

In The High Court At Calcutta

CIRCUIT BENCH AT JALPAIGURI

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 185 of 2025

Sanjay Ghosh

Vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Sudipto Mazumdar, Sr. Adv.
Mr. Shubhankar Dutta.

For the Siliguri Municipal Corporation : Mr. Bijay Bikram Das,
Mr. Deborshi Dhar.

For the Private Respondent No.3 : Mr. Saptanshu Basu, Sr. Adv.
Mr. Nabankur Paul,
Ms. Sutapa Sen Paul
Mr. Subham Das,
Mr. Bodhisatya Ghosh.

For the State : Mr. Hirak Barman,
Mr. Kumar Shantanu.

Judgment reserved on : 27.02.2026

Judgment delivered on : 05.03.2026

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred praying for direction upon the respondent no. 2 to set aside the impugned notice

dated 06.01.2025 issued by respondent no. 2, vide memo no. 403/SMC/N/Bldg/2024-25.

2. Vide the impugned order dated 06.01.2025, the respondent no. 2 herein passed the reasoned order in compliance of the High Court's direction in WPA 2235 of 2023 dated 26.09.2024. The said order was passed on hearing the parties, which the parties attended.
3. The respondent no. 2 on considering the submission of the parties and on perusal of the materials on record, held as follows:-

".....From the documents submitted by Sri Sanjoy Ghosh, it appears that there was an existing structure at the subject site. But Sri Sanjoy Ghosh could not produce any document i.e., building plan or any other permission with regard to the construction of the said structure.

After the said structure was gutted down by fire Sri Sanjoy Ghosh again tried to construct afresh another structure over the subject site. A complaint was lodged regarding such illegal construction. Accordingly, an inspection was caused. In the said inspection it was found that "A tin shed iron frame structure (area-55.06sq.m) & iron frame structure (area-24.185sq.m), total area: 79.245sq.m has been constructed in the premises of Ashoka Hotel. During enquiry, Sanjoy Ghosh was asked to produce the sanctioned building plan, land deed for raising such construction, but he failed to produce such documents.

Such action of Sanjoy Ghosh was brought to the notice of Hon'ble High Court by way of a Writ Petition being W.P.A. No. 1136 of 2023 filed by Krishna Devi.

The said writ petition was disposed of by the Hon'ble High Court by an order dated 06.06.2023

thereby directing the Municipal Corporation conclude the proceedings under Section 287 in accordance with law and pass a reasoned order.

Pursuant to the order dated 06.06.2023 passed by Hon'ble High Court in connection with WPA No. 1136 of 2023, one opportunity of hearing in terms of Section 287 of The West Bengal Municipal Corporation Act, 2006 was afforded to the concerned parties on 19.07.2023 and accordingly Sri Sanjoy Ghosh was directed to dismantle/remove the unauthorized tin shaded iron frame structure measuring 79.245 Sq.m. from the premises in question since Sri Sanjay Ghosh failed to produce any prior permission and/or sanction from the Corporation for construction of tin shed structure at that time.

The concerned office of the Corporation i.e., the building cell, verified from its records and ascertained that there was no building plan sanctioned for the construction that existed at the subject site prior to the same being gutted down by fire. Sanjay Ghosh also could neither produce any permission either for the previous structure which was gutted in fire nor for the present construction.

Since there was no existing plan as such no permission need to be granted to the applicant for reconstructing the subject structure. **The present structure is a fresh construction which is being erected without any sanction from the Corporation.** There is no scope for regularization of the same under the West Bengal Municipal Corporation Act, 2006.

Sub Rule 1 of Rule 11 of The West Bengal Municipal (Building) Rules, 2007 read with Section 266 of West Bengal Municipal Corporation Act, 2006 is apposite in the present facts and circumstances of the case which postulates that prior permission/sanction is required for raising any construction.

Hence, it is

ORDERED

that as per the provisions laid down under Sub Rule 1 of Rule 11 of The West Bengal Municipal (Building) Rules,

2007 read with Section 266 and 287 of West Bengal Municipal Corporation Act, 2006, **the opposite party namely Sri Sanjay Ghosh is hereby directed to dismantle/remove the said unauthorized tin shaded structure on the premises in question, on or before 31/1/2025 at his own cost, failing which Siliguri Municipal Corporation will demolish/remove the said** unauthorized structure after the expiry of the prescribed period and the cost will be borne by him.

