

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

**HEARD ON: 18.06.2025
DELIVERED ON: 18.06.2025**

**PRESENT:
THE HON'BLE JUSTICE GAURANG KANTH**

W. P. A. 1050 OF 2025

***DR. BIDYAPATI CHATTERJEE*
VERSUS
*SILIGURI MUNICIPAL CORPORATION & ORS***

Appearance:-

Mr. Amalesh Ray, Sr. Adv
Mr. Dhiraj Lakhotia, Adv
Ms. R Agarwal, Adv
Ms. Meghna Joshi, Adv
Ms. Khushi Kundu, Adv
Mr. Nigam Mittal, Adv
Ms. P M Mitra, Adv
Ms. D Biswas, Adv

.....For the Petitioner

Mr. Bijoy Bikram Das

..... For the Siliguri Municipal Corporation

JUDGMENT

Gaurang Kanth, J. :-

1. The Petitioner has preferred the present writ petition challenging the impugned order dated 23.04.2025 passed by the Commissioner, Siliguri Municipal Corporation. By the said order, the Commissioner directed the petitioner to demolish the unauthorised portion of the construction within seven days, failing which the Siliguri Municipal Corporation would undertake the demolition itself.

2. The property in question is located adjacent to the wide Hill Cart Road. The sanctioned building plan for the premises, identified as Building Plan No. 1264, was approved on 12.07.1979. The building comprises four stories. The Petitioner, by letter dated 14.07.2023, sought permission from the respondent Corporation to carry out repair work. The proposal was considered at the MMIC meeting held on 22.01.2024 and was subsequently approved by the Board of Councilors in its meeting dated 30.01.2024. However, it was later observed that the petitioner had also undertaken unauthorised construction work at the premises. Accordingly, an inspection was conducted by the technical staff on 01.08.2024 and a report was submitted on 12.08.2024. A hearing was afforded to the petitioner by the Commissioner, during which the inspection report was discussed. The petitioner admitted the findings of the said report. Consequently, the Commissioner passed an order dated 30.08.2024 directing the petitioner to remove the additional iron structure. The petitioner was further instructed to ensure that the dismantling work would be supervised by a structural engineer to prevent any untoward incident. The said directions were complied with by the petitioner.

3. However, on receipt of further information regarding continued construction at the site, additional inspections were conducted by the technical staff on 06.02.2025 and 10.03.2025. Based on the findings of these reports, another hearing notice was issued to the Petitioner. The inspection findings were discussed in detail, and the petitioner submitted detailed written representations in response. After due consideration, the Commissioner passed the impugned order dated 23.04.2025 directing the petitioner to remove the unauthorized constructions within seven days.

4. Mr. Roy, learned senior counsel for the petitioner submits that the impugned order is contrary to the settled position of law as provided under the

West Bengal Municipal Corporation Act, 2006 and in terms of the West Bengal Municipal (Building) Rules 2007. He further submits that the deviations which have been carried out in the said building are minor and fall within the compoundable limit, thus capable of being regularized. It is also submitted that the construction in question primarily involved minor repair works and cannot be termed as material alteration or unauthorized construction. Learned Senior Counsel further contends that the material alteration in terms of the internal structure like bathroom and other structure on first, second and third floor respectively along with brick wall construction at the north-west corner were undertaken in compliance with applicable building rules 2007 and in no way can be said to be material alteration or unauthorized in nature. He submits that in accordance with the rules such internal alteration can be carried out without seeking sanctioned plan from the corporation. He further submits that aluminum and glass structure work which have been installed at the site are also permissible and relies on the National Building Code of India, 2016, which permits the glass partitions or the glass outer wall in a building. He submits that the said construction can be regularized by the Board of Councillors under Rule 88 of West Bengal Municipal Building Rules, 2007.

5. Learned Counsel for the respondents refutes the contention of the petitioner and submits that the Commissioner passed the impugned order after considering all relevant facts and circumstances. The inspection reports were discussed with the petitioner on each occasion, and the petitioner submitted written representations against the said reports. Thus, the impugned order was passed by the Commissioner needs no interference.

6. He further relies on the report which he has filed in the form of affidavit which deals with three issues in terms of carrying out plastering, installation of

tiles or re-flooring, wall putty and painting work, the stand of the corporation is that the permission was granted and the petitioner is carrying out the said work exceeded the permitted scope in terms of the provisions of the Act and Rules. As regards the aluminum and glass structure, learned counsel for the corporation submits that the length and breadth of the building have been extended beyond the permissible limit as specified in the sanctioned building plan. As per the approved plan, the area beneath the cantilever projections are required to remain open, with only parhait walls permitted as safety features, have been enclosed. The actual peripheral walls of the building are those aligned with the structure columns. Furthermore the installation of an iron frame structure by piercing RCC roof slab constitute material addition and alteration, and does not fall within the definition of "repair". Hence, such construction activity cannot be permitted. He further submits that the petitioner did not submit any application before the competent authority to assess the structural safety of the glass structure erected on the outer portion of the building. As per established procedure, an empanelled structural engineer of the Siliguri Municipal Corporation must provide a structural safety report upon receiving an application from the petitioner. He submits that no such application was ever made by the petitioner. With regard to the new construction of internal structures such as bathrooms and other structures on the first, second and third floor respectively along with brick wall construction at the north-west corner, it is submitted that newly constructed toilets deviate from the approved building plan no. 1264 dated 12.07.1979. Permission granted under section 285 of the West Bengal Municipal Corporation Act read with sub-rule 2 of rule 11 of the West Bengal Municipal Building Rules, 2007, was limited to carrying out repair work. However, the nature of the work actually executed falls under the category of addition and alteration, which is

