

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Uday Kumar**

**MAT 52 of 2025
With
CAN 1 of 2025**

**Binod Kumar Goel
vs
Siliguri Municipal Corporation and Ors.**

For the appellant	:	Mr. Suresh Kumar Mitruka, Mr. Aayush Mitruka, Mr. Raghav Agarwal
For the Siliguri Municipal Corporation:	:	Mr. Bijoy Bikram Das
For the respondent nos.6 and 7	:	Mr. Rajat Das, Mrs. Anumita Lahiri
Heard on	:	23.07.2025
Judgment on	:	23.07.2025

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred against the order of a learned Single Judge passed in a writ petition whereby the appellant had challenged a decision taken by the Commissioner of the Siliguri Municipal Corporation, directing the appellant/occupant of the concerned building to furnish a structural inspection report on a 'Push Over Analysis' from an empanelled engineer.

- 2.** Learned counsel for the appellant argues that, within the contemplation of Section 268 of the West Bengal Municipal Corporation Act, 2006, which is the relevant provision in the present case, in the event the Commissioner, upon any information in his possession, is satisfied that any building is “unfit for human habitation” and is not capable, at a reasonable expense, of being rendered fit, he shall serve upon the owner of the building and upon any other person having an interest in the building, whether as a lessee, mortgagee 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. In the present case, initially such notice was issued, according to the appellant, only on the landlord/owner of the building. The appellant claims to be a tenant of the building, which is disputed by the landlord, who is also appearing through counsel before us.
- 3.** Be that as it may, it is not in doubt that the appellant is an occupant of the ground floor of the building.
- 4.** Learned counsel for the appellant contends that since no notice under Section 268(1) was given at the initial stage to the appellant/occupier, the appellant was compelled to move this court and obtain an order whereby such notice was directed to be issued. Thereafter, an undertaking to carry out the necessary repair work was initially filed by the appellant, which was not accepted by the respondent Corporation.

5. Subsequently, pursuant to another order of this court, directing the appellant to furnish an undertaking by disclosing the exact nature of repairs proposed to be undertaken by the appellant, the appellant did file such undertaking, upon which the impugned order of the Commissioner of the Siliguri Municipal Corporation dated November 12, 2024 was passed.
6. Learned counsel for the appellant argues that the formation of opinion as to whether a building is unfit for human habitation, as contemplated in Section 268(1) of the 2006 Act, has to be done in the context of sub-section (6) of the said Section, which provides that in determining, for the purpose of the section, whether a building is “unfit for human habitation”, regard shall be had to its condition in respect of the matters as specified therein, including the stability of the building. Thus, it is argued that the very insistence of the Corporation on a structural engineer’s report itself shows that the initial formation of opinion regarding the building being “unfit for human habitation” was tainted. Before formation of opinion, the Corporation had to have a similar report and as such, the insistence on a further report at the cost of the appellant is superfluous.
7. Learned counsel submits that the learned Single Judge proceeded to interpret the various provisions of the Section but erroneously arrived at the finding that there was no procedural impropriety on such insistence of the Corporation for the engineer’s report.
8. Learned counsel appearing for the Siliguri Municipal Corporation submits that it is well within the jurisdiction of the Commissioner of

the Municipal Corporation to seek a fresh engineer's report for the purpose of ascertaining as to whether the repairs suggested by the appellant would suffice to restore the building to a habitable condition.

9. Learned counsel further points out that in view of there being a dispute regarding the property between the owner and the occupant, that is, the appellant, two contradictory reports came from the said two persons.
10. In view of such contradiction, it is all the more necessary for a further report to be obtained before considering the appellant's undertaking for repair. The 'Push Over Analysis' required to be done by the engineer, counsel explains, is technically necessary since the locale where the building is situated is in an active seismic zone.
11. Learned counsel for the Corporation submits that it is the incumbent duty of the occupant, who seeks to file an undertaking for taking up the repair work, to furnish an engineer's report as well in order to enable the Corporation to ascertain the efficacy of such repair work.
12. Learned counsel for the landlord supports, in principle, the contentions of the Corporation and denies that the appellant is a tenant in respect of the property.
13. Be that as it may, the jural relationship between the owner of the property and the appellant is not the subject matter of the present consideration and need not be entered into.
14. We are conscious that this Bench, sitting in an intra-court appeal, is required to be more cautious than any other appeal and we have to

consider whether a plausible view was taken by the learned Single Judge.

