

Ct. 5 02.03.2026
JPD
Item No.2&3 Alope

In The High Court At Calcutta
In The Circuit Bench at Jalpaiguri
Appellate Side

WPA 883 of 2025

Saurab Agarwal & Ors.
Vs.
Siliguri Municipal Corporation & Ors.

WITH

WPA 897 of 2025

Shelter Sale Pvt. Ltd. & Anr.
Vs.
Siliguri Municipal Corporation & Ors.

Mr. Amallesh Roy, Id. Sr. Adv.
Mr. N. Mittal
Ms. A. Chhetri
...for the petitioners

Mr. Soumya Majumder, Id. Sr. Adv.
Mr. Rajdeep Majumder, Id. Sr. Adv.
Ms. Supriya Singh
Mr. P. Roy
Ms. S. Ghosh
... for the respondent no. 6 & 7

Mr. Bijay Bikram Das
Mr. Deborshi Dhar
... for the SMC

1. Both the writ applications have been preferred praying for setting aside of the impugned notices dated 07.02.2025 and 03.04.2025, issued by the Commissioner, Siliguri Municipal Corporation, the respondent no. 3 herein.
2. It appears that vide the impugned order dated 07.02.2025, the respondent no. 3 herein, issued a notice to the petitioners herein in respect of the unauthorized construction made and on

considering a report as submitted by the technical officials office, the respondent no. 3 found that though occupancy certificate had been issued in favour of the petitioners, **the L.R. Khatian and the ROR of land in question prima facie shows that they are tribal land.** The respondent no. 3 found a mis-match between the land owner as mentioned in the sanctioned building plan and present ROR and directed the parties to appear before him on a specified date and time with all documents in support thereof.

3. Vide the order dated 03.04.2025, the respondent no. 3 on the same findings had also directed a hearing.
4. Being aggrieved by an order passed by the Single Bench in the present case, an appeal was preferred before the Division Bench being MAT 34 of 2025. The Hon'ble Division Bench considering the order of the Hon'ble Single Judges has remanded the matter back to the Single Bench, on the relevant findings as follows :

“Mr. Amales Ray, learned senior counsel appearing on behalf of the respondents/writ petitioners submits that a municipal corporation cannot decide the title of the applicants. This is a settled proposition of law. However, what is equally true is a person cannot construct building on land that does not belong to him. It is essentially for this reason that Section 286 has been incorporated in the

West Bengal Municipal Corporation Act of 2006” and set aside the order of the Single Bench.

5. The Hon’ble Division Bench further directed as follows :

“All questions of jurisdiction and maintainability of the proceedings before the Siliguri Municipal Corporation are kept open to be decided by the Single Bench.”

6. Mr. Roy, learned senior counsel for the petitioner has relied upon the following judgments :

i) **1996 SCC OnLine Cal (K.G. Patel & Co. vs.**

Smt. Chandra Devi Bothra & Ors.); para

18 which reads as follows :

“18. However, there cannot be any doubt whatsoever that a complicated disputed question of title cannot be decided by the authorities of the Calcutta Municipal Corporation. See Sheo Dulari Devi v. Smt. Nageshra Kuer reported in AIR 1977 Pat 86 and Venode Kumar Jalan v. Calcutta Municipal Corporation reported in 1987 (1) CLT 333.”

ii) **(2007) 6 SCC 120 (Arunima Baruah vs.**

Union of India & Ors.).

7. Mr. Majumder, learned senior counsel appearing for the respondent nos. 6 and 7 has filed a short note, stating therein that the writ petitions proceeds on the foundation that question of title over the plot of land can be adjudicated only in Civil Suits, and not by the Municipal Authority.

8. Mr. Majumder, further submits that Section 280(d) of the West Bengal Municipal Corporation Act, 2006 allows Corporation to refuse sanction if information required by the Commissioner has not been duly furnished. This is a case where the documents/application for obtaining a sanctioned building plan had not been duly furnished to the SMC.
9. It is further stated that Section 286 of the Act of 2006 is a provision creating a legal fiction to address a situation of material misrepresentation or fraudulent statement being made in the plan for sanction. Section 287 is thus concomitant to Section 286. Notices captioned “Unauthorized Construction” issued by SMC on the strength of the enabling provisions contained in Section 286 and 287 are thus well within the jurisdiction of the Municipal Commissioner. In exercising such powers, the Commissioner does not decide any question of title.
10. Section 286 and 287 of the West Bengal Municipal Corporation Act, 2006 being relevant are reproduced herein :

