

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.324 of 2025

BINOD KUMAR GOEL

-VERSUS-

SILIGURI MUNICIPAL CORPORATION AND OTHERS

For the petitioner : Mr. Suresh Kumar Mitruka, Adv.,
Mr. Aayush Mitruka, Adv.,
Ms. Shruti Yadav, Adv.

For respondent nos.6 and 7 : Mr. Rajat Das, Adv.,
Ms. Anumita Lahiri, Adv.,
Ms. Srijana Thapa, Adv.

For Siliguri Municipal Corporation: Mr. Deborshi Dhar, Adv.

Hearing concluded on : 14.02.2025

Judgment on : 05.05.2025

Kausik Chanda, J.:-

The petitioner is a tenant in respect of a shop on the ground floor of a building at Naya Bazar, Siliguri, Darjeeling, under respondent nos.6 and 7. It is submitted that respondent nos. 6 and 7 have made an attempt to evict the petitioner by demolishing the building in collusion with the Siliguri Municipal Corporation by initiating a proceeding under Section 268 of the West Bengal Municipal Corporation Act, 2006 (in short, the Act of 2006).

2. The following key events, however, have led to the filing of the present petition:

3. On April 12, 2024, the Corporation issued an order addressed to the building's owners, directing them to inspect and submit a report about the building's condition by April 29, 2024, failing which demolition order would be passed. This order was not directed to the petitioner.

4. The petitioner challenged the order by filing WPA No. 916 of 2024. A learned Judge of this Court, by an order dated April 29, 2024, directed that no final decision be made without hearing the petitioner.

5. Accordingly, on July 29, 2024, the Corporation issued an order declaring the building unfit for habitation, based on an alleged biased report. The order directed the petitioner to vacate the premises within 60 days.

6. The petitioner, thereafter, filed WPA No. 2077 of 2024, and a Co-ordinate Bench of this Court, on September 27, 2024, noted the

Corporation's submission that if the petitioner submitted a proposal for repairs, the Corporation would consider it.

7. On October 01, 2024, the learned Judge kept the demolition order in abeyance, allowing the petitioner to submit a fresh undertaking for repairs. Accordingly, on October 19, 2024, the petitioner submitted an undertaking outlining the improvements to be carried out, based on a report by a structural engineer empanelled with the Corporation.

8. On November 11, 2024, the Corporation passed an order demanding a new structural stability report. On December 28, 2024, the Corporation reiterated its demand for a structural report.

9. The petitioner, aggrieved by these two orders dated November 11, 2024 and December 28, 2024, approached this Court by filing this present writ petition.

10. The petitioner submits that the provisions under Section 268 of the Act of 2006 require the Corporation to follow a clear, sequential process before taking any demolition action. This includes determining whether the building is unfit for habitation and whether it can be rendered fit at a reasonable cost, followed by an opportunity for interested parties to submit undertakings for repairs. The petitioner has diligently submitted an undertaking for repairs, which falls within the scope of Section 268(7) of the Act of 2006.

11. The Corporation's actions demonstrate a failure to adhere to the statutory process. It has failed to determine whether the building can be

rendered fit for human habitation at a reasonable expense and has bypassed essential stages in the procedure outlined under Section 268. In similar cases, reported at **1999 SCC OnLine Cal 215 (*Priya Brata Maity v. State of West Bengal*)** and **2021 SCC OnLine Pat 1206 (*Sanjeev Kumar v. State of Bihar*)**, Courts have emphasised the mandatory nature of these procedures.

12. It is further submitted that the Corporation must act in a fair and reasonable manner. The Corporation's actions in demanding a new structural stability report and its failure to follow the process outlined under Section 268 are arbitrary and unjust.

13. The petitioner submits that this Court should set aside the proceedings initiated by the Corporation, including the impugned orders dated November 11, 2024 and December 28, 2024, and direct the Corporation to follow the proper procedure as mandated by the Act of 2006. The petitioner further prays that the Corporation be directed to consider the petitioner's undertaking in accordance with the provisions of Section 268, and to take no further steps towards demolition until these legal requirements are met.

14. On the other hand, respondent nos.6 and 7 submit that Section 268 of the Act of 2006 allows the Commissioner to order the demolition of a building that is unfit for habitation and beyond repair. The condition of the building is widely acknowledged to be ruinous, and the structural reports submitted by the parties, including the petitioner, suggest the building's

dilapidated state. Section 268(2) and Section 268(7) of the Act of 2006 should be read together, and when it is acknowledged that the building is beyond repair, the order for demolition is legally justified.

15. It is submitted that the Commissioner, after considering the petitioner's undertaking and structural reports, concluded that the proposed repairs were insufficient to render the building habitable. As such, the Commissioner's decision is within the scope of the Act of 2006.

16. On behalf of Siliguri Municipal Corporation it is submitted that on September 27, 2024, the High Court allowed the petitioner to submit a fresh undertaking detailing the repairs they intended to make, subject to the approval of the Commissioner. The Court clarified that the petitioner would bear the cost of repairs, and the right, title, and interest regarding the building would be decided by a competent civil court. Following this order, a structural engineer recommended specific repairs, but the tenant could not provide an undertaking that these repairs would render the building safe. As a result, the Commissioner directed further tests, such as a pushover analysis, to assess the structural stability of the building.

