

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

**WPO/201/2026
Gateway Hirise Ltd.
Versus
The State of West Bengal &Ors.**

For the petitioner	:	Mr. Bikash Ranjan Bhattacharya, Sr. dvocate, Mr. Raghunath Chakraborty, Advocate, Ms. Tanushree Das, Advocate, Mr. SaikatThakurta, Advocate,
For the KMC	:	Mr. Aloke Kr. Ghosh, Advocate Mr. Dilip Kr. Chatterjee, Advocate
Heard on	:	25.06.2026.
Judgment on	:	25th June 2026.

RAJA BASU CHOWDHURY, J. (Oral) :

1. Complaining inaction on the part of the municipal authority to decide on the petitioner's application for sanction filed in terms of the liberty reserved in favour of the petitioner by the judgment delivered by the Hon'ble Division Bench of this Court in APO/47/2022 on 30th September, 2022, the instant writ petition has been filed.
2. When the matter was taken up for consideration on 20th May, 2026 noting that an application for sanction was filed in accordance with Section 394 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as 'the said Act') for construction of five

additional floors on a G+7 storeyed building at 115/3, Hazra Road, Kolkata (hereinafter referred to as ‘the said premises’) and noting the submissions made by the learned Advocate for the Municipality that the petitioner’s application was not in form, this Court had called upon the municipality to file a report. Pursuant to the aforesaid direction passed by this Court a report has been filed which is countersigned by the Executive Engineer (C) Building Department, Borough – IX, Kolkata Municipal Corporation dated 10th June, 2026. In such report it has been portrayed that since the petitioner did not apply for a completion certificate of the existing structure/building as raised on the basis of the plan sanctioned on 21st February, 2015 which stood lapsed by operation of law and since, the matter was not pursued, the plan proposal has been kept pending.

3. To morefully appreciate the case at hand, it would be relevant to note down the facts giving rise to the present cause.
4. The petitioner claims to have applied for and obtained a sanction building plan for construction of B+G+12 storeyed residential building at 115/3, Hazra Road, Kolkata (hereinafter referred to as ‘the said premises’), vide building permit no. 2014090074 dated 21st February, 2015. Upon obtaining such sanction permit, the petitioner commenced the construction work at the said premises in accordance with sanctioned plan. According to the petitioner, the petitioner had obtained all relevant clearances including no objection clearance certificate from BSNL and had applied for and

obtained fire safety recommendation upon payment of requisite fees. The requisite certificate of clearance was also obtained by the petitioner in terms of the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2006 and other necessary permissions as required for carrying out the construction.

5. Unfortunately, according to the petitioner, on 4th February, 2020 on the verbal instruction from the police authorities that the construction work would continue till the seventh floor roof slab only having regard to the restriction imposed on construction of new masonry building in the high security zone of Kolkata, the work was brought to an abrupt halt. In such aforesaid circumstances, the petitioner made a representation before the Officer-in-Charge of the Kalighat Police Station on 5th February, 2020.
6. In the interregnum, though the petitioner had approached the municipal authority since the building permit was about to lapse, the municipal authority refused to accept the application for revalidation. In the peculiar facts and circumstances and despite requests and representations being made, since the municipality did not accept the application of the revalidation of the building plan by relying on the circular issued by the Municipal Commissioner being no. 5 of 2020-21 dated 17th June, 2020 which imposed construction of new masonry building within the high security zone of Kolkata, the petitioner was compelled to approach this Court by filing a writ petition which was registered as WPO/275/2020. The said writ

petition was disposed of by a Co-ordinate Bench of this Court by an order dated 21st April, 2022 by directing the Municipal Commissioner to renew the sanction plan and extend the period of completion of the construction and fix up the time limit on consideration of the application submitted by the petitioner on 24th June, 2020. The municipality, however, did not accept the said order, instead had preferred an appeal which was registered as APO/47/2022.

