

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

WPA/133/2025

G. Bhoominathan

Vs.

Hon'ble Lieutenant Governor, A &N Administration and others

Mr. KMB Jayapal ... for the petitioner

Mr. Shatadru Chakraborty, Sr. Adv.

[through virtual mode]

Mr. Rakesh Kumar

Mr. Dibesh Dwivedi ... for the respondents

July 09, 2025

[Manoj]

Item Nos. 5

The controversy in this writ petition has been set out in the order dated March 6, 2025, passed by this Court. The same is reproduced below:

“The petitioner challenges an order dated March 3, 2025, issued by the Secretary of the Municipal Council of Sri Vijaya Puram.

By the impugned order, the said authority determined that the petitioner had unlawfully erected a rolling shutter, thereby encroaching upon a verandah space intended for customers. As a result, the petitioner was directed to remove the rolling shutter and restore the verandah at the petitioner's expense on or before March 6, 2025. The notice further stated that, in the event of non-compliance, the Municipal Council would remove the rolling shutter at the petitioner's cost.

Mr. Sakya Sen, learned advocate for the petitioner, disputes the findings of the authority in passing the impugned order. He submits that the petitioner installed the shutter in full compliance with the permission letter dated October 22, 2011, issued by the Revenue Officer of the Municipal Council. Moreover, the petitioner has never been penalized for installing the shutter pursuant to that permission. He denies the allegations of encroachment.

On the other hand, Mr. Shatadru Chakraborty, learned advocate for the Municipal Council, submits that the impugned order was passed after considering all relevant documents, in compliance with the order dated January 31, 2025, passed in WPA 50 of 2025. He further contends that the impugned order contains sufficient reasoning and findings regarding the petitioner's alleged encroachment.

However, it does not appear from the impugned order that the Municipal Council conducted an inspection of the premises with due notice to the petitioner, on the basis of which the finding of encroachment was made.

In light of this, Mr. Lokesh Chelizean (Mobile No. 7063952477) is appointed as a Special Officer to inspect the premises in question on March 15, 2025, at 1:30 p.m., with the assistance of a surveyor, to determine whether the rolling shutter was recently erected to occupy the space intended for customers.

The petitioner is required to remain present during the inspection. A competent officer of the Municipal Council shall also be present. Since all parties are represented before this Court, the Special Officer shall not be required to issue any separate notice.

The matter shall be listed after three weeks under the heading 'Upgraded Motion,' when the Special Officer shall submit his report before this Court.

The Special Officer shall be paid a consolidated fee of Rs. 10,000, to be borne by the petitioner.

In view of the above, there shall be a stay on the operation of the impugned order dated March 3, 2025, for a period of six weeks from the date of this order."

In compliance with the above directions, the Special Officer has filed his report before this Court. The inspection was conducted after due notice to all concerned parties and in their presence.

The relevant portion of the Special Officer's report is quoted below:

"A. Whether the rolling shutter has been recently erected to occupy the space intended for customers?

The shop room, being Shop Room No. 9, was measured by the Surveyor of Sri Vijaya Puram Tehsil, with reference taken from the building plan map of the Vegetable Market at Mohanpura. It was found that the front passage has been occupied by the writ petitioner to an extent of approximately 7.20 sq. mtrs (3.00 m x 2.40 m).

There are two rolling shutters. The one attached to Shop Room No. 9 is painted and in good condition, without rust. The second shutter, located in front of Shop Room No. 9 between the passage and the RCC drain slab, is rusted but still functional.

The passage intended for customers has been partially occupied by the petitioner, who has placed goods

and perishable items such as vegetables in the area. At the time of inspection, two foldable aluminum sheet doors were partially open. The petitioner was requested to close them with locks to assess any obstruction. Once closed, it was found that the entire passage area in front of Shop Room No. 9 became inaccessible, and the rolling shutter was also found to obstruct the space.

The occupation is further evidenced by the presence of permanent electrical appliances such as a fan. Notably, no other shop room in the area has installed permanent electrical appliances in the passage, apart from the writ petitioner.”

Mr. K.M.B. Jayapal, learned advocate for the petitioner, has objected to the Special Officer’s report by filing an affidavit. He submits that the relevant rolling shutter was installed with due permission from the Municipal Council and does not encroach upon any common area.

However, I am not inclined to accept the objections raised by Mr. Jayapal. The report of the Special Officer clearly establishes that the petitioner has erected a rolling shutter that occupies a substantial portion of the common entrance passage. There is no sufficient reason to disregard the findings contained in the report.

The special officer stands discharged.

Accordingly, I find no merit in the writ petition.

WPA/133/2025 is dismissed.

(Kausik Chanda, J.)