17. The learned advocate for the Corporation argued that the Commissioner is justified in directing the submission of another inspection report based on the "pushover analysis" test. The petitioner's undertaking regarding repairs is not in compliance with Section 268(7), and it is within the Commissioner's authority to ensure that the proposed improvements are effective. The Commissioner, at this stage, is evaluating whether the

building can be made fit for habitation and is rightfully seeking further structural analysis to confirm its stability before approving any repair work.

18. The matter was heard at length. During the course of the hearing, certain questions arose concerning the scope and applicability of Section 268 of the Act of 2006. Mr. Suresh Kumar Mitruka, learned advocate for the petitioner, urged this Court to interpret Section 268 of the Act of 2006, submitting that there has been no authoritative pronouncement on this provision by this High Court.

19. Before addressing the merits of the case, it is necessary to quote Section 268 of the West Bengal Municipal Corporation Act, 2006.

“268. Power to order demolition of buildings, dangerous, ruinous or unfit for human habitation. –

(1) Where the Commissioner, upon any information in its possession, is satisfied that any building is unfit for human habitation and is not capable, at a reasonable expense, of being rendered fit, it shall serve upon the owner of the building and upon any other person having an interest in the building, whether as lessee, mortgage or otherwise, a notice to show cause within such time as may be specified in the notice as to why an order of demolition of the building should not be made.

(2) If any of the persons upon whom a notice has been served under sub-section (1) appears, in pursuance thereof, before the Commissioner and gives an undertaking that such person shall, within a period specified by the Commissioner, execute such work of improvement in relation of the building as will, in the opinion of the Commissioner, render the building fit for human habitation or that the building shall not be used for human habitation until the Commissioner, on being satisfied that it has been rendered fit for human

habitation, cancels the undertaking, the Commissioner shall not make an order of demolition of the building.

(3) If no such undertaking as is referred to in sub-section (2) is given or if, in a case where any such undertaking has been given, any work of improvement to which the undertaking relates is not carried out within the specified period or the building is used in contravention of the terms of the undertaking, the commissioner shall forthwith make an order of demolition of the building requiring that the building shall be vacated within such period, not being less than sixty days from the date of the order, as may be specified in the order, and demolished within ninety days after the expiration of the period.

(4) Where an order of demolition of a building under this section has been made, the owner of the building or any other person having an interest therein shall demolish the building within the period specified in the order, and if the building is not demolished within such period, the Commissioner shall demolish the building and sell the materials thereof.

(5) Any expenses incurred by the Commissioner under sub-section (4), which cannot be met out of the proceeds of sale of materials of the building, shall be recovered from the owner of the building or any other person having an interest therein as an arrear of tax under this Act.

(6) In determining for the purpose of this section, whether a building is unfit for human habitation, regard shall be had to its condition in respect of the following matters, that is to say,—

- (a) repair;
- (b) stability;
- (c) freedom from damp;
- (d) natural light and air;
- (e) water supply;
- (f) drainage and sanitary conveniences;
- (g) facilities for storage, preparation of cooking of food and for the disposal of rubbish, filth and other polluted matter;

and the building shall be deemed to be unfit as aforesaid if it is so defective in one or more of the matters as aforesaid that it is not reasonably suitable for the occupation in that condition.

(7) For the purpose of this section, "work of improvement" in relation to a building shall include any one or more of the following works, namely:—

- (a) necessary repair;
- (b) structural alterations;
- (c) provision of light points and water taps;
- (d) construction of drain, open or covered;
- (e) provision of latrines and urinals;
- (f) provision of additional or improved fixtures and fittings;
- (g) opening up or paving of courtyard;
- (h) removal of rubbish, filth and other polluted and obnoxious matter;
- (i) any other work, including the demolition of any building or any part thereof, which, in the opinion of the Commissioner, is necessary for executing any of the works specified in clauses (a) to (h)."

20. Section 268 of the Act has been enacted with a purpose to deal with the buildings that are unfit for human habitation due to their dilapidated state. It applies to buildings that are beyond repair and it is not possible to render it fit for habitation at a reasonable cost. The term 'reasonable cost' is used in Section 268 to ensure a practical balance between the expenses incurred for repairing or improving a building and its actual value or utility after the improvement.

21. The purpose of notice under Section 268 (1) is essentially a preliminary step to inform the owner or the person having an interest in the building that the building is deemed unfit for habitation.

22. For the issuance of a notice of demolition under Section 268 (1) of the Act of 2006, the Commissioner's satisfaction that the building is unfit for human habitation in terms of Sub-section (6) is the primary requirement.

Section 268 does not impose a statutory requirement to have a detailed technical report before issuing the notice. The Commissioner may form an opinion based on the visible condition of the building, complaints from the public or neighbouring property owners, or any preliminary assessment made by the Municipal authority.