7. On the contested hearing, the said appeal was disposed of by a judgment and order dated 30th September, 2022 by observing that if the petitioner applies for renewal of the building plan/fresh sanction of building plan, the same will be considered in accordance with law and the applicable rules by the competent authority without taking into account the aforesaid municipal circular no. 5 of 2020-21 dated 17th June, 2020, and the direction on the part of the learned Single Bench to renew the sanction plan was set aside to the extent it directs extension of period of completing the concerned construction without the petitioner applying for fresh sanction. The petitioner had, however, instead making any requisite application, had simply applied before the municipal authority in writing. Since, the municipality was not acting on the basis of such application, the writ petition being no. WPO/689/2024 was filed.
8. The said writ petition was initially dismissed by an order dated 27th August, 2024, inter alia, on the ground that the petitioner had

proceeded in contempt jurisdiction and that the contempt application was pending before the Hon'ble Division Bench for implementation of the order dated 30th September, 2022.

9. By an order dated 26th November 2024, the Hon'ble Division Bench of this Court on the undertaking given by the petitioner that he shall withdraw the contempt application, was pleased to set aside the order dated 27th August 2024 and remanded the writ petition to the Learned Judge for fresh consideration. Subsequently, the writ petition was taken up for consideration and was disposed of by an order dated 8th January, 2025 by, inter alia, granting liberty to the petitioner to file a fresh application for sanction in accordance with Section 394 of the said Act. It was further provided that the application must be in prescribed form under Rule 4 of the Kolkata Municipal Corporation Building Rules, 2009 (hereinafter referred to as 'the said Rules'). It was also made clear that if such application is submitted within 30 days from the date of passing of such order, the municipality shall process such application in accordance with law. Pursuant to the aforesaid direction, the petitioner having applied and since the municipality did not take any steps, the petitioner was compelled to approach this Court by the instant writ petition.
10. As noted above, the municipality has already filed a report. In the aforesaid report in page 6, the municipality has acknowledged the receipt of an application in the form of plan proposal under Section 394 of the said Act read with the provision of Rule 4(2) of the said

rules with certain documents. The report further records that though the proposal was taken up for consideration, however, since the petitioner had not yet applied for completion certificate of the existing structure/building as raised upon obtaining the sanctioned building plan dated 21st February, 2015 which stood lapsed by operation of law and since, the petitioner neither pursued the plan proposal nor submitted any application for obtaining the completion certificate, as a result whereof, the issue was lost sight of the building department for further processing the matter. It has been further highlighted that if the petitioner submits the application for obtaining the completion certificate in prescribed form along with the relevant papers and documents as is required in terms of Rules 27 and 28 of the said Rule read with Section 403 of the said Act, appropriate steps shall be taken by the department to process the petitioner's plan proposal.

11. Mr. Ghosh, learned Advocate appearing for the municipality has taken this Court to the provision of Section 394 of the said Act and the rules 27, 28 and 29 of the said Rules and insists that unless, the petitioner is in a position to apply for a completion certificate and unless such completion certificate is issued, the municipality is in no position to decide on the petitioner's application.
12. Mr. Bhattacharya, learned Senior Advocate appearing for the petitioner while responding to the same has submitted that the building is incomplete and as such the question of making an

application for completion certificate or partial completion certificate cannot and does not arise. According to him, the partial completion certificate can only be issued if a building constructed up to a particular level is complete in all respects. In the instant case, since the building in question is incomplete, the question of applying for partial completion certificate cannot and does not arise.

13. Having regard to the submission made by the respective parties, and on considering the materials on record the question that falls for consideration in the present case is whether the petitioner is obliged under the provisions of the Municipal Act to apply for completion certificate/partial completion certificate in terms of the said Rules for the municipality to process the petitioner's application under Section 394 of the said Act.
14. As noted above, the fact that the building is incomplete is not in dispute. The Hon'ble Division Bench of this Court in its judgment and order dated 30th September, 2022 has specifically recorded the contention of the municipality in paragraph 11 wherein it is recorded that the learned Advocate for the municipality had argued, the question of extension of time to complete any construction work can arise only when application for extension is made before the time runs out.
15. In paragraph 14 of the said judgment, the following observation has been made:-

“The question that falls for determination is a short one, i.e., if the initial validity period of a sanctioned building plan expires without the builder having applied for extension of the validity period prior thereto and if construction of the building is not yet complete, can the builder, in order to continue and complete the construction, applying and obtain extension of the initial validity period of the sanctioned plan or must he obtain renewal of the sanctioned plan which really means obtaining a fresh sanction?”

