

Form J(2)
Sl.No.5
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In the High Court at Calcutta
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

WPA 446 OF 2026

Swati Dey

VS.

Siliguri Municipal Corporation & Ors.

For the petitioner : Mr. Sanjay Mazoomdar, Adv.

For the Respondent Nos. 1,2 & 3/ SMC

: Mr. Bijoy Bikram Das, Adv.
Mr. Deborshi Dhar, Adv.

For the Respondent Nos. 4 to 6 & 8

: Mr. Sayan De, Adv. (VC)
Ms. Esha Acharya, Adv.

For the Respondent No. 9

: Mr. Rahul Ghatak Adv. (VC)

Heard on : May 21, 2026

Judgment on : May 21, 2026

[In Court]

Aniruddha Roy, J. :

1. Mr. Sanjay Mazoomdar, learned Advocate appears for the petitioner.

2. Mr. Deborshi Dhar, learned Advocate appears for the respondent nos. 1 to 3/municipal corporation.
3. Mr. Sayan De, learned Advocate (VC) with Ms. Esha Acharyya, learned Advocate appears physically for the respondent no. 4 to 6 and 8.
4. Mr. Rahul Ghatak, learned advocate appears for the respondent no.9.
5. On the prayer of Mr. Sanjay Mazoomdar, learned Advocate appearing for the petitioner leave is granted to the petitioner to file a supplementary affidavit. The supplementary affidavit, filed in Court today, is taken on record. Copy has been served.
6. The petitioner claims to be owner of a particular premises within the municipal jurisdiction of the respondent no.1.
7. Respondent no.9 is the husband of the petitioner. The relation between them is such, as submitted by the petitioner and the respondent no.1 that, they do not have any communication between themselves though they reside under the same roof.
8. The respondent nos. 4 to 6 and 8 claim that, they have purchased their respective flats at the same premises.
9. The allegation is for unauthorized construction at the premises.
10. Mr. Deborshi Dhar, learned Advocate appearing for the respondent nos. 1 to 3/municipal corporation submits that, the issue had already travelled up to the desk of the Commissioner. Ultimately an order of demolition has been passed on **February 27, 2026**. The demolition

order dated **February 27, 2026** is annexed to the supplementary affidavit as **Annexure-P3 at page 3** thereto.

11. Learned Advocate for the municipal corporation submits that, following the due process of law and upon serving proper notice of hearing, the hearing took place and demolition order has resulted. The hearing was attended by the respondent no.9/husband along with his advocate.
12. The record shows that, prior hearing notice was served upon the petitioner and she has accepted it by putting her signature on the receipt copy. Copies of the relevant records, placed before this Court from the end of the municipal corporation, are taken on record.
13. Mr. Sayan De, learned Advocate (VC) with Ms. Esha Acharyya, learned Advocate appearing for the alleged flat owners/respondent nos. 4 to 6 and 8 submits that, respondent no.9/husband of the petitioner has constructed substantial illegal and unauthorized construction at the premises including at the roof. The flat owners have also lodged complaints before the municipal corporation in this regard.
14. Respondent no.9/husband submits that, no prior notice of hearing was served upon him and the petitioner submits that, the order of demolition was passed in her absence.
15. Mr. Deborshi Dhar, learned Advocate appearing for the municipal corporation has denied and disputed the submissions made by the respondent no.9/husband as also by the petitioner.

16. After hearing the rival submissions of the parties and on perusal of the materials on record this Court finds that, correctly or incorrectly an allegation of unauthorized construction in deviation of the sanctioned building plan is there on record and the same needs to be addressed by the jurisdictional municipal authority forthwith. Though the order of demolition is there on record dated **February 27, 2026** but the allegations and counter allegations of the parties, as recorded above, would show there might be some disputed facts with regard to service of notice or participation in the hearing. In such circumstance, this court deems it fit and proper that, the municipal corporation **must revisit the issue** in accordance with law forthwith. Accordingly, the order of demolition dated **February 27, 2026** which is in existence stands **set aside** and **quashed**.

17. Following directions are made :

- a. The respondent no.2 upon issuing a prior hearing notice of clear **three days** on the petitioner, respondent no.9 and respondent nos. 4 to 6 and 8 and by fixing a date and time shall cause an inspection of the **entire** premises in the light of the existing sanctioned building plan;
- b. For the purpose of this inquiry, the respondent no.2 shall be at liberty to depute an experienced competent authority from his office who shall cause the said inquiry;

- c. The said inquiry shall be completed **positively** within **seven days** from the date of communication of this order and upon serving a prior notice, as mentioned above;
- d. The report of the inquiry then shall be provided to the petitioner, respondent no.9 and respondent nos. 4 to 6 and 8;
- e. In the event, the unauthorized construction is detected **anywhere** of the said premises, the respondent no.2 then after granting an opportunity of hearing to the petitioner, respondent no.9 and the respondent nos. 4 to 6 and 8 shall pass a reasoned order in accordance with law. This exercise for holding hearing and passing a reasoned order shall be done positively by the respondent no.2 within a period of **two weeks** from the date of holding the inquiry;
- f. The reasoned order then shall be communicated to the petitioner, respondent no.9 and respondent nos. 4 to 6 and 8 within **three working** days from the date of the said reasoned order to be passed.
- g. In the event, the reasoned confirms unauthorized construction **anywhere** in the said premises, the respondent no.2 shall take all necessary and consequential steps for removal of the same and to demolish such unauthorized construction forthwith but positively within a period of **one week** from the date of communication of the reasoned order in accordance with law.

18. In the event, any police assistance is required by the respondent no.2, it shall be free to take such assistance upon intimation to the jurisdictional police station and in that event the jurisdictional police station shall render all necessary assistance to the respondent no.2, without fail.
19. It is made clear that, if at any stage any of the parties avoids to receive notice or the reasoned order, the municipal authority shall be free to proceed in accordance with law to give an immediate effect to the said reasoned order to be passed.
20. Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.
21. With the above observations and directions this writ petition, **WPA 446 of 2026** stands disposed of, without any order as to costs.
22. Parties shall act on the basis of the server copy of this judgment duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)