23. The owner or the person having an interest in the building may respond to a demolition notice under Section 268 (1) by asserting that the building is not unfit for human habitation and requires no demolition. The Commissioner must evaluate whether the building is fit for human habitation or remains unsafe, unsanitary, or beyond repair at a reasonable cost.

24. If the building is found fit for human habitation, having regard to the factors as mentioned in Section 268(6), the Commissioner must withdraw the demolition notice. No further action is needed, and the owner or the person having an interest in the building is allowed to continue using the building.

25. On the other hand, if the owner or the person having an interest in the building does not contest the notice under Section 268 (1), they can provide an undertaking to execute specified improvement works as mentioned in Sub-section (7) within a timeframe set by the Commissioner “or” they can give an undertaking not to use the building for habitation until the Commissioner certifies it as fit.

26. The expression “or,” as used Section 268(2), should be interpreted as “and/or”, to uphold the legislative intent.

27. There may arise situations where the improvement works cannot be undertaken without vacating the premises. In such circumstances, the Commissioner may appropriately require the submission of both undertakings: (i) an undertaking to execute the improvement works, and (ii) an undertaking not to use the building for human habitation.

28. Conversely, if the improvement works can be carried out without vacating the building, then only the first undertaking—i.e., to execute the necessary improvements—may suffice.

29. However, under no circumstances should an undertaking not to use the building for human habitation be accepted without a corresponding undertaking to carry out the required improvements. Furnishing only the former, without assuming responsibility for the structural or safety-related improvements of the relevant building, would defeat the purpose and objective of Section 268.

30. If the Commissioner is satisfied that the work of improvement carried out has rendered the building fit for human habitation, the Commissioner shall “cancel” the undertaking, and the building will not be demolished.

31. I may hasten to add that the word “cancel” as deployed in Section 268(2) of the Act of 2006, does not mean a negative direction. It means the formal closure, a conclusion of the undertaking because its objective of “making the building habitable” has been successfully achieved.

32. If no satisfactory undertaking is given or the terms of the undertaking are breached, the Commissioner may order the building's demolition in terms of Section 268(3) of the Act of 2006.

33. If the owner or the person having an interest in the building fails to demolish the building within the stipulated period, the Commissioner can carry out the demolition in accordance with Section 268(4) of the Act of 2006 and sell the building materials.

34. Turning to the merits of the present case, I find that before the Commissioner, two structural engineering reports were submitted in relation to the proposed improvement work: one by the petitioner and another by respondents Nos. 6 and 7. Upon considering these reports, the Commissioner, in the impugned orders, directed that the structural inspection report of the empaneled structural engineer employed by the petitioner be based on the "Pushover Analysis" test, at the petitioner's expense.

35. The Commissioner further directed that the report of the structural engineer engaged by the petitioner be reviewed and verified by the Executive Engineer of the Siliguri Municipal Corporation. Based on the verification, permission to undertake the repair work would be granted.

36. Therefore, it is evident that no final decision has yet been made by the Commissioner regarding the undertaking furnished by the petitioner.

37. I am not inclined to interfere with the Commissioner's decision at this stage. The proposed improvement work, in the Commissioner's

opinion, must render the building fit for human habitation. Section 268(2) of the Act of 2006 grants the Commissioner a discretionary power to accept the undertaking to execute the improvement work only when, in his opinion, such work renders the building suitable for human habitation. However, the Commissioner's opinion must be formed in good faith, be reasonable, and be based on objective material and relevant considerations. The Commissioner may, at his discretion, decline to accept the undertaking for the "work of improvement" as submitted and direct modifications to the same, in light of Section 268(7) of the Act of 2006.

38. However, it should be clarified that there is no authority to issue a demolition order under Section 268(2) of the Act of 2006. This Section provides that the owner or interested party must be provided with an opportunity to rectify defects of the building through the undertaking of "work of improvement," as specified in Sub-section (7). A demolition order may only be issued under Sections 268(3) and 268(4), subject to the fulfillment of the conditions outlined therein.

39. I am also unable to accept the petitioner's contention that the impugned orders are tainted by procedural impropriety. The Commissioner has acted in accordance with the directions issued by this Court from time to time. The petitioner did not challenge any of these orders. Consequently, when the Commissioner acts in compliance with the directives of this Court, it is not open to the petitioner to argue that

the Commissioner has circumvented the essential procedural steps outlined in Section 268 of the Act of 2006. In fact, no substantial procedural lapses have been found in passing the impugned orders.

40. Should the petitioner be aggrieved by the final decision of the Commissioner regarding the acceptance of their undertaking for the work of improvement, it will be open to the petitioner to challenge this decision in accordance with the law.

41. Before concluding, I wish to express my sincere gratitude to Mr. Suresh Kumar Mitruka, Mr. Rajat Das, and Mr. Deborshi Dhar for their valuable assistance in aiding this Court's interpretation of the relevant provisions of Section 268 of the Act of 2006.

42. Accordingly, W.P.A. No.324 of 2025 is disposed of.

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

(Kausik Chanda, J.)