

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

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

WPO/365/2026

**RAKESH JANGID
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.**

For the Petitioners	:	Mr. Biswaroop Bhattacharya, Adv. Mr. Aditya Mondal, Adv. Mr Snehasish Dey, Adv.
For the KMC	:	Mr.Biswajit Mukherjee, Adv. Ms. Monisha Nath, Adv. Mr Sundar Gopal Bhattacharyya, Adv.
Heard on	:	13th August, 2026
Judgment on	:	13th August, 2026

RAJA BASU CHOWDHURY, J.:

1. The present writ petition has been filed inter alia challenging the order passed under Section 400(8) by the Kolkata Municipal Corporation (in short Municipal Authority) concerning premises no. 41A, Broja Dulal Street, Kolkata-700006 under Kolkata Municipal Corporation Ward No. 24, Borough IV.

2. Before proceeding to deal with the rival contention of the parties it would be relevant to note down the facts giving rise to the instant writ petition.
3. The private respondent in the instant writ petition had previously, challenging the failure on the part of the Municipal Authorities to take steps for demolition of the alleged unauthorised construction at premises no. 41A, Broja Dulal Street, Kolkata-700006 (hereinafter referred as “the said premises”) filed a writ petition which was registered as WPO/478/2025. The said writ petition was contested by the petitioner herein.
4. By an order dated 18th September, 2025 the said writ petition was disposed of by directing by the Executive Engineering, Building Department, Borough IV and V, Kolkata Municipal Corporation to decide the representation dated 30th May, 2025 filed by the petitioner in the said writ petition who also happens to be the private respondent herein, upon giving opportunity of personal hearing to the petitioner therein and the private respondent who is the petitioner in the present proceeding.
5. In terms of the aforesaid direction the Executive Engineering, Building Department Borough IV, Kolkata Municipal Corporation had afforded an opportunity of hearing to both the parties and ultimately by an order dated 11th May, 2026 was, inter alia, pleased to dispose of the representation by observing as follows:-

ANNEXURE 'P/6'
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WPD/478/2025
DEVANG BADANI
VS

THE KOLKATA MUNICIPAL CORPORATION & ORS.

Reg: Premises No. 41A, Broja Dulal Street, Ward no. 024, Borough- IV, Kolkata- 700006
Ref:- Order of Hon'ble High Court Dated-18/09/2025

ORDER

Pursuant to the order of Hon'ble High Court, Calcutta, dated 18/09/2025, a notice was issued from the petitioner and the private respondent to appear before me for hearing in terms of order of Hon'ble High Court, Calcutta. The said letter was issued on dated 06/11/2025. Wherein at a time of petitioner represented by himself Devang Badani and none appeared on behalf of private respondent at a time of hearing. In spite of service of notice dated 06/11/2025, 15/12/2025 and 20/11/2025 and hearings were conducted on 12/11/2025, 03/12/2025 and 19/12/2025 respectively.

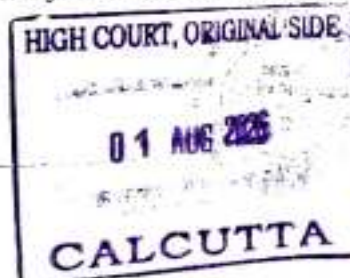
The Hon'ble Court in his order dated 18/09/2025 directed inter alia as follows.

"In view of the same, this Court directs the respondent no.4, Executive Engineer, Building Department, Borough IV and V, Kolkata Municipal Corporation to decide the petitioner's representation dated 30th May, 2025 within a period of 8(eight) weeks from the date of communication of this order, strictly in accordance with law, after affording an opportunity of personal hearing to the petitioner and the private respondent or its authorized representative, by way of a speaking order. With the above direction, the present writ petition is disposed of."

At the very outset of hearing the petitioner was present personally submit before undersigned for considering his representation dated 30/05/2025. In his representation dated 30/05/2025 he alleged that an unauthorized construction has been raised at premises no. 41A, Broja Dulal Street, Ward-024, Borough-IV. The Assistance Engineer along with Sub-Assistant Engineer present at the time of hearing with records submit that on 30/05/2025. On the basis of complaint and detection by this concern Borough, Sub Assistant Engineer and Assistant Engineer a D-Sketch was prepared wherein responsible person has constructed R.C.C. Slab at Ground & First Floor, Beam and Column casting at First & Second Floor without any sanction plan from the appropriate authority of KMC department.

In respect of such unauthorized construction, a notice under Section 401 of the KMC Act, 1980 was issued on 03/12/2024 along with intimation to the Police Station (Jorbagan) to stop the unauthorized construction and the matter was placed before KMC authority for taking appropriate steps against the unauthorized construction. In pursuance of the above, department proposed for proceeding under section 400(B) of the KMC Act 1980 of

Annexure. P-6
to the Pleading / Affidavit
Affirmed by *R. George*
on the *20* day of *Aug*
20 *25*
Before me
N. Commissioner



= 65 =

the raised construction as per D-Sketch plan, KMC authority in his order approved the said proposal and directed to proceed as per section 400(8) of the KMC Act, 1980. Subsequently, Sub-Assistant Engineer on spot inspection further informed that another notice was issued for raising further unauthorized construction above the said two floors. Simultaneously as per Law, notice was issued under section 401(A) of the KMC Act, 1980 to stop further unauthorized construction immediately and a D-Sketch was further prepared on the basis of said unauthorized construction and Building Department raised the proposal before KMC authority with the proposal for proceedings under section 400(8) of the KMC Act, 1980. Thereafter, KMC authority approved the same for proceeding under section 400(8) of the KMC Act, 1980.

