

25.08.2026
Court No.12
SL No.24
Cp/Gb

MAT 1360 of 2026
With
CAN 1 of 2026
With
CAN 2 of 2026

Nazneen Jahan & Ors.
Vs.
Md. Kalam & Anr.

Mr. Sounak Bhattacharyya,
Mr. Goutam Das,
Mr. Altamas Kabir

... for the Appellants.

Mr. Subhajit Chowdhury,
Mr. Binay Shaw

..... for the respondent/writ petitioner.

Mr. Biswajit Mukherjee
Mr. Debanjan Mukherjee

...for the K.M.C.

The appeal arises out of an order dated June 11, 2026, passed in CPAN 1824 of 2024 which arose out of WPA 5698 of 2023.

CAN 1 of 2026 is an application for leave to appeal. The applicants are either intending tenants or intending purchasers of certain flats in Premises No.B/1/H/4, Rameshwar Shaw Road, Ward No.059, Police Station – Beniapukur, Kolkata – 700014.

They submit that the order passed by Her Lordship in the contempt application, thereby, directing demolition of the unauthorized floors in the building, affected their right to enjoy the property and, as such, they should be granted leave to prefer this appeal.

It is further submitted that the Joint Commissioner of Police, Lalbazar and the Officer-in-Charge, Beniapukur Police Station had been approached by the Corporation to get the premises vacated.

It is urged that, Her Lordship had failed to consider the plight of the occupants of the building who had invested money in the same. Moreover, the persons in occupation were not heard when the demolition order was passed on April 19, 2024. As such, Mr. Bhattacharyya, learned advocate for the applicants, submits that the order of Her Lordship should be modified to the extent that, before the applicants could avail of their remedy under the law, demolition should not take place.

Mr. Mukherjee, learned advocate for the Kolkata Municipal Corporation, submits that, in respect of the self-same property and by challenging an order of demolition passed by the learned Single Judge, FMA 993 of 2026 was filed. The Division Bench had granted a breathing time of a month to some of the occupants of the said building, to avail of their statutory right of appeal. According to Mr. Mukherjee, despite such liberty being granted, no order of the Building Tribunal had been served upon the Corporation, staying such demolition. On the other hand, it is submitted that the officers of the Corporation are facing contempt and orders have been passed to freeze retiral dues of the contemnor until further orders.

Admittedly, there are unauthorized constructions of a few floors. No sanction had been granted for such construction. There is an order of demolition and the person interested at the relevant point of time was heard. At the stage of demolition, batches of alleged tenants and/or occupants are approaching the court, praying for stay of the demolition work, on the ground that they were not heard.

However, the law does not contemplate that each and every occupant of an unauthorized structure must be heard. The person responsible for such construction was heard and order was passed. None of the applicants challenged such order at the appropriate stage. Although Mr. Bhattacharyya contends that they were unaware of the order of demolition, it is the specific case of the Corporation that notices were pasted at conspicuous places of the construction. Thus, the plea of ignorance could not be accepted. Secondly, it is submitted that part demolition has already taken place.

The documents which have been annexed to the stay application only indicate that, either the applicants were intending to take the respective portions on rent or they had booked the same. With regard to the booking of the flats we find that, all the documents are notarized documents on either Rs.10/- or Rs.50/- non-judicial stamp papers. Admittedly, no title has passed on the basis of such documents.

With regard to the tenancy document also, it appears that a tenancy agreement would be executed in future. There are no rent receipts which indicate that some of the applicants are residing in the premises as tenants.

Under such circumstances, the documents relied upon, do not create any right upon the applicants to be heard by the Kolkata Municipal Corporation before demolition.

Section 400 (1) of the KMC Act, 1980 set out below:-

“400. Order of demolition and stoppage of buildings and works in certain cases and appeal.- (1) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 396 or in contravention of any of the provisions of this Act or the rules and the regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order. Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Municipal Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:”

The Section provides that, where erection of any building or the execution of any work had been commenced or carried on contrary to the sanction or

without sanction, the municipal commissioner may make an order directing such erection or work to be demolished by the person at whose instance the erection or the work had commenced or was being carried on. The proviso states that no order of demolition shall be made unless such person, has been given by means of a notice served in the manner prescribed by the municipal commissioner, a reasonable opportunity of showing cause why such order should not be passed. Quote

We are of the view that the expression such person in the first line of the proviso is qualified by the expression, "person at whose instance the erection or the work has been commenced or is being carried on or has been completed." The proviso cannot create an additional right of hearing in favour of all persons in occupation of the premises. The proviso has to be read in consonance with the actual provision. The law requires hearing to be given to the person at whose instance the erection or the work had commenced or had been completed or carried on. The legislative intent is clear. The legislature has framed the law for obtaining permission before any construction as a regulatory measure. Purported tenants or proposed buyers cannot come in batches by filing petitions after petitions to stall the demolition work, although the court had directed immediate demolition. If the interpretation of law is that each and every person who claims to have an interest in the property by way of

some sort of permission to occupy must be heard, in such cases the person at whose instance an unauthorized construction was erected may set up proxies in order to stall the implementation of the law.