“286. Power of the Commissioner to cancel permission on the ground of material misrepresentation by applicant. If, at any time, sanction to erect any building has been given and **the Commissioner is satisfied that such sanction was given in consequence of any material**

*misrepresentation or fraudulent statement contained in the plans, elevation section or specifications or land or **any material particulars submitted in respect of such building**, it may cancel such sanction, and any work done thereunder shall be deemed to have been done without sanction.*

287. Unauthorised construction.-Subject to the provision of section 266 if the Commissioner is satisfied that-

(a) the erection of any building-

(i) has been commenced without obtaining sanction or permission under this Act or the rules or the regulations made thereunder or has been completed **otherwise than in accordance with the particulars on which such sanction or permission is based or after such sanction or permission has been lawfully withdrawn, or**

(ii) is being carried on, or has been completed, in contravention of any provision of this Act or the rules or the regulations or the bye-laws made thereunder, or

(b) any building or projection exists in violation of any condition, direction or requisition, lawfully given or made under the provisions of this Act or the rules or the regulations made thereunder, or

(c) any material alteration of, or addition to, any building has been commenced, or is being carried on, or has been completed, in contravention of any provision of this Act or the rules made thereunder,

it may, after giving the owner of the building a reasonable opportunity of being heard, make an order directing that such erection,

*building, projection, alteration, or addition, as the case may be, or so much thereof as has been executed unlawfully, or such building or existing structure be demolished or altered, and, upon such order, it shall be the duty of such owner to cause such demolition or alteration to the satisfaction of the Commissioner, and within such period, as may be fixed in this behalf, and in default, such erection, building, projection, or addition, **as the case may be, may be demolished or altered by the Commissioner at the expense such owner.***”

11. The writ petitioners have also filed their written notes reiterating their case as made out in the writ application and have further attempted to prove their title in the disputed property by stating in details the method of transfer, before the writ Court.
12. Considering all these facts and the materials on record and also keeping in mind the direction of the Division Bench, it is for this Court to ascertain as to whether the impugned notices issued by the respondent no. 3 are in accordance with law.
13. Admittedly, the authority concerned has only directed the petitioners to produce relevant documents to decide the complaint made against the petitioners regarding unauthorized constructions made prima facie on the property which belongs to another person and more so the

person belonging to the tribal community and the land in question being tribal land.

14. The present land being tribal land, the respondent no. 3 has also found prima facie a mismatch land, in the name of the land owner as mentioned in the sanctioned building plan and ROR and, as such, called the parties for a hearing.
15. The petitioners' challenge is that the respondent no. 3 has no authority to decide the title of a property.
16. In the present case, there is nothing to indicate in the impugned notices, that the respondent no. 3 has proceeded to decide the title of the disputed land.
17. It clearly appears that the respondent no. 3 has acted well within his power as provided under Section 286 of the Act.
18. The further contention of the petitioner is that the impugned notices do not indicate that the notices have been issued under Section 286 of the Act.
19. The said submission of the petitioner has no substance, considering that the contents of the said notices clearly show that the said power has been exercised by the respondent no. 3, by invoking the Section 286 of the West Bengal Municipal Corporation Act.
20. The respondent no. 3 while proceeding to cancel the sanction, on the ground of material

misrepresentation or fraudulent statement contained in an application upon which the plan was sanctioned or specification of land, area, or any material particulars was wrong, can proceed to call for connected documents to verify the complaint of any unauthorized construction.

21. As such, this Court finds that the said impugned notices issued, are in accordance with law and the respondent no. 3 is within his powers to proceed in accordance with law in respect of the said notices.

22. It is submitted that the hearing in the said matter is complete and the matter is pending for orders.

23. Considering that the petitioners have been busy pursuing the matter before this Court on a ground, which is totally out of context in respect of the provisions of the West Bengal Municipal Act, this Court finds no merit in the writ applications and the same stands dismissed.

24. The writ applications being **WPA 883 of 2025** and **WPA 897 of 2025** are dismissed.

25. Commissioner, Siliguri Municipal Corporation to proceed with the hearing and dispose of the matter/issue in accordance with law, expeditiously preferably within 60 days from the date of this order by way of a reasoned order.

26. Connected application, if any, stands disposed of.

27. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Shampa Dutt (Paul), J.)