

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

WPA/134/2025

Smti M Devi

Vs.

Honble Lt. Governor, Andaman and Nicobar 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. 33

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 space at the petitioner’s expense on or before March 6, 2025. The notice further stipulated that in the event of 2 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 in accordance with the said permission letter. 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, as directed by this Court in its order dated January 31, 2025, in WPA 50 of 2025. He further contends that the impugned order provides proper

reasoning and findings regarding the petitioner's encroachment.

However, it does not appear from the impugned order that the Municipal Corporation inspected the relevant premises with due notice to the petitioner, from which the finding of encroachment was derived.

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., to determine, with the help of a surveyor, whether the rolling shutter has been recently erected to occupy the space intended for customers.

The petitioner is required to be present during the inspection.

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

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 compensated with a consolidated fee of Rs.10,000, which shall 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. 3 was measured by the Surveyor of Sri Vijaya Puram Tehsil and the reference point for the said survey was taken from the building plan map of Vegetable Market at Mohanpura and it has been found that the front passage has been occupied by writ petitioner at about 6.21 sq.mtrs (2.70 m x 2.30 m).

That there are two rolling shutters in front of Shop room No. 1 erected between the RCC Drain slab and passage and one rolling shutter erected between the passage prior to Shop Room No.3, which is being used as a passage to enter the Super Market only, the same is in good condition with some rust and the same is in working condition.

The space intended for customers at passage has been partly occupied by the writ petitioner by placing certain goods and perishable items such as packaged food items and when the inspection was conducted, the writ petitioner was requested to close the said rolling shutter in front of the shop room No. 3 in order to ascertain whether the said structure obstructs the passage or not and after closing the rolling shutter in front of the shop room No.3, it was found that the passage area in front of Shop Room No. 3 was accessible as there is another rolling shutter erected in the passage but if the another rolling shutter between the passage is closed, the passage will be not accessible either to writ petitioner or customers and it was found that the front passage has been occupied by writ petitioner by constructing tiled flooring and movable goods.

That the said occupation is supported with the tiled flooring in the passage, no other shop room has erected tiled flooring 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/134/2025 is dismissed.

(Kausik Chanda, J.)