The applicants cannot claim violation of their right and the remedy under Article 226 of the Constitution of India cannot be availed of to justify an unlawful act and prevent a statutory authority from lawfully discharging its statutory duty.

Reference is made to the decision of a single Judge of this court in ***Sanjay Mehta & Ors. vs The Kolkata Municipal Corporation & Ors.*** reported in ***2006 SCC Online Cal 447***. The relevant portions of the said judgment are quoted below:-

“36. First proviso to sub-section (1) of section 400 of the said Act recognises the right of the person at whose instance the erection of the work has been commenced or is being carried on or has been completed. Explanation added to sub-section (1) of section 400 of the said Act explains the meaning of the expression “person at whose instance” appearing in sub-section (1) thereof. It is stated in the said explanation that in this Chapter “the person at whose instance” shall mean the owner, occupier or any other person, who causes the erection of any building or execution of any work to be done including alterations if any, or does it by himself. Thus, “the person at whose instance” is an inclusive expression which not only includes the owner or the occupier but also includes any other person who causes erection of any building or execution of any work to be done including alterations if any or does it by himself.

37. In short, the right of hearing is recognised for such owner, occupier or any other person who is actually responsible for such unauthorised construction.

38. Let me now consider the provision relating to appeal.

39. Section 400(3) of the said Act confers a right of appeal upon "any person" who is aggrieved by an order made under section 400(1) of the said Act.

40. Does the expression "any person" mean and/or include all persons affected by the order of demolition?

41. My answer to this question is "no". The reason is very simple. The person whose right of hearing is not recognised at the trial stage, cannot claim any right of appeal, as appeal is a continuation of the original proceeding. Then I will have to find out the persons whose right of participation in the proceeding at the initial stage is recognised and the person whose such right is not recognised.

42. I repeat once again that it is only those owner, occupier and/or any other person who is responsible for such construction, is the person whose right of participation in the proceeding under section 400(1) of the said Act is recognised. Needless to mention here that such right of participation of the other owner, occupier who is not responsible for such construction, is not recognised. If that be the position in law, then this Court has no hesitation to hold that "any person" carries a restricted meaning with it.

43. Thus, this Court holds that the owner and/or occupier who is not responsible for such construction, cannot prefer any appeal under section 400(3) of the said Act. "Any person" means any of three categories of persons, viz., owner, occupier or any other person who is actually responsible for such construction.

44. Furthermore, a tenant being an occupier of an unauthorised construction cannot oppose demolition of an unauthorised construction by contending, inter alia, that though such construction is unauthorised but still then such construction should be retained to protect the tenant's occupation therein. In case of demolition of any unauthorised construction, a tenant may at best claim compensation for loss of his tenancy against his landlord who has inducted the tenant in an unauthorised construction without disclosing the nature of such construction, but the tenant cannot resist demolition of an unauthorised construction on a plea of loss of his tenancy right. The Municipal authority is not a party to the tenancy agreement and as such, the Municipal authority has no duty to

look into the sufferance of the tenants due to demolition of the unauthorised construction."

In the matter of ***Ram Awatar Agarwal and Ors. Vs. Corporation of Calcutta and Ors.*** reported in ***1982 SCC Online Cal 81***. The Calcutta High Court held as follows:-

27. Now the question is whether each and every occupier who is found in the unauthorized building at the time of the execution of the demolition order should be served with a copy of the order. It is the contention of the appellants that if any person comes to occupy the building before the execution of the demolition order, he has to be served with a copy of the order and, consequently execution will have to be deferred for thirty days as provided in the first proviso to S. 414 (3) of the Act. This will mean that each time the Corporation proceeds to demolish the building, if a new occupier is found in the building, he will have to be served with a copy of the demolition order and the work has to be postponed for thirty days from the date of service. In our opinion, if such a contention is accepted, it will defeat the purpose and object of S. 414 of the Act. In that case, a demolition order may be defeated by the owner of an unauthorized building or structure or a person responsible by inducting a new occupier each time the Corporation starts the demolition work. A statutory provision should not be interpreted in such a way as will render it nugatory. The interpretation should be such as to make the provision workable and consistent with the object and purpose for which it has been enacted. On a proper construction of the first proviso to S. 414(3) of the Act, it seems that after a demolition order is passed and copies of which are served on the owner and the occupiers for the time being of the unauthorized structure, the Corporation will be entitled to start the demolition work after the expiry of thirty days from the date of service of the demolition order. No further copy of the demolition order is required to be served by the Corporation on any person who comes to occupy the unauthorized structure during the period of thirty days or during the period between the service of the copies of the demolition order and the execution of the work of demolition. Any other interpretation of the first proviso to S. 414(3) of the Act will frustrate the very object and purpose

of the provision and the intention of the legislature. In other words, the provision of S. 414 will be rendered inoperative.

