

29.04.2025
(D/L-3)
Ct. No.1
(B.K.N.)

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

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

**The Commissioner,
Siliguri Municipal Corporation
Vs.
Sri Rajiv Sitlani & Ors.**

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

Mr. Nilanjan Bhattacharjee, Sr. Adv.,
Mr. Sayan De,
Ms. Esha Acharya,
Ms. Rimik Chakraborty
...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 an order passed by the Commissioner, Siliguri Municipal Corporation on 26.09.2024 directing the petitioner to demolish the unauthorized structure by 03.10.2024. It is the petitioner's case that upon demolition of his old dilapidated structure the petitioner's intended to erect a new residential building. Though the building had been demolished the respondent authorities were taking too much time in sanctioning the building plan which was

submitted by the petitioner on 16.08.2021. for the last about three years the authorities were dragging their feet in according sanction to the building plan. The admitted position emerging from the records is that the Municipal Mayor-in-Council (MMIC) in the meeting dated 18.11.2023 considered the inspection report with respect to the petitioner's proposed structure. He has taken note of the fact that the construction had commenced before the approval of the sanction plan. The construction of the foundation to the plinth, beam and columns up to the ground floor roof has been constructed. Though construction is without prior sanction. It is not in dispute that the construction is as per The West Bengal Municipal (Building) Rules, 2007. There is no alleged violation or deviation with the planning standards and building rules. The MMIC, therefore, was of the view that the building plan may be considered for approval and a fine may be collected as per the Kolkata Municipal Corporation Rules since the commencement of work is without prior sanction.

3. Subsequently the petitioner was served with the notice of demolition dated 26.09.2024 whereby and whereunder he was intimated that the commencement of work undertaken without prior sanction was in violation of the provisions

contained in Section 261(A) of the West Bengal Municipal Corporation Act, 2006 (hereinafter referred to as “the 2006 Act”). The Commissioner thus directed for demolition of the building, so far erected in exercise of powers under Section 266 of the 2006 Act. The admitted position that emerges is that the commencement of work is without prior sanction, and also that the commencement of work and structure erected so far is as per The West Bengal Municipal (Building) Rules, 2007 and there is no violation or deviation whatsoever of any of the building rules or planning standards.

4. In similar circumstances the Hon’ble Single Judge was considering the case of one **Sri Abhijit Modak** in the writ proceedings arising out of **W.P.A 2247 of 2024**, wherein also there was similar commencement of work without prior sanction, but without violating any building rules or planning standards. In that case also there was a decision of the MMIC of the same date as in this case to the effect that the building plan of the said writ petitioner may be considered for approval by collecting fine as per the Kolkata Municipal Corporation Building Rules.
5. In the case of **Sri Abhijit Modak (supra)** the Hon’ble Single Judge directed the respondent Corporation to take a decision in terms of the

resolution of the meeting of the MMIC dated 18.11.2023. It is relevant to note here that the resolution of the MMIC in favour of the present writ petitioner is also of the same date (18.11.2023). Finding the petitioner's case similar to that of **Sri Abhijit Modak (supra)** the Writ Court thus found that similar relief may be granted to the petitioner as has been granted to **Sri Abhijit Modak** with an exception that retention fee had not been accepted in the case of present petitioner whereas in the case of **Sri Abhijit Modak (supra)** the same has already been accepted by the authorities. The effect of the order passed by the Hon'ble Single Judge is that the Corporation was obliged to take a decision in terms of the resolution dated 18.11.2023 passed by the MMIC in favour of the present writ petitioner also.

6. The order passed by the Hon'ble Single Judge in the case of **Sri Abhijit Modak (supra)** has been considered today in **MAT 1 of 2025** preferred by the Siliguri Municipal Corporation. Considering the fact that The West Bengal Municipal (Building) Rules, 2007 contains a specific provision under Rule 32, being the second proviso added by notification dated 27.07.2023, providing the discretion to grant regularization of the structure

where there is commencement of minor construction, without prior sanction, this Court was of the opinion that the authorities ought to have considered the petitioner's claim for regularization under the said provision (Rule 32 of the 2007 Rules) rather than immediately resorting to the option for demolition.

7. Under this circumstance this Court has clarified 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 or any other applicable provision, in accordance with law.
8. There is no dispute that the petitioner's case stands on a similar footing as that of **Sri Abhijit Modak (supra)**. The Writ Court accordingly considered the present petitioner to be entitled to similar relief as has been granted to **Sri Abhijit Modak** in **W.P.A. 2224 of 2024**. The directions contained in paragraph 37 of the decision of the Hon'ble Single Judge in **W.P.A. 2224 of 2024 (Sri Abhijit Modak)** have been modified by this Court in the proceedings arising out of **M.A.T. 1 of 2025**, today, as follows:

“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.”

9. Since, it is not in dispute that the appellant’s case stands on the same footing as **M.A.T. 1 of 2025** we find the writ petitioner in the present proceeding to be entitled to the same relief as has been granted in **M.A.T. 1 of 2025**, extracted above. We thus dispose of the present appeal, accordingly modifying the order passed by the Hon’ble Single Judge in the case of the present writ petitioner, also.

10. The appeal is disposed of in the same terms as **M.A.T. 1 of 2025**.

11. The application also stands disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)