- 15.** On a careful perusal of the provisions of Section 268 of the 2006 Act, even going by the interpretation lent to the same by the learned Single Judge, we find that the duty to ascertain whether a building is unfit for human habitation is cast upon the Corporation under Section 268(1) of the 2006 Act. Sub-section (2) thereof, which is applicable in the present case, provides that if any of the persons upon whom a notice has been served under sub-section (1) appears 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 to 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.
- 16.** Thus, the charter of the Commissioner of the Corporation is, upon an undertaking being filed, to form an opinion of his own as to whether the “work of improvement” suggested by the person giving the undertaking would render the building fit for human habitation. In the event the Commissioner is not satisfied on such count, the Commissioner has the liberty to cancel the undertaking on such grounds as it deems proper.

- 17.** Sub-section (7) of Section 268 provides a workable definition of the “work of improvement” to the effect that for the purpose of the section, such expression would, in relation to a building, include any one or more of the works as specified therein.
- 18.** Thus, the limited duty cast on the person giving the undertaking under Section 268 is to file an undertaking disclosing the nature of the repairs. However, no obligation is imposed on the said person also to furnish an engineer’s report to assist the Commissioner in coming to the appropriate findings on the undertaking. Such duty is cast squarely on the Commissioner under Sub-section (2) of Section 268, since the Commissioner, upon getting the undertaking, has to form his own opinion to ascertain whether the work of improvement suggested would render the building fit for human habitation.
- 19.** Since it is the incumbent duty of the Commissioner to ascertain whether such work of improvement as suggested by the person giving the undertaking would suffice, upon formation of his opinion in that regard, it is obviously upon the Commissioner to take appropriate information and/or seek a report from an empanelled engineer of the Corporation itself, if the Commissioner so deems necessary, for the purpose of deciding on the undertaking. The shifting of such burden to the person giving the undertaking is not contemplated in law. The duty of such person ends with the submission of the undertaking, whereupon it is the Commissioner’s job to ascertain, by whatever mode he deems proper (including appointing a structural engineer to

furnish a report in that regard), as to whether the suggested repair work would make the building fit for human habitation.

- 20.** Furthermore, in view of the admitted position that engineers' reports were previously sought from both the owner and the appellant-occupant, which contradicted each other, the further direction on the appellant to furnish another similar report is futile.
- 21.** As such, although we agree with the interpretation lent to the Section by the learned Single Judge, with utmost respect, the procedural infirmity in the present case, which pertains to the Commissioner insisting upon the structural engineer's report being furnished at the cost of the petitioner, without the law casting any such duty on the person giving the undertaking, was overlooked in the impugned order. Thus, the impugned order is perverse, being contrary to law to that extent, and as such, is required to be interfered with.
- 22.** Accordingly, MAT 52 of 2025 is allowed on contest, thereby setting aside the impugned order dated May 5, 2025 passed in WPA 324 of 2025 and consequentially, setting aside the order dated November 12, 2024 passed by the Commissioner, Siliguri Municipal Corporation, with reference to Office Memo No. 128/SMC/N/Bldg./2024-2025 dated July 3, 2024.
- 23.** The Commissioner of the Siliguri Municipal Corporation shall now proceed to decide on the undertaking furnished by the appellant under Section 268(2) of the West Bengal Municipal Corporation Act, 2006 by whatever mode deemed fit and proper by the Commissioner. For such purpose, it shall be open to the Commissioner to appoint, at

the cost of the Respondent-Corporation, an empanelled engineer of the Corporation to ascertain the stability of the building or the condition of the building and the feasibility and efficacy of the repair work proposed in the appellant's undertaking, by way of a Push Over Analysis or otherwise. It is expected that such exercise shall be undertaken at the earliest by the Commissioner, preferably within four weeks from date.

24. CAN 1 of 2025 is consequentially disposed of.

25. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)