

Sl.28
03.04.2025
Court No.2
BP

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

WPA 611 of 2025

M/s. S. Serum Analysis Center Pvt. Ltd.
-versus-
Siliguri Municipal Corporation & Ors.

Mr. Probal Kumar Mukherjee, Sr. Advocate
Mr. Rajat Das
Mrs. Anumita Lahiri
..for the petitioner

Mr. Deborshi Dhar
..for SMC

Mr. Amales Roy, Sr. Advocate
Ms. Prerna Mitra
..for the respondent no.5

The petitioner herein is the owner of a three storied building bearing holding no. 147/A/1/217, S.F. Road within ward no. 26 of the Siliguri Municipal Corporation.

The private respondent herein is a tenant in respect of one shop room situated at the ground floor of the said premises.

The private respondent herein lodged a complaint with the municipal authority alleging that the petitioner has made unauthorized construction in different portions of the said premises.

Alleging inaction on the part of the municipal authority, the private respondent filed a writ petition

being WPA 1011 of 2024 which was disposed of a Coordinate Bench by an order dated June 19, 2024 by directing the municipal authority to conduct an inspection and after serving copy of the report of the inspection to the respective parties to conduct a hearing and to pass a reasoned order within the time limit indicated in the said order.

Pursuant to the said order the Commissioner, Siliguri Municipal Corporation passed an order dated February 18, 2025. By the first portion of the said order the petitioner herein was directed to remove/dismantle the unauthorized structures as pointed out in the inspection report which are beyond the sanction plan within the time limit mentioned in the said order failing which the Corporation will remove/dismantle the said unauthorized structure after expiry of the prescribed period and the cost shall be borne by the petitioner. By the later part of the said order the petitioner was directed to stop the commercial activities on the part of the ground floor as well as the first floor of the building since the same has been sanctioned as residential and heavy machineries cannot be permitted to operate from such premises.

The order of the Commissioner dated 18th February, 2025 is under challenge at the instance of the owner of the said premises.

Mr. Mukherjee, learned senior advocate appearing for the petitioner submits that the Government of West Bengal, Urban Development and Municipal Affairs Department (Municipal affairs Branch) issued a notification dated December 4, 2023 wherein the guidelines were framed for determining the unauthorized erection or work as “minor” and for regularization of such minor unauthorized construction. He contended that the Commissioner without considering the effect of the said Notification in its true letter and spirit held that the deviations cannot be regularized by taking the aid of such notification.

Mr. Mukherjee further submits that the building plan of the said premises was sanctioned as part residential and part commercial and such aspect of the matter was also not taken note of by the Commissioner while directing the petitioner to stop the commercial activities.

Mr. Ray, learned Senior Advocate representing the private respondent seriously disputes the submission of Mr. Mukherjee. He submits that the nature of violation as indicated in the inspection report does not fall within the scope of “minor unauthorized erection” or “execution of any minor work without sanction” as specified under various clauses of paragraph 1 of the said notification. By drawing the attention of the Court to the sanction building plan of the said premises, Mr. Ray contended

that the mode of user as per the sanction plan in respect of the ground floor, the first floor and second floor are partly residential and partly commercial. He submits that since the petitioner herein is using the entire property excepting the portion occupied by the private respondent for commercial purpose, the municipal authority was justified in directing the petitioner to stop the commercial activities on the portion of the ground floor as well as the first floor of the building.

Mr. Dhar, learned Advocate appearing for the Siliguri Municipal Corporation submits, on instructions from the concerned engineer, that the first floor was sanctioned as partly residential and partly commercial.

Heard the learned Advocates for the parties and perused the materials placed.

After going through the order impugned this Court finds that the observations of the inspecting team as recorded in the inspection report has been extracted in the said order. Point nos. 2 and 3 of the inspection report, as extracted in the impugned order this Court, relates to unauthorized construction.

The notification dated December 4, 2023 states that in exercise of the powers conferred by second proviso to Sub-Rule (2) of Rule 32 of the West Bengal Municipal (Building) Rules, 2007, the Governor, for the purpose of determining minor unauthorized erection, or execution of any minor work without sanction and the

rates for regularizing such minor unauthorized erection, or execution of any minor work without sanction is pleased hereby to specify that any unauthorized erection or work may be determined by the Board of Councilors as 'minor' keeping regard to the conditions noted in paragraph 1 and such minor unauthorized erection or execution of any minor work without sanction may be regularized by the Board of Councilors on payment of such fees as described in paragraph 2 of the said notification.