All the concerned parties are hereby directed to act accordingly. A copy of the reasoned order be immediately sent to the concerned section/department and the necessary parties for immediate compliance.

**Sd/-
Commissioner
Siliguri Municipal Corporation”**

4. Supplementary affidavit has been filed by the petitioner wherein the petitioner's application praying for permission to construct a premises in place of the Tin shade which was burnt on 16th February, 2023 has been annexed.
5. The petitioner has further filed a copy of his counterclaim filed in title suit no. 65 of 2023, wherein he has prayed for the following reliefs:-

“..... 1.) A decree declaring that the defendants have absolute right, title and interest with respect to the below scheduled suit property.
2.) A decree for permanent injunction restraining the plaintiffs, their, agent and servants from disturbing the defendants possession of the defendants with respect to the suit land.
3.) A decree for the costs of the suit;
4.) A decree for any other reliefs or reliefs to which the defendants may be found entitled to under the law;”

6. The respondent no. 2 in his affidavit in opposition has stated that the impugned order has been passed on giving a hearing to the parties as directed by the High Court.

7. The respondent no. 2 has further stated in his opposition that:-

“.....From the said report it appears that a tin shaded iron frame structure of area of 79.254 sq.m (approx) had been constructed by the petitioner. Mr. Sanjoy Ghosh could not produce any prior permission from the Corporation for construction of such tin shaded iron frame structure. The petitioner neither applied for nor obtained any fresh/ revised building plan from the corporation for the construction of tin shaded iron frame structure measuring 79.245sq.m. Pertinent to mention herein that any permanent structure requires prior permission from the corporation, which in the instant case in hand has not been obtained. Therefore, order for demolition of the said structure was passed.....”

8. Subsequently a fresh hearing was again granted to the parties in compliance of the High Court's direction dated 26.09.2024 and the impugned order was passed and the findings was the same.

9. The respondent no. 2 has further stated that:-

“.....Since there was no existing plan as such no permission needed to be granted to the applicant for reconstructing the subject structure. The present structure is a fresh and new construction in terms of Section 2 (65) (b) of the said Act, 2006 and was being erected without any sanction. There is no scope for regularization of the same under the provisions of the West Bengal Municipal Corporation Act, 2006. Accordingly, the petitioner was directed to

dismantle/remove the said unauthorized tin shaded structure on the premises in question.....”

10. In reply to the said opposition the petitioner herein states that:-

- a) That the plot of land upon which the hotel named and styled as “Ashoka Hotel” of the petitioner was built by his father somewhere in 1963-64 on piece of vacant land. The father of the petitioner had paid the labourers who worked in building the structure which housed the hotel. In the first stage the ground floor was constructed and thereafter the First floor was constructed in the year 1966.*
- b) That the petitioner's father since the inception was and is in possession of the said Hotel till his death 06.08.1977 and thereafter the petitioner is in possession of the said Hotel and running the same till a major portion of the building and the entire internal furniture and fixtures got burned down in the fire which took place on 23/02/2023.*
- c) That in the year 1975 an agreement to sale of the said property was entered into by and between the father of the petitioner and the then owner of the property. Subsequently a suit for specific*

performance was initiated by the petitioner and his mother which came to be dismissed on 18.06.1996 but the possession of the petitioner was never disturbed from any quarter whatsoever.

d) one Chandra Shekar Chowdhury and two others claiming to be the legal heirs of Sarju Prasad Chowdhury instituted a civil suit for injunction against the petitioner his two brothers before the Court of the Ld. Civil Judge, Junior Division being Title Suit No 65 of 2023 and obtained an ex-parte order of ad interim injunction which was later temporary injunction restraining the petitioner from constructing without the permission or sanction of the respondent number 2. The petitioner is contesting the said suit in full earnest and has submitted his written statement along with a counter claim.

- 11.** It is stated that the Siliguri Municipal Corporation came into existence in the year 1994 and after the fire, which occurred on 23.02.2023, the petitioner on 24.02.2023 informed the respondent no. 2 of his intention to repair the structure and also prayed for financial assistance to repair the same.