16. I find that initially the petitioner was prevented from completing the construction later. The municipality had taken a stand that unless the petitioner applies for obtaining fresh sanction, the petitioner has no right to complete the construction. Not only the Hon'ble Division Bench but subsequent Co-ordinate Bench of this Court has also granted the liberty to the petitioner to apply for fresh sanction in accordance with Section 394 of the said Act. It is not in dispute that an application under Section 394 of the said Act has been made. The only question that is to be considered is whether along with the application, the petitioner is required to make an application for obtaining completion certificate. To appreciate the above, it is necessary to understand the scope of Sections 390(1), 394 of the said Act and Rules 27, 28 and 29 of the said Rules. The same is extracted hereinbelow :-

“390. Definitions:-

In this Chapter, unless the context otherwise requires,--

(1) The expression "to erect a building" means--

(a) to erect a new building on any site, whether previously built upon or not;

(b) to re-erect--

(i) any building of which more than one-half of the cubical contents above the level of plinth have been pulled down, burnt or destroyed, or

(ii) any building of which more than one-half of the superficial area of the external walls above the level of plinth has been pulled down, or

(iii) any frame-building of which more than half of the number of posts or beams in the external walls have been pulled down;

(c) to convert into a dwelling house any building or any part of a building not originally constructed for human habitation or, if originally constructed for human habitation, subsequently appropriated for any other purpose;

(d) to convert into more than one dwelling house a building originally constructed as one dwelling house only;

(e) to convert into a place of religious worship or a sacred building any place or building not originally constructed for such purpose;

(f) to roof or cover an open space between walls or buildings to the extent of the structure formed by the roofing or covering of such space;

(g) to convert two or more tenements in a building into a greater or lesser number of such tenements;

(h) to convert into a stall, shop, office, warehouse or godown, workshop, factory or garage any building not

originally constructed for use as such, or to convert any building constructed for such purpose, by sub-division or addition, in greater or lesser number of such stalls, shops, offices, warehouses or godowns, workshops, factories or garages;

(i) to convert a building, which when originally constructed was legally exempt from the operation of any building regulations, contained in this Act, or under any rules or regulations made under this Act, or contained in any other law in force for the time being, into a building which, had it been originally erected in its converted form, would have been subject to such building regulations;

(j) to convert into or use as a dwelling house any building which has been discontinued as or appropriated for any purpose other than a dwelling house;

(k) to make any addition to a building;

(l) to close permanently any door or window in any external wall;

(m) to remove or reconstruct the principal staircase or to alter its position;

xxx xxx xxx xxx

“[394. Application for addition to or repairs of buildings. – Every person who intends to execute any of the works specified in clause (b) to clause (m) of sub-section (1) of section 390 shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form together with such fees including Drainage development fee and containing such information as may be prescribed.]”

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“27. Notice of completion.-(1) Within one month after the completion of the erection of any new building or execution

of any work the applicant shall in the form as specified in Schedule XII duly countersigned by the Architect or Licensed Building Surveyor and Structural Engineer, as the case may be, give notice to the Municipal Commissioner of such completion under section 403 of the Act.

(2) The notice shall be accompanied by 3 sets of building plans (either ammonia print or computer generated print) marked as "Completion Plans" with all the revisions and modifications including those referred to in sub-rule (2) of rule 26 incorporated therein and clearly stating the occupancy or use-group for which the building or the work has been sanctioned. The plans shall be duly signed by the applicant and the Architect or the Licensed Building Surveyor, and the Structural Engineer, as the case may be.