Upon going through the said notification this Court finds that for the purpose of determination of the minor unauthorized erection or execution of any minor work without sanction, the Board of Councilors have to see whether the impugned unauthorised construction falls within the scope of minor unauthorized erection or execution of any minor work without sanction as specifically laid down in clause (a), (b), (c) of paragraph 1. Thus, the competent authority before taking any decision as to whether the unauthorised construction can be regularized or not has to first arrive at a factual finding whether the impugned erection falls within the scope of minor unauthorized erection, or execution of any minor work without sanction.

Mr. Mukherjee would contend that the petitioner applied before the municipal authority for regularization of the minor unauthorized erection in terms of the notification dated December 4, 2023. This court finds that the municipal authority has failed to determine whether the impugned unauthorised construction falls within the scope of paragraph 1 of the notification dated December 4, 2023. It has only been observed that the deviations that have been detected in the inspection report cannot be regularized by taking aid of the notification dated December 4, 2023 issued by the State Government. The reasons as to why the same cannot be regularized has not been specified in details.

That apart the issue of regularisation shall arise after determination whether the unauthorised construction falls within the scope of paragraph 1 of the said Notification.

Whether the entire unauthorized construction or a portion thereof falls within the scope of minor unauthorized erection or erection of any minor work without sanction has also to be specifically considered and determined by the concerned authority in terms of paragraphs (a),(b),(c) of paragraph 1 of the notification dated December 4, 2023.

The question of removal/dismantling the impugned structure has to be decided after

adjudicating whether the same or a portion thereof can be regularized in accordance with law.

Since such an exercise has not been undertaken by the municipal authority, this Court is inclined to interfere with the portion of the order directing removal or dismantling the unauthorized structures as pointed out in the inspection report.

Now this Court has to consider the other portion of the order whereby the petitioner was directed to stop commercial activities on certain portions of the said premises.

Mr. Mukherjee would contend that the mode of user as per the sanctioned plan was partly residential and partly commercial without any identification as to which portion of each floor would be residential or commercial.

Mr. Ray would contend that the petitioner has violated the mode of user of the premises as per the sanction plan as he is using the portion sanctioned for residential use as commercial.

It appears that portions of ground floor and first floor was sanctioned for commercial purpose. The portions which were sanctioned as residential in the ground floor as well as in the first floor but is being used for commercial purpose has not been specifically stated in the said order.

In point no. 1 of the Inspection Report it has been indicated that as per the sanction plan, Ground Floor is partly commercial and partly residential. In point no. 4 of the said report it has been stated the 1st floor is partly chamber.

The Commissioner has not decided whether the chamber in the 1st floor is for residential use or commercial use as per the sanction plan. In the absence of such a finding, this Court is of the considered view that the observation of the Commissioner that the petitioner has changed the user of the building calls for interference.

At this stage Mr. Mukherjee, learned Advocate for the petitioner would contend that Section 272 of the West Bengal Municipal Corporation Act, 2006 gives right to the owner to apply for permission for using any part of the building for a purpose that was not originally erected or authorized to be used as such.

However, it is not in dispute that no permission to such effect has been sought for by the petitioner.

At this stage Mr. Mukherjee would submit that liberty be given to the petitioner to apply before the municipal authority for change/conversion of the mode of user of any portion of the property.

On a query of the Court Mr.Dhar, learned Advocate appearing for the Municipal Corporation

could not point out any provision from the West Bengal Municipal Corporation Act, 2006 or the rules framed thereunder which provides for permission to be taken for installation of machineries in a building.

However, Mr. Dhar submits that at the time of inspection the petitioner could not produce the permission/license under the Clinical Establishment Act. Mr. Mukherjee would submit that they are possessing all the certificate for running a pathological centre at the said premises including the fire safety certificate and the license under the Clinical Establishment Act.

Thus, the finding of the Commissioner, Siliguri Municipal Commission that no sanction or permission was taken by the petitioner for installation of the machinery, is without any basis and the same is liable to be set aside.

However, it appears from the inspection report that the installation of heavy machinery in the first floor of the premises is likely to affect the structural stability of the building.

Mr. Mukherjee, upon instruction from the learned advocate on record, undertakes that the petitioner shall submit a Structural Stability Certificate from a Structural Engineer empanelled with the municipality at the time of hearing.

For all the reasons as aforesaid, the order dated February 18, 2025 is set aside. The Commissioner, Siliguri Municipal Corporation is directed to revisit the aforesaid issues after giving an opportunity of hearing to the respective parties or their Authorised Representatives and by passing a reasoned order. Needless to mention that the reasoned order shall be communicated to the parties immediately thereafter. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a server copy of this order.

With the above observations and directions, WPA 611 of 2025 stands allowed.

No order as to costs.

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

(Hiranmay Bhattacharyya, J.)