beyond the scope of permission granted. Such work is not permitted unless prior approval from the corporation, which is not obtained in this case. He further submits that the new toilets were constructed beyond the designated area or as per sanctioned building plan and that the new brick wall were erected in deviation from the approved lay out. Such changes have been carried out without prior permission. He submits that the areas designated as shop, office and hall have allegedly been converted into a nursing home, again without prior permission.

7. This Court has carefully considered the rival submissions advanced by both sides and has meticulously examined the materials placed on record.

8. As per the inspection report dated 10.03.2025, submitted by the Technical Committee of the Siliguri Municipal Corporation, the following deviations from the sanctioned building plan were observed:

- (i) Construction of three unauthorised toilet blocks measuring approximately 5400 mm x 3175 mm, 5700 mm x 3040 mm, and 5700 mm x 3040 mm on the third, second, and first floors, respectively. In addition, a permanent brick wall structure measuring 10,500 mm x 1250 mm has been constructed at the north-western corner of the first floor, in deviation of the sanctioned building plan.
- (ii) The rear portion of the building on the western side, measuring approximately 8.50 metres x 5.00 metres, is presently being used as a Nursing Home by Kins Hospital, which constitutes a change in the sanctioned use of the said portion of the premises.
- (iii) An aluminium and glass structure has been erected along the external periphery of the building, which was not contemplated in the originally sanctioned plan.

9. It is the submission of the learned Senior Counsel for the Petitioner that the aforesaid deviations are minor in nature and therefore amenable to regularisation. However, this contention does not merit acceptance. The construction of toilet blocks on three different floors, each of substantial size, cannot be classified as a minor deviation. Such constructions materially impact the building's sanitation infrastructure, plumbing systems, and may alter the Floor Area Ratio (FAR) as sanctioned under the applicable municipal building regulations. These deviations also have the potential to encroach upon mandatory open spaces or setback areas, thereby affecting ventilation, fire safety norms, and overall compliance with planning standards.

10. The Technical Committee of the Respondent Corporation, comprising subject-matter experts, has rightly recorded these deviations as significant and not falling within the compoundable or regularisable category of minor infractions. Based on the said report, the Municipal Commissioner has lawfully rejected the Petitioner's contention that the deviations are minor in nature. This Court finds no reason to discredit or interfere with the findings of the technical authorities, who are best placed to assess such matters within their domain of expertise. Accordingly, the contention advanced on behalf of the Petitioner is found to be devoid of merit and stands rejected.

11. The materials on record clearly demonstrate that the Commissioner of the Siliguri Municipal Corporation followed a fair, transparent, and participatory process before passing the impugned order. Multiple inspections were carried out by the technical staff of the Corporation, and the Petitioner was afforded repeated opportunities to be heard. The contents of each inspection report were duly communicated and discussed, and the petitioner submitted written objections, which were considered in detail. Accordingly, the allegations of the petitioner that

his grievances were not considered found to be wholly unsubstantiated and devoid of merit.

12. It is evident from the record that the petitioner had carried out unauthorized construction in deviation from the sanctioned plan. The Commissioner, being the competent authority under law, acted well within his jurisdiction to pass the demolition order in the interest of upholding municipal building norms and ensuring public safety.

13. In view of the above, this Court finds no procedural infirmity, irregularity or arbitrariness in the impugned order dated 23.4.2025. On the contrary, the said order reflects strict adherence to the statutory requirements and compliance with the principles of natural justice. Accordingly, this Court is not inclined to exercise its writ jurisdiction under Article 226 of the constitution of India.

14. At this stage learned counsel for the respondent submits that if the petitioner makes an application before the Board of Councilors in terms of notification no. 889/UDMA-15011(24)/6/2023-LS-MA SEC dated 04.12.2023, issued by the Government of West Bengal Urban Development and Municipal Affairs Department, the Board of Councilors will consider the same in accordance with law and the applicable rules and regulations under the West Bengal Municipal Corporation Act, 2006, and the West Bengal Municipal Corporation Rules, 2007. It is further clarified that in the event such an application is made, the Board of Councilors shall consider and dispose of the same independently, without being influenced by any observation made by this Court.

16. With the above direction, the present writ petition is disposed of.

17. However, there shall be no order as to costs.

18. Since no affidavit is called for, allegations made in the petition are deemed to have been denied.

19. Certified copy of this judgment, if applied for, be given to the learned Advocates for the parties on usual undertaking.

(Gaurang Kanth, J.)

tkm

