171, Mouza Keranitola, Municipal Holding no. 705 in Ward no. 7 under Midnapore Municipality and as per the Agreement executed on 30.08.2022 (Annexure 'P-6', Page no. 47-50 of the Writ Petition) by & between the Petitioner and the Private Respondents leaving 4 ft. open space from their boundary line.

2. That thereafter the Private Respondents got another sanctioned plan Vide P.W. no. 58 dated 14.03.2024 and in terms of said sanction plan they have constructed extending the above said building vertically up-to 5th floor. It is pertinent to mention here that said sanction was obtained by the Private Respondents on submission of necessary Certificates from the Architect, Structural Engineer and Geo-Technical Engineer in terms of Rule 53 of the West Bengal Municipal (Building) Rules, 2007.

.....

7. That on 19.06.2024, the Officials & Staffs of Midnapore Municipality made spot inspection as per scheduled date & time. Though Private Respondents were present and showed their documents pertaining to their

building in question but the Petitioner was absent during inspection. It was found that the Private Respondents have constructed their building as per sanctioned building plans as described above and in terms of above said Agreement dated 30.08.2022 executed by & between the Petitioner and the Private Respondents. It was also found that the Petitioner himself has constructed 2 & 1½ storied building over the common building wall without following the West Bengal Municipal Act, 1993 and the West Bengal Municipal (Building) Rules, 2007.

.....

12. That the allegation as to making unauthorized construction of a B+G+5 storied building by the private respondents without obtaining sanctioned plan from Midnapore Municipality as contended by the petitioner at the time of hearing dated 07/10/2024 before this Hon'ble Court was in correct, baseless, frivolous and wrong.”

This writ petition has been filed after the construction of the building was substantially completed. This Court was primarily concerned regarding the structural stability of the building. The building was constructed with a certificate from a structural engineer in terms of Rule 53 of the West Bengal Municipal (Building) Rules, 2007. Since the specialist engineer has again affirmed the building's structural stability, no further interference is warranted.

In that view of the matter, **WPA 15877 of 2024** along with **CAN 2 of 2024** and **CAN 4 of 2025**, is disposed of.

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

**(Kausik Chanda, J.)**