12. Written notes filed by parties are taken into consideration.
13. The private respondent no. 3 herein, who claims to be the owner of the disputed property has stated that the father of the petitioner herein was inducted as a tenant in the disputed property. **After his death, his legal heirs, one of them being the petitioner** herein, is occupying the premises being a defaulter in payment of rent.
14. It is submitted that the petitioner herein has made the said construction without any sanction plan.
15. The said respondent no. 3 has relied upon the following provisions of the act of 2006 being the West Bengal Municipal Corporation Act, 2006 and prayed for demolishing of the said structure on strict implementation of the impugned order.
 - i. **Section 2(7) of the West Bengal Municipal Corporation Act, 2006 defines the term building,** which states that, **“building” means** a structure constructed for whatsoever purpose or of **whatsoever materials**, and includes foundation, plinth, wall, floor, roof, chimney, fixed platform, verandah, balcony, cornice, projection or part of a building and anything affixed thereto, and any wall (other than boundary wall of less than two metres in height on the road side, having the solid portion not exceeding 1.5 metres in height)

enclosing, or intended to enclose, any land, sign or outdoor display structure, but does not include a tent, shamiana or tarpauline shelter;".

- ii. **Section 2 (65) (b) of the said Act, 2006** states that the term **“new building” includes:-**

“(b) any building which, having collapsed or having been demolished or burnt down for more than one-half of its cubical extent, is reconstructed wholly or partially after the commencement of this Act, whether or not the dimensions of the reconstructed building are the same as those of the original building”.

Since the earlier structure was gutted in fire, the petitioner having raised a new construction, the same cannot be considered to be a continuation of the earlier building, but (reconstruction) a new building (built afresh).

- iii. **Section 261A of the said Act, 2006 prohibits erection of building without sanction** and categorically states that *"No person shall erect or commence to erect any building or sanction, execute any of the works specified in section 259 **except with the previous sanction of the Commissioner** and in accordance with the provisions of this Chapter and of the rules and the regulations made*

under this Act, in relation to such erection of building or execution of work on payment of such fees as may be prescribed".

iv. Section 262 lays down:-

"262. Erection of building:- Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form together with such fees and containing such information as may be prescribed:

Provided that the Corporation may also levy fees under this section with retrospective effect on case to case basis."

This provision also applies in case of re-construction (as in this case).

v. Rule 11(1) of the West Bengal Municipal (Building)

Rules, 2007, mandates that "no person shall erect a new building, or **re-erect** or make additions to and/or alteration of any building or cause the same to be done **without first obtaining a sanction** in the form of a building permit from the Board of Councillors under these rules."

vi. Section 287 read with section 266 of the said Act, 2006 empowers the Commissioner to pass an order of demolition, where the erection of any building has been commenced without obtaining sanction or permission, which also includes 'reconstruction' as in this case.

16. The judgments relied upon by the respondent are as follows:-

a) Dipak Kumar Mukherjee vs Kolkata Municipal Corporation & Ors. reported in (2013) 5 SCC 336 paragraphs 8 and 9.

b) Sarita Agarwal vs Municipal Building Tribunal, Kolkata Municipal Corporation & Ors. reported in (2009) 4 CNH 734 paragraphs 21, 22.

c) Ghanashyam Das vs The Kolkata Municipal Corporation & Ors. 2014 SCC OnLine Cal 15980.

17. This Court on hearing the parties and perusal of the materials on record and also relying upon the judgment of a Co-ordinate bench passed in **WPA 16981 of 2024 and 16979 of 2024, Kishori Lal Poddar vs Bidhannagar Municipal Corporation & Ors. decided on 08.05.2025**, is of the view that the petitioner's case comes within the Sections referred to herein, for a new construction, even if it is in place of an old construction (reconstruction in this case). As such the impugned order passed by the respondent no. 2 being in accordance with law requires no interference, considering that no sanctioned plan could also be placed before this Court, by the petitioner till date.

18. But keeping in mind **the principles of equity**, the writ application is disposed of with **liberty granted to the petitioner** to pray for necessary sanction within 15 days from the date of this order for making the (re)construction, which the respondent no. 2 shall consider, in accordance with law, as per the relevant provision of the act, **expeditiously**.
19. In case no such application is made within 15 days as per liberty granted, the respondents shall be at liberty to put the impugned order dated 06.01.2025 into effect thereafter without any further reference to this Court.
20. **The writ application is accordingly disposed of.**
21. All connected application, if any, stands disposed of.
22. Interim order, if any, stands vacated.
23. Urgent Photostat certified copy of this Judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]