That the said two files along with the D-Sketch plans were sent to D.G. (Building) for obtaining the date to proceed for the demolition.

In view of the above, I am in the observation that the said construction as raised illegally without any plan sanction from concerned borough of Building Department, to in terms of direction of KMC authority for proceeding under section 400(8) of the KMC Act, 1980 for demolition of the said unauthorized construction. Assistant Engineer is hereby directed to fixed up a date for demolition and initiate the demolition proceeding at the earliest for carrying out the order of the KMC authority.

Amr 11/05/26
Executive Engineer (Civil)
Building Department, Borough-IV
Kolkata Municipal Corporation

Chy
46/05
11/05/26

Executive Engineer Civil (Bldg.)
Borough No.-IV
Building Department
K.M.C.



6. Questioning the above inquiry proceedings and the hearing that took place on 20th December, 2025, being unaware of the outcome of the above proceedings, a writ petition was filed by the petitioner herein which was registered as WPO 241 of 2026. In course of hearing of the

said writ petition, the municipal authorities had produced the records and had drawn the attention of this Court to the order passed under Section 400(8) of the said Act. This Court in the peculiar facts by order dated 11th June, 2026, while directing the municipal authorities to take steps and implement the order in accordance with law had also observed if, the petitioner is aggrieved by any of the acts or actions on the part of the municipal authorities, the remedy of the petitioner lies before the Tribunal. The above direction was issued taking into consideration the fact that the proceeding initiated before the Executive Engineer was drawn to a close by passing an order on 11th May, 2026 observing therein that the construction raised is illegal, without any plan sanctioned from the concerned borough of the building department.

7. Being aggrieved, the petitioner appears to have preferred an intra Court Appeal which was registered as APOT 112 of 2026.
8. The Division Bench of this Court by an order dated 7th July, 2026 was, inter alia, pleased to dispose of the said appeal by recording as follows:-

13. His Lordship held that, the remedy of the appellant was before the Building Tribunal. Factual issues which have been raised before us by the appellant do not impress us, inasmuch as, the appellant has not been able to produce any sanction plan which would indicate that the construction had been permitted by the Corporation. Secondly, the assessment records which have been produced before us, do not create any equity in favour of the appellant in respect of such unauthorised construction. However, all disputed questions will be decided by the appropriate forum. His Lordship has already indicated that the appellant has an alternative remedy. As the premise is being used as a school, the demolition will not take effect for a period of one month, to enable the appellant to make alternative arrangement and secure safety of the students.

14. The appeal and the application are accordingly disposed of.



9. The petitioner, thereafter, claims to have preferred an appeal before the Building Tribunal. Since the Building Tribunal refused to accept and register the appeal, the instant writ petition had been filed. When the matter was moved on 6th August, 2026, Mr. Mukherjee, learned Advocate appearing for the Kolkata Municipal Corporation had sought for an accommodation and accordingly on his prayer, the matter was adjourned till 10th August, 2026. Today, Mr. Mukherjee, learned Advocate for the Kolkata Municipal Corporation would submit that the Building Tribunal has already registered the appeal. He submits that initially the Building Tribunal was not registering the appeal as according to the Tribunal the order passed under Section 400(8) of the said Act is not appealable.

10. Having heard the learned Advocates representing the respective parties, I find that admittedly in this case, in terms of the order passed by a Co-ordinate Bench of this Court in WPO 478 of 2025 dated 18th September, 2025 an opportunity of hearing was granted to the parties, notwithstanding the order passed under Section 400(8) of the said Act which was approved by the Mayor-in-Council on 10th September, 2025.
11. The Executive Engineer had, however, disposed of the said proceeding by passing the order dated 11th May, 2026. The petitioner being unaware of such disposal of the proceeding had approached this Court by filing the writ petition which was registered as WPO 241 of 2026. However, in course of hearing, this Court having detected the above order passed under Section 400(8) and the order dated 11th May, 2026 had disposed of the said writ petition by making the observations which have been noted hereinabove.
12. Having regard to the facts at hand, I find that in the instant case, the municipal authorities had already accepted the direction passed by the co-ordinate Bench on 18th September, 2025 and an opportunity of hearing was afforded to the parties, even before implementing the order passed under Section 400(8) of the said Act. Thus once, the parties were heard the said proceeding lost its character as a proceeding under Section 400(8) of the said Act and is deemed to be a proceeding under Section 400(1) of the said Act. It is well settled that a proceedings under Section 400(8) of the said Act can be directed to be converted to a proceedings under Section 400(1) of the said Act as the exigencies of the case might demand. The judgment delivered in the case of **Saif**

Impex Pvt. Ltd. & Anr. v. The Kolkata Municipal Corporation &

Ors. report in (2014) 3 Cal LT 706 support the above view. The present appeal is now pending before the municipal Building Tribunal and as such there cannot be any doubt that the municipal Building Tribunal is competent to decide upon and dispose of the appeal on merit. Since, the appeal being B.T Appeal No. 55 of 2026 has now been registered, accordingly, the writ petition stands disposed of without any further order.

13. I must, however, record that Mr. Bhattacharya, learned Advocate had insisted that the protection afforded by the Division Bench by an order dated 7th July, 2026 should be extended by this Court. In this context, I find that since the appeal has been registered, this Court has no scope to pass an order and if, the petitioner seeks for an extension, it is for the petitioner to make an appropriate application before the Building Tribunal, if so advised.

14. With the above observation the writ petition stands disposed of.

(RAJA BASU CHOWDHURY, J.)