

Item No.33
02.09.2026
Court. No. 12
GB

FMA 1010 of 2026
With
CAN 1 of 2026

Ranjan Saha & Ors.
VS
Kolkata Municipal Corporation & Ors.

Sk. Md. Galib,
Md. Adnan Ahmed,
Md. Rustam,
Ms. Sangita Paul

... for the Appellants.

Mr. Billwadal Bhattacharyya, Ld. AAG.,
Mr. Srijib Chakraborty,
Mr. Debanjan Mukherjee

... for the KMC.

1. The appeal arises out of an order dated July 7, 2026, passed in WPA 12412 of 2026. The appellants were the writ petitioners. They prayed for an order upon the Special Officer (Building) allowing their participation in the demolition proceeding initiated by the Kolkata Municipal Corporation, in respect of the Premises No.19A, Syed Amir Ali Avenue.
2. Mr. Galib, learned advocate for the appellants submits that the appellants have been occupying the premises for the past few decades. Rent control challans showing deposit of the rent have been annexed. As per the challan, the estate belonged to Ms. Muluk Zadi and Ms. Noor Jahan. Earlier to that, one Phullan Bibi was the landlord and rent receipts had been issued by her.
3. The owners who were issued notice of hearing by the Special Officer (Building) under Section 400(1) of the

Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the 'said Act'), were subsequent purchasers.

4. Thus, it is contended that, the owners who have been asked to participate in the proceeding are not in a position to apprise the Special Officer (Building) about the actual state of affairs. The appellants, who have been occupying the premises since long, were in a position to answer the questions to be raised at the hearing.
5. Mr. Galib submits that, under such peculiar circumstances, when the original owners are not available and the purchasers who may have acquired ownership at a later date, are unable to satisfy the Special Officer (Building) as to the validity of the construction, the appellants should be given an opportunity to participate at the hearing.
6. Mr. Bhattacharyya, learned Additional Advocate General appears on behalf of KMC and submits that an occupier who is not responsible for the unauthorized construction, does not have a right of audience. He submits that, this Court and the coordinate Benches have already taken a view in this regard. The matter is now well-settled. There is no reason to unsettle the ratio laid down by Court, upon interpretation of Section 400(1) of the said Act.
7. He further submits that, if we allow participation of the appellants, it would open a flood gate and lead to abuse of process of Court. In such situations, owners will set up imaginary occupiers by creating documents only to stall a demolition proceeding.

8. Upon hearing the rival contentions of the parties, we once again reiterate that an occupier who has not raised the subject unauthorized construction need not be heard.
9. However, the situation is not the same in this case. It appears that the building is very old. It has been standing there since long. Several hands have changed with regard to ownership. The order of the Special Officer (Building) records that the present owners could not apprise the officer with regard to the validity of the building and have failed to produce relevant documents, including the sanction plan. It may so happen that the occupiers in the building, might have constructed portions which were not permissible in law. Secondly, we find that the Executive Engineer has been asked to inspect the building and prepare a demolition sketch map with details of the infringement.
10. Under such circumstances, it is necessary that a representative of the appellants be present during such inspection, to apprise the authority on the facts. In the present case, the person at whose instance the construction was made, is unavailable. Thus, there must be some representation. We also deem it necessary for the Executive Engineer to handover the report as prepared at the time of inspection to the representative of the appellants. Thereafter, when the proceeding continues before the Special Officer (Building), the said representative of the appellants shall be permitted to produce documents which they may be privy to, in support of the fact that the building is not unauthorized.

11. This order will not create a precedence and is only restricted to the appellants in this appeal. However, participation does not mean that the appellants have a right to seek retention of an unauthorized building. The issue will be decided in accordance with law, by the Special Officer (Building).
12. Participation in the proceeding only means that a representative of the appellants will be permitted to attend the hearing and while doing so, documentary evidence and contemporaneous documents in support of such construction shall be placed before the authority. The Special Officer (Building), upon hearing the notices as also a representative of the appellants, will dispose of the matter and reach the same to its logical conclusion. The participation of the appellants will be in aid of the proceeding and will not create any equity in their favour in respect of the construction. The fate of the construction will be subject to the demolition proceeding.
13. Accordingly, the appeal and the connected application are disposed of.
14. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)