

29.04.2025
(D/L-2)
Ct. No.1
(B.K.N.)

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

**M.A.T. 1 of 2025
With
CAN 2 of 2025**

**Siliguri Municipal Corporation & Anr.
Vs.
Sri Abhijit Modak & Ors.**

Mr. Deborshi Dhar
...for the Appellants/Siliguri Municipal
Corporation

Mr. Amales Ray, Sr. Adv.,
Mr. Nigam Mittal,
Ms. Prerna Mitra
...for the Respondents

1. Heard learned counsel for the appellant and the learned counsel for the respondents.
2. The writ petitioner had approached the Writ Court being aggrieved by a direction issued by Siliguri Municipal Corporation directing for demolition of alleged unauthorized structure. The Hon'ble Single Judge by the order dated 03.10.2024 directed the Corporation to take a decision in terms of their resolution held in the meeting of Mayor-in-Council on 18th November, 2023. While giving such interim direction the writ petition was directed to be listed on 11th November, 2024 giving liberty to the Corporation to place before the Court the further decision taken by them in

this regard in terms of the resolution dated 18.11.2023. The impugned communication dated 26.09. 2024 was directed to be kept in abeyance. It is against this interim order that the present Intra Court Appeal has been filed.

3. The brief factual background of the matter is that the writ petitioners applied for sanction of the building plan for construction of a residential building on 20.04.2023. The site was inspected, the deeds were verified, the architectural plan was examined and on all these scores the petitioners' building plan was found to be in accordance with the statutory rules/provisions.
4. The authorities discovered that the petitioners had commenced construction, which was completed up to the plinth level and some columns. Finding the commencement of construction to be contrary to the provisions contained in Section 261(A) of the West Bengal Municipal Corporation Act, 2006 (hereinafter referred to as "the 2006 Act") the impugned notice was issued for demolition of the structure.
5. It is submitted by the learned counsel for the appellants that the authorities had rightly directed for demolition of the structure in question. However, he has not disputed the fact that the commencement of work was only till the

plinth level and some columns. He has also fairly submitted that building plan was in accordance with the standards laid down in the rules and provisions as regards the various parameters including verification of deeds, architectural plan etc. According to him the commencement of work without prior sanction was in violation of the statute inviting the consequence of demolition under Section 266 of the 2006 Act. The authorities had rightly issued the order dated 26.09.2024 for demolition.

6. It is further submitted that the direction of the Hon'ble Single Judge contained in paragraphs 36 to 39 are unsustainable since the same would entail regularization of the illegal commencement of work, under Section 400 of the Kolkata Municipal Corporation Act, 1980 which provision is not applicable in respect of the building in question, which has to be dealt with in accordance with the West Bengal Municipal Corporation Act, 2005.
7. At this juncture the learned counsel for the respondents has drawn attention of the Court towards the West Bengal Municipal Building Rules, 2007. He draws attention towards Rule 32 of the same wherein proviso has been added by notification dated 27.07.2023 providing for

regularization of “execution of any minor work without sanction”.

8. According to the learned counsel for the respondents since the commencement of minor construction, is admittedly in accordance with the building standards and bylaws, there is a scope for regularization under the amended provision of Rule 32 of the 2007 Rules. There being no violation of the building standards, subjecting the petitioner to demolition of these minor works is unwarranted.
9. Having considered the rival submissions, the admitted position that emerges is that commencement of minor work was without prior sanction of the building plan. Another admitted position which emerges is that the construction completed so far is only up to the plinth level, and few columns and the same is in accordance with the building plan and there is no deviation.
10. We find that there is a provision contained under the second proviso to Rule 32 of the 2007 Rules under which it is open to the Corporation to consider the grant of regularization of the structure. Since there was a specific provision contained in the 2007 Rules, when the notice for demolition was issued on 26.09.2024 the authorities ought to have considered regularizing

the petitioners' structure under the said provision (Rule 32 of the 2007 Rules), rather than immediately resorting to the option for demolition.

11. We, therefore, clarify the order of the Hon'ble Single Judge to the extent that while taking a decision in terms of the resolution of the Corporation dated 18.11.2023 it would be open to the Corporation to proceed in accordance with the proviso to Rule 32 of the 2007 Rules incorporated on 27.07.2023.

12. There being a substantive provision in the Rule for regularizing the execution of minor work without prior sanction, we find no reason to interfere with the interim order passed by the Hon'ble Single Judge keeping in abeyance the effect of the notice of demolition dated 26.09.2024. The fact that Section 400 of the KMC Act, 1980 is not applicable to the petitioners' case, therefore, loses its significance altogether, since now the decision is required to be taken by the authority under Rule 32 of the 2007 Rules and any other provision, in accordance with law.

13. The directions contained in paragraph 37 of the Hon'ble Single Judge are thus modified to be read as directing the Corporation to take a decision in terms of the resolution held in the meeting of the Mayor-in-Council on 18th November, 2023, having

regard to the provision contained in Rule 32 of the 2007 Rules and any other applicable provision in accordance with law.

14. Since the writ petition is now to be placed before the Hon'ble Single Judge, no further orders are required to be passed in the present proceedings, as the issue now has to be considered by the Hon'ble Single Judge.

15. The appeal is disposed of in these terms.

16. The application also stands disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)