(3) The notice shall be accompanied by a structural stability certificate duly signed by an Structural Engineer and Architect or Licensed Building Surveyor, as the case may be, and wherever applicable shall be accompanied by-

(a) in the case of a building having more than three separate and Independent residential units or apartments and all buildings other than residential buildings, a certificate from the Licensed Building Surveyor or Architect that internal house drainage and water supply network have been tsfaction (sic) of the Municipal Commissioner;

(b) fire safety certificate, if applicable under the West Bengal Fire Services Act, 1950 (West Ben. Act XVIII of 1950) and the rules made thereunder has been obtained;

(c) in the case of building referred to in clause (a) a certificate from the electricity supply

undertaking regarding provision to its satisfaction, of transformer, sub-station, ancillary power supply as required;

(d) a certificate pertaining to the lift installation, if any;

(e) such other certificates/documents/declarations as are necessary under any law for the time being in force or as the Mayor-in-Council may, from time to time, specify in this behalf.

28. Completion Certificate.-(1) Within fifteen days of the receipt of notice of completion of building work, the Municipal Commissioner shall inspect the building or work and shall satisfy himself that the erection or the execution of the work has been completed in accordance with completion plan.

(2) Within ten days of inspection, the Municipal Commissioner shall, if he is satisfied that the building or work has been completed in accordance with the completion plan issue a completion certificate in the form as specified in Schedule XIII:

Provided that such certificate shall not be issued in the case of building or any work for which provisional sanction was given unless the applicant produces before the Municipal Commissioner the license or permission in accordance with sub-section (3) of section 396 and documents recording compliance of the terms and conditions of such provisional sanction.

(3) After due verification, one set of the building plan as submitted under rule 27 shall be returned to the applicant with the endorsement "Approved Completion

Plan", under the signature of the Municipal Commissioner.

(4) In case where the Completion Certificate is refused, the Municipal Commissioner shall communicate the reasons thereof in writing to the applicant within a reasonable time of inspection under sub rule (1) above.

(5) In case where in the opinion of the Municipal Commissioner the building or the work has not been completed in accordance with the completion plan he may take necessary action in accordance with the provisions of the Act and rules.

(6) The Municipal Commissioner shall not permit connections to be made to municipal water mains and municipal drains from any new building in respect of which Completion Certificate has not been issued:

Provided that the Municipal Commissioner may permit connections to be made in respect of a building where Partial Completion Certificate or Block wise Completion Certificate has been issued as per provision of rules 29 and 30.

Provided further that the Municipal Commissioner may order disconnection of such connections if he is of the opinion that the conditions of the Partial Completion Certificate or Block wise Completion Certificate are being violated or if further erection of the building or execution of the work is proceeding contrary to the sanctioned plans.

29. Partial Completion Certificate.- (1) Upon a written request made to the Municipal Commissioner for issuance at Partial Completion Certificate consequent upon completion of a part of a building which is under construction, the Municipal Commissioner, on being

satisfied that the construction of the specified portion is complete in all respects; that the remaining construction cannot be completed as per sanction plan within a reasonable period of time and that circumstances exist for allowing partial occupation of the building, may issue Partial Completion Certificate valid for a specified period, in the form as specified in Schedule XIII.

(2) A written request under sub-rule (1) shall be accompanied by-

(a) a notice of completion in the form as specified in Schedule X for the portion of the building which is stated to be complete, along with all enclosures as per rule 27 as applicable,

(b) structural stability certificate for the portion of the building which is stated to be complete,

(c) an indemnity bond/undertaking to indemnify the Corporation against any risk, danger or damage to any person, whether an occupier or not, and an undertaking to ensure, in such manner as the Municipal Commissioner may specify, public safety,

(d) an undertaking that no person shall occupy or shall be allowed to occupy any portion of the building for which Completion Certificate has not been issued,

(e) an undertaking that in the event of violation of the terms of the Partial Completion Certificate, the Corporation shall be entitled to disconnect municipal water mains and municipal drains for the entire building without any notice.

