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15.12.2025
d.p.

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

**W.P.A 2006 of 2025
IA No. CAN 1 of 2025**

**Nikhil Das
-versus
Siliguri Municipal Corporation & Ors.**

**Mr. Nabankur Paul,
Ms. Sutapa Sen Paul,
Mr. Bodhisatya Ghosh.
...For the Petitioner.**

**Mr. Bijoy Bikram Das, (vc)
Mr. Deborshi Dhar.
...For SMC.**

**Mr. Sanjay Mazoomdar.
...For the Private Respondent.**

CAN 1 of 2025

1. The petitioner prays for recalling the order dated 31st October, 2025 dismissing the writ petition for default.

2. I have perused the reasons put forth in the application for non-appearance of the learned advocate on the day when the matter was taken up for consideration by the Court.

3. Being satisfied therewith, I recall the order dated 31st October, 2025.

4. The writ petition is restored to its original file and number.

5. The application being IA No. CAN 1 of 2025 is disposed of.

Re: WPA 2006 of 2025

6. The petitioner challenges the order passed by the Commissioner, Siliguri Municipal Corporation on 28th July, 2025 directing the petitioner to remove/dismantle the unauthorized construction at his own expenses within the time limit stipulated therein.

7. The order impugned mentions that the construction complained of is a semi pucca structure.

8. The petitioner submits that the construction in question was made when the land fell within the jurisdiction of the Gram Panchayat.

9. The West Bengal Municipal Corporation Act, 2006 cannot be applied for testing the validity of the construction which was made prior to the Act coming into force.

10. Prayer has been made to set aside the impugned order and to remand the matter back to the Corporation to revisit the issue.

11. Learned advocate representing the Corporation submits that it is for the first time that the petitioner claims that the construction was made when the subject land fell within the jurisdiction of the Panchayat.

12. Learned advocate representing the private respondent submits that there is nothing on record to suggest that the petitioner ever contended before the Corporation that the structure was constructed during the period when the land fell within the jurisdiction of the Panchayat.

13. Upon hearing the submissions made on behalf of the parties and on perusal of the documents

placed before this Court, it appears that the authority has come to a conclusive finding that the structure is an existing old semi pucca shop and the area of the structure is 38.22 sq.mt.

14. It is true that the petitioner never objected to the applicability of the West Bengal Municipal Corporation Act, 2006 in this matter earlier.

15. As an issue has been raised with regard to the applicability of the law under which the construction is being dealt with, the authority, that is the Corporation, ought to revisit the issue all over again.

16. In view of the above, the Siliguri Municipal Corporation is directed to ascertain as to whether the construction was made after the commencement of the Act, 2006.

17. If it appears that the construction was made prior thereto, then the 2006 Act will not be made applicable. In that case the construction, complained of, has to be dealt with in terms of the prevailing Act.

18. The Corporation is directed to keep the impugned order dated 28th July, 2025 in abeyance for the time being to arrive at a fresh decision in the matter at the earliest.

19. Opportunity of hearing shall be granted to the petitioner and the private respondent at the time of consideration of the matter in terms of the directions passed hereinabove.

20. It will be open for the private party to produce documents to show that the construction existed prior to coming into force of the 2006 Act.

21. The writ petition stands disposed of.

22. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Amrita Sinha, J.)