

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

35 06.9.2024
AB Ct. no.2

WPA 1822 OF 2024

Sri Ganesh Chandra Das

Vs.

Commissioner, Siliguri Municipal
Corporation & Ors.

Dr. Navin Barik, Adv.
Ms. Esha Acharya, Adv.
....For the Petitioner

Mr. Deborshi Dhar, Adv.
....For the Siliguri Municipal Corporation

Mr. Sabir Ahmed, Adv.
Mr. Hillol Saha Poddar, Adv.
Mr. Abhijit Saha, Adv.
Ms. Mousumi Das, Adv.

....For respondent No. 4

The petitioner has assailed the impugned order dated **July 25, 2024** passed by the respondent no.1, **annexure P-10** at **page 61** to the writ petition. Under the said impugned order, the Municipal Corporation had held that at the subject premises there are constructions in existence which are in deviation of the sanctioned plan or without any sanctioned plan. The record shows that previously on two occasions inspections were held at the subject premises on **May 6, 2024, annexure P-5** at **page 44** and on **July 9, 2024** and the

related report is dated **July 20, 2024, annexure P-7** at **page 47** to the writ petition. The illegal construction was alleged by the private respondent no.4 herein, at whose instance ultimately the said impugned order was passed.

Drawing attention to a letter of request dated **July 20, 2024, annexure P-8** at **page 48** to the writ petition, learned counsel appearing for the petitioner submits that on the ground of Smt. Bula Das, since deceased, an adjournment of the hearing was sought for which was fixed on **July 22, 2024**.

The impugned order dated **July 25, 2024** shows that Sri Ganesh Chandra Das, husband of Smt. Bula Das, since deceased, attended the hearing on behalf of Smt. Bula Das, since deceased on **July 22, 2024** when the hearing took place. The impugned order further reveals that the parties submitted that there was certain illegal and unauthorised constructions at the subject premises which is either without the sanctioned plan or in deviation of the sanctioned plan. Finally, the Municipal Corporation had identified the deviation and/or illegality in the constructions at the subject premises and summarised the same in the impugned order.

In course of the hearing both the petitioner and the private respondent No. 4 have relied upon

certain photographs including the photographs annexed to the writ petition. The principal allegation, at this stage alleged by the private respondent is that the free and open space which is statutorily required to be kept at the premises, a portion there of is sought to be converted into a structure by putting RCC construction.

Learned counsel for the petitioner has relied upon a notification bearing no. **889/UDMA-15011(24)/6/2023-LS-MA SEC** dated **December 4, 2023** issued by the Special Secretary to the Government of West Bengal, a copy whereof is taken on record. On the basis of the said notification the petitioner submits that, regularization is possible in respect of the alleged construction with the RCC pillars done at a portion of the open space of the premises.

After considering the rival contentions of the parties and on perusal of the materials on record at this stage, this Court is of the firm view that, the inspection reports have not been challenged and there was due participation of the petitioner in the hearing when the impugned order dated **July 25, 2024** was passed. On a scrutiny of the said impugned order it appears that, the same was passed on the basis of the joint inspection reports, as referred to above. Thus, this Court is of

the considered opinion that, the said inspection reports and the impugned order at this stage are not interfered with.

To sub-serve justice, there shall be a further inspection **only in respect of the alleged new RCC structure existing on the rear side of the building within the premises being the South-East corner of the subject premises and not beyond that.**

Such physical inspection shall be caused in presence of and under the supervision of a learned Special Officer being appointed herein. Accordingly, Mr. Momenur Rahman, learned advocate is appointed as the Special Officer for such purpose in whose presence and supervision, the physical inspection shall be carried out in the manner directed hereinafter. Learned Special Officer shall be paid a remuneration of **Rs.60,000/-** (Rupees sixty thousand only), to be shared equally by the petitioner and the respondent No. 4.

It is made clear that, the learned Special Officer shall only remain present when the physical inspection shall take place and he will oversee the process and then shall file a report before the Court when the matter shall be taken up for further consideration.

It is once again made clear that, the petitioner and the respondent No. 4 at every stage till the physical inspection is completed shall inform the learned Special Officer with the development in the matter with proper notice.

Such physical inspection shall be caused either by the Commissioner of the concerned Municipality by herself or through the jurisdictional Executive Engineer of the Municipal Corporation upon serving a prior notice of at least **three days** to the learned Special Officer, petitioner and the private respondent No. 4, then the authority shall prepare the inspection report and provide copies thereof to the petitioner and the private respondent No. 4 and the learned Special Officer forthwith.

The entire exercise of physical inspection shall be carried out and completed positively within a period of **seven working days** from the date of communication of this order and the report shall be furnished to the petitioner and the private respondent No. 4 positively within a period of **two weeks** from the date of the said inspection to be held.

The Municipal Corporation on the basis of such inspection report shall then take steps in accordance with law forthwith but positively within a period of **two weeks** from the date of the said

inspection. The Municipal Corporation then shall file a report before this Court when the matter shall be taken up next for further consideration.

After completion of the aforesaid exercise the parties shall be at liberty to mention this writ petition before the available Circuit Bench then, subject to its convenience and upon notice to each other.

A copy of the writ petition has already been handed over to the learned Special Officer in Court today by the petitioner.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)