(f) any other documents or undertakings that the Municipal Commissioner may deem necessary.

3) When the erection of the building or the execution of the work is completed within the period or extended

period provided for in section 399, the applicant shall apply for conversion of the Partial Completion Certificate or issue of Completion Certificate and such certificate may be issued in accordance with the provisions of these rules.”

17. As would appear from the above, there is no requirement specified in Section 394 of the said Act for obtaining completion certificate. It does not require an applicant to make any application for obtaining completion under the said Rules as well. From perusal of the aforesaid Rules, it would transpire that in terms of Rule 27 of the said Rules, it is the obligation of the builder to apply within a month after the completion of the erection of any new building or execution of work to apply in a prescribed form as per Schedule XII duly countersigned by the architect or licenced building surveyor or structural engineer, as the case may be, give notice to the Municipal Commissioner of such completion under Section 403 of the said Act. Once, such application is made as per Rule 28, the Municipal Commissioner is duty bound to carry out an inspection of the building and to satisfy himself that the erection or execution of the work has been completed in accordance with the completion plan and within 10 days of such inspection, if he is satisfied that the building or the work has been completed in accordance with the completion plan issue a completion certificate in the form specified in Schedule XIII.
18. The circumstance for grant of partial completion certificate is a little different. There is no obligation cast on the builder to apply for a

completion certificate. The opening sentence of the Rule 29 of the said Rules reads that upon a request made to the Municipal Commissioner for issuance of partial completion certificate consequent upon completion of a part of a building which is under construction, the Municipal Commissioner on being satisfied that the construction of the specified portion is complete in all respects that the remaining construction cannot be completed as per sanction plan within a reasonable period of time and that circumstances exist for allowing partial occupation of the building, may issue partial completion certificate valid for a specified period in the form as specified in Schedule XIII. Ordinarily, there is no obligation for the builder to obtain a partial completion certificate.

19. Having regard to the aforesaid and noting the provision of the said Act and the rules framed thereunder and also noting the definition of the expression 'to erect a building' and to make addition to a building, I do not find that there is no requirement in law for the builder to apply for a completion certificate before making an application under Section 394 of the said Act. In the peculiar facts of this case, I must note that despite there being a specific direction from the Co-ordinate Bench of this Court vide its order dated 8th January, 2025, the municipality did not bother to decide on the petitioner's application, rather the municipality tried to shift the responsibility on the petitioner by noting in the report that after the petitioner had submitted the plan proposal, neither the petitioner

had pursued the plan nor submitted any application for completion, and as a result the issue was lost sight for further processing the matter. It is not known, how a person who applies for obtaining sanction plan would be required to pursue the matter with the concerned official or if the same is not pursued the municipality shall not take steps and shall lose sight of such an important issue, especially when the parties have been at loggerhead and three several Coordinate Bench of this Courts had passed three several orders in the matter.

20. In the light of the above, I am of the view that the claim made by the Executive Engineer (C), Buildings Department to hold on the petitioner's application for sanction by claiming that unless, the petitioner files an application for partial completion and upon the municipality determining on the basis thereof that there is no deviation, that the plan proposal may be dealt with, in my view, does not have the backing of the statute. Ordinarily, the municipality is well authorised by the said Act to take appropriate action if the municipality finds that there is any deviation in carrying out the construction. It is not the case of the municipality that the construction carried out by the petitioner to the extent that has been carried out is in deviation of the sanctioned plan or at least no disclosure in this regard has been made.
21. In the light of the above, I direct the Building Committee including the Municipal Commissioner to decide on the petitioner's application

in accordance with law on an expeditious basis, preferably within four weeks from the date of communication of this order on the basis of the above observations made herein.

22. The instant writ petition, accordingly, stands disposed of.

23. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(RAJA BASU CHOWDHURY, J.)

R. Bose/S.Seal