

In The High Court at Calcutta

In The Circuit Bench at Jalpaiguri

Appellate Side

Ct. No. 5 26.02.2026
JPD
Item No. 13 SM

WPA 135 of 2026

Prakash Singh

Versus

The State of West Bengal & Ors.

Mr. Rahul Ghatak

Mr. Ambalika Roy Ghatak

.....for the petitioner

Mr. Bijay Bikram Das

Ms. Deborshi Dhar

.....for the Siliguri Municipal Corporation

- 1.** The writ application has been preferred praying for direction upon the respondent no. 2 to set aside the impugned order no. 406/SMC/N/Bldg./2025-26 dated 23.12.2025.
- 2.** The petitioner has further prayed for a fresh hearing on setting aside of the said order, after being supplied with the inspection report.
- 3.** The respondents herein have filed a report in the form of affidavit as directed. Copy served upon the learned counsel for the petitioner.
- 4.** The sole contention of the petitioner herein is that though the inspection in the present case was conducted in his presence, no copy of the inspection report has been served upon him, though the petitioner duly attended the said meeting.
- 5.** It is submitted that as the respondent authority did not provide him a copy of the inspection report, the said impugned order is liable to be set aside.

6. It appears that the impugned order in the present case has been passed by the respondent no. 2 in compliance of the direction of the High Court passed in WPA 1133 of 2025, wherein on conducting an inspection in the presence of all stakeholders, including the petitioner, the technical officials submitted an inspection report.

7. The relevant portion of the inspection report are as follows:-

“1. 04 (Four) nos. tin shaded retails shop was found there being area as 5.60mtr. X 2.70mtr, 2.27mtr X 6.47mtr., 2.43mtr X 6.55mtr, 2.43mtr X 6.55mtr.

2. The opposite parties did not produce any sanctioned building plan for such construction at site during enquiry.”

8. After the said inspection report was submitted, a notice for hearing was issued on 03.11.2025. In course of hearing the complainant withdrew his complaint, but the respondent no. 2 proceeded to act as per the provisions of the West Bengal Municipal Corporation Act and held that Section 287 of the West Bengal Municipal Corporation Act, 2006 read with Section 32 is applicable and thus directed as follows:-

“Hence, it is

Ordered

that in exercise of powers conferred under Section 287 of the West Bengal Municipal Corporation Act,

2006, read with Rule 32 of the West Bengal Municipal (Building) Rules, 2007, the Opposite Parties are hereby directed to remove/dismantle the unauthorized structures standing at the alleged premises as mentioned in the inspection report dated 21.06.2025 on or before 07/01/2026 at their own cost and responsibility.

In default thereof, the Siliguri Municipal Corporation shall remove/dismantle the said unauthorized structures after expiry of the prescribed period, and the entire cost incurred shall be recoverable from the Opposite Parties in accordance with law.

All concerned parties are directed to act accordingly. A copy of this reasoned order shall be forwarded forthwith to the concerned section/department and to the necessary parties for immediate compliance.

*Sd/-
Commissioner
Siliguri Municipal Corporation”*

- 9.** Being aggrieved, the writ application has been preferred solely on the ground that the petitioner has not been provided with a copy of the inspection report, which has been relied upon by the respondent no. 2, who has passed the reasoned order in compliance of the High Court's direction.
- 10.** It appears from the record, that the relevant part of the inspection report, has been duly

reproduced in the order and as such the same is well within the knowledge of the petitioner.

11. Learned counsel for the respondent relies upon the definition of the word 'Building' in support of their case that the structure on the said land is a **'Building'** under the Act and the same can only be constructed /reconstructed with the sanction /permission of the authorities under the Act, on compliance of all required formalities, which in this case has not been done by the petitioners herein.

12. The said respondent 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.

13. 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.***

14. 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 mentioned 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 sanction plan could also be placed before this Court, by the petitioner till date.

15. 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**.

16. 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 23.12.2025 into effect there after without any further reference to this Court.

17. The writ application is accordingly disposed of.

18. All connected application, if any, stands disposed of.

19. Interim order, if any, stands vacated.

20. 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]