29. It is contended on behalf of the appellants that the occupiers have a statutory right to claim service of the copies of the demolition orders on them. Technically it may be correct, but the grant of any relief under Art. 226 of the Constitution is discretionary with this Court. Nobody can claim as a matter of right that he must be given the relief he asks for in his writ petition. After considering the facts and circumstances of the case, we are of the view that it is a fit case where we should not exercise our discretion by issuing a mandate on the Corporation to serve copies of the demolition orders on the occupiers of the building”

In the matter of ***Bijay Biswakarma Vs. Rajkumari Devi Singh & Ors.*** decided in ***MAT 2279 of 2023***, Calcutta High Court held as follows:-

“25. In the reported decisions of Sanjay Mehta(supra) as passed by a Single Bench of this Court, a similar question arose as to whether Section 400(1) of the said Act recognizes the right of an occupier of an unauthorized construction to represent himself in a demolition proceeding. The question arose in the said case as to whether each and every occupier of a disputed building enjoys such right or not. In answering to such question the learned Single Bench expressed the following view:-

“40. Does the expression "any person" mean and/or include all persons affected by the order of demolition?

41. My answer to this question is "no". The reason is very simple. The person whose, right of hearing is not recognised at the trial stage, cannot claim any right of appeal, as appeal is a continuation of the original proceeding. Then I will have to find out the persons whose right of participation in the proceeding at the initial stage is recognised and the person whose such right is not recognised.

42. I repeat once again that it is only those owner, occupier and/or any other person who is responsible for such construction, is the person whose right of participation in the

proceeding under section 400(1) of the said Act is recognised. Needless to mention here that such right of participation of the other owner, occupier who is not responsible for such construction, is not recognised. If that be the position in law, then this Court has no hesitation to hold that "any person" carries a restricted meaning with it.

43. Thus, this Court holds that the owner and/or occupier who is not responsible for such construction, cannot prefer any appeal under section 400(3) of the said Act. "Any person" means any of three categories of persons, viz., owner, occupier or any other person who is actually responsible for such construction.

44. Furthermore, a tenant being an occupier of an unauthorised construction cannot oppose demolition of an unauthorised construction by contending, inter alia, that though such construction is unauthorised but still then such construction should be retained to protect the tenant's occupation therein. In case of demolition of any unauthorised construction, a tenant may at best claim compensation for loss of his tenancy against his landlord who has inducted the tenant in an unauthorised construction without disclosing the nature of such construction, but the tenant cannot resist demolition of an unauthorised construction on a plea of loss of his tenancy right. The Municipal authority is not a party to the tenancy agreement and as such, the Municipal authority has no duty to look into the sufferance of the tenants due to demolition of the unauthorised construction."

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30. I am in agreement with the view taken by the learned Single Bench in the reported decision of Sanjay Mehta (supra) that the present appellant being a tenant cannot claim any right or equity to protect his possession in respect of an unauthorised occupation and at best his remedy lies in seeking a compensation for loss of his tenancy against his landlord.

31. In considered view of this Court the reported decision of Amar Singh Harika (supra) and BachhitaSingh (supra) as cited from the side of the appellant has got no bearing in the facts and circumstances as involved in this appeal since non-communication of order of demolition by the Municipal Commissioner under the first proviso of Section 400(1) does not cause any prejudice to the present appellant. In view of my discussion (supra)

that the present appellant being the person not responsible for the illegal construction is not entitled to such notice in view of the legislative mandate under Section 400(1) of the said Act.

32. The reported decision of Bhaggo Dhar Manna (supra) as has been cited from the side of the appellant is also no way significant in my considered view for effective disposal of the instant appeal.

33. Before parting with, I once again reiterate that the present appellant has got no locus either to participate in the proceeding before the Municipal Commissioner or at the same time he has no right to prefer any appeal under Section 400(3) of the said Act before the Municipal Commissioner in view of the fact that it is the legislative intent as well as it has been consistently held that the words 'any person aggrieved' as mentioned under Section 400(3) of the said Act has to be construed keeping in mind the provision of Section 400(1), its first proviso and its explanation and the words 'any person aggrieved' cannot include any person and/or any other occupier and/or any other tenant who is not responsible for the illegal construction or erection of any building."

The original order of demolition has attained finality and the same has not been either upset or set aside or stayed by any competent forum.

Unauthorized constructions cannot be allowed to continue for an unending period, on the ground that the occupants had not been heard. The occupants may have a right to claim damages or compensation from the person who had put them in possession of an illegally constructed structure. The applicants also has not made any statement in the application, which would indicate that they were put in possession. Accordingly, we do not find any reason to grant leave to the applicants to maintain the appeal. The order has been passed upon the alleged contemnors, who had failed to comply with the order of Her Lordship.

Mr. Mukherjee, submits that an order should be passed directing the police to arrest the persons resisting the demolition process.

The prayer of Mr. Mukherjee has been addressed by the learned Single Judge and police help has already been granted. We are not inclined to pass any order.

The appeal is being dismissed without granting any leave to the applicants. Accordingly, connected application being CAN 2 of 2026 is also dismissed.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)