

13.06.2025
Sl. No.4
akd

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

W. P. A. 1159 of 2025

[Birendra Agarwal & Anr. -Vs- Siliguri Municipal Corporation & Ors.]

Mr. Amales Ray .. Sr. Advocate
Mr. Nigam Mittal
Ms. Prerna Mitra

... .. for the petitioners

Mr. Subham Ghosh
Mr. Mayank Roy
Mr. Gopal Roy

... for respondent nos.6 & 7

Mr. Bijoy Bikram Das

... .. for the SMC

1. The petitioners have preferred the present writ petition assailing the order dated 13.05.2025, passed by the Commissioner, Siliguri Municipal Corporation, whereby the petitioners were directed to remove the unauthorized construction, allegedly made in deviation from the sanctioned building plan, on or before 31.05.2025 at their own cost, failing which the respondent-Siliguri Municipal Corporation would proceed to demolish the same at the cost of the petitioners.

2. Learned Senior Counsel for the petitioners submits that the petitioners and the complainant are co-owners of the premises in question. The construction in the said premises was carried out pursuant to the building plan sanctioned on 22.06.1962, 30.08.1963, 18.07.1972 (for construction of godown) and 19.10.1981 and the same was renewed on 22.01.1991. He further submits that there exists an inter se

dispute amongst the co-owners concerning the title of the property, and a civil suit in this regard is currently pending. He also submits that the petitioners were not provided with a copy of the inspection report. It is further submitted that the Commissioner, Siliguri Municipal Corporation, is not authorized to pass the impugned order since the sanctioned plan in question dates back to the year 1962. Additionally, it is argued that the notification dated 04.12.2023 has not been considered at the time of passing of the impugned order.

3. Learned Counsel for the respondent-Siliguri Municipal Corporation contends that the first building plan was sanctioned in the year 1962 and subsequently another plan was sanctioned in the year 1963. The building plan of 1972 was only to the construction of the godown. He further contends that the extension portion of the existing ground floor and the proposed portion were sanctioned in the year 1981 under the provisions of the West Bengal Municipal Act, 1932. He also contends that the petitioners had carried out the unauthorized construction beyond the sanctioned plan of 1981 as well as the renewed sanctioned plan of 22.01.1991. It is further contended that the inter se civil dispute between the parties has no relevance to the present proceeding since the present proceeding was initiated based on the complaint dated 20.12.2024 filed by the private respondent nos.6 and 7. It is also contended that the private respondent nos.6 and 7 had filed WPA 40 of 2025 wherein an order was passed on 20.01.2025 where directions were given that the Corporation shall hand over a copy of the inspection report upon the petitioners and that the Commissioner, Siliguri Municipal

Corporation after granting an opportunity of hearing shall decide the representation of the private respondent nos.6 and 7 dated 20.12.2024 by passing a reasoned order, in accordance with law without exceeding the scope of the said representation. It is also submitted that the impugned order itself states that it is confined to the said representation of the petitioners and that any request made by the petitioners for regularization of deviations in accordance with the Government of West Bengal notification dated 04.12.2023, remains open to be pursued separately by the petitioners.

4. Learned Counsel for the private respondent nos.6 and 7 submits that the petitioners had carried out the unauthorized construction in gross violation of the sanctioned building plan. He further submits that the entire construction is afresh and bears no connection to the earlier sanctioned building plan.

5. This Court has carefully considered the submissions made by the learned Advocates for the respective parties and has perused the pleadings and documents placed on record.

6. The core issue for consideration in the present writ petition is whether the impugned order dated 13.05.2025 directing the removal/demolition of a portion of the construction measuring 1304.38 sq. ft., allegedly in excess of the sanctioned plan, suffers from any illegality, procedural infirmity, or violation of natural justice. The record reflects that, in compliance of the earlier direction of this court in WPA 40 of 2025, a joint inspection was carried out by the officials of the respondent-Siliguri Municipal Corporation.

During inspection, specific deviations from the sanctioned building plan dated 19.08.1981 were identified, particularly the unauthorized construction measuring about 1304.38 sq. ft. The Commissioner, thereafter, issued a show cause notice and afforded the opportunity of hearings, thereby complying with the principles of natural justice as enshrined under Article 14 of the Constitution of India.

7. It is well settled that constructions made in deviation of sanctioned plans are *per se* unauthorized and cannot be permitted to subsist. The petitioners, while claiming the deviations to be minor, have failed to place any record, any specific provision or notification or relevant building Rules that permit regularization of such deviation to the magnitude of 1304.38 sq. ft., particularly after a lapse of several decades. Even otherwise, the mere passage of time does not render any unauthorized construction legal nor does it create any equity in favour of the erring party. Furthermore, the contention of the petitioners that no inspection report was furnished does not vitiate the entire proceedings in the present case.

8. It is not in dispute that the inspection was carried out in presence of the petitioners as recorded in the orders of the Municipal Commissioner. There is no document placed on record disputing the findings of the joint inspection report conducted in pursuance of the hearing held by the Municipal Commissioner. The impugned order clearly discloses the basis of the Commissioner's decision, namely, the findings of the joint inspection and the extent of deviation. The petitioners were duly heard in the matter, and the materials

relied upon by the authority were substantially disclosed, thereby satisfying the requirements of fairness and transparency under the administrative law.

9. This Court, therefore, finds no procedural infirmity or infringement of any legal rights of the petitioner that would warrant judicial interference. The impugned order dated 13.05.2025 appears to have been passed after due application of mind, in compliance with the statutory procedure, and based on objective assessment of factual findings. The Court cannot act as an appellate authority to reassess the factual findings of a municipal body acting within the scope of its statutory powers, unless there is manifest arbitrariness or mala fide, is shown, which is not established in the present case.

10. In view of the above, this Court does not find any merit in the present writ petition.

11. The writ petition is accordingly, dismissed.

12. There shall be no order as to costs.

13. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

14. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)