

ORDER

OD – 1

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/138/2026
IA NO: GA/1/2026
GA/2/2026
SUFIA BEGUM
Vs

THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR
The Hon'ble JUSTICE ARJUN RAY MUKHERJEE

Date: 19th August 2026.

Appearance:

Mr. Diptomoy Talukder, Adv.
Ms. Reshmi Hossain, Adv.
Mr. Hebzur Rahman, Adv.
Mr. Shamim Halder, Adv.
... for applicant/appellant.

Mr. Alak Kr. Ghosh, Adv.
Ms. Manisha Nath, Adv.
... for KMC.

Mr. Sarban Bhattacharjee, Adv.
... for writ petitioner.

The Court:- APOT/138/2026 arises out of an order dated July 13, 2026 passed in CC/69/2024 arising out of WPO/189/2024. The appellant is a third party (occupier of the premises) who has approached this Court, being aggrieved by the order of Her Lordship. It is contended that, in the teeth of the order of status quo with regard to premises no.5, Kasai Bustee Cross Lane, demolition orders were passed in the contempt application and the intervention application filed by the applicant/proposed appellant was not allowed.

GA/1/2026 is an application for leave to appeal filed by the applicant/appellant on the ground that the applicant is adversely affected by the order passed in the contempt proceedings. It is urged that, the Learned Judge had exceeded her jurisdiction and passed orders beyond the directions passed in the writ petition. In the contempt proceeding the scope of the writ petition has been enlarged. Without safeguarding the rights of the appellant, the construction which had since been protected by virtue of an order of the Hon'ble Apex Court dated 19th February 2026, passed in Special Leave Petition (Civil) Diary No(s).9247/2026, directions for demolition have been passed.

Considering the fact that the appellant is one of the occupiers of the premises directed to be demolished, we allow the said application for leave and we regularize the appeal.

Mr. Ghosh, learned advocate for the Corporation was asked by us to take information with regard to the order of status quo passed by the Hon'ble Apex Court. Mr. Ghosh submits that, from the Special Leave Petition it would appear that the proceedings before the Hon'ble Apex Court arose out of premises no.44/1, Canal East Road, Ward No.29, Borough-III of the Kolkata Municipal Corporation.

Mr. Bhattacharjee, learned advocate appearing on behalf of the writ petitioner and the applicant in the contempt proceedings, submits that a seven storeyed unauthorized building stands on premises no.5, Kasai Bustee Cross Lane and despite repeated orders of demolition, the building has not yet been demolished. Mr. Bhattacharjee refers to an order dated November 10, 2025, passed by the learned single Bench in the contempt proceedings and from

paragraph 7 thereof, it appears that the appellant was represented before her Lordship. The learned advocate representing her submitted that the appellant would take steps to self-demolish the unauthorised portion. Further reference has been placed on the order of Her Lordship dated March 16, 2026. It appears from paragraphs 1 and 2 of the said order that the Hon'ble Apex Court had directed status quo to be maintained in respect of premises no.44/1, Canal East Road [portion] and not the premises in question. Relevant paragraphs of the order are quoted below :

“1. Perused the report of the Executive Engineer [Civil], Building Department, Borough-III, Kolkata Municipal Corporation signed on 16th March, 2026 wherefrom it appears that in respect of premises no.44/1, Canal East Road [portion], the department has received an order from the Hon'ble Supreme Court directing the parties to maintain status quo with regard to the existing construction. Accordingly, no order is being passed in respect of the said premises at present.

2. As regards premises no.5, Kasai Bustee Cross Lane, it appears that the police have failed to vacate the seven storied building constructed unauthorizedly.”

Although Mr. Talukdar submits that the appeal from which the Special Leave Petition was preferred being APOT/79/2025, pertains to premises no.5, Kasai Bustee Cross Lane, but we find that the appeal being APOT/79/2025 was preferred from an order dated April 2, 2024 in WPO 189 of 2024. The relevant portion of the order dated April 2, 2024 are quoted below :

“A report has been filed signed by three engineers of the Kolkata Municipal Corporation on 01.04.2024. It mentions that in premises no.44/1, Canal East Road, Ward No.29, Borough-III of the Kolkata

Municipal Corporation as many as fourteen unauthorized structures have been identified.

The present writ petition is in respect of the structure no.14 of the report where a single storied RCC framed structure has been completed upto the first floor level. The report mentions that stop work notice under section 401 of the Kolkata Municipal Corporation Act, 1980 was served on 05.03.2024 with intimation to Narkeldanga Police Station and proposal under section 400 of the Kolkata Municipal Corporation Act, 1980 was forwarded to the Director General [Building] on 16.03.2024.

The Director General [Building] is directed to take prompt necessary steps to ensure that the unauthorized construction in respect of the structure no.14 is immediately taken care of and necessary steps shall be taken to deal with the same.”

Under such circumstances, we are of the view that, no protection can be given to the appellant who claims to be an occupier of the unauthorized building at premises no.5, Kasai Bustee Cross Lane.

We refer to the decisions of the Hon’ble Apex Court to hold that unauthorized constructions have to be demolished and there is no way out.

In the matter of **Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.** reported **in (2013) 5 SCC 336**, the Hon’ble Apex Court held as follows:-

29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

In the matter of **Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.**, reported in **(2021) 10 SCC 1**, the Hon'ble Apex Court held as follows:-

“159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.”

In **Friends Colony Development Committee v. State of Orissa** reported in **(2004) 8 SCC 733**, the Hon' ble Apex Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorised. The Apex Court held as follow:-

“24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and

other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building.

Noting that the private interest of landowners stand subordinate to the public good while enforcing building and municipal regulations, the Apex Court issued a caution against the tendency to compound violations of building regulations :

“25. ... The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

Unauthorised floors have been held to be a burden on general welfare must be dealt with strictly.

In ***Priyanka Estates International (P) Ltd. v. State of Assam*** reported in **(2010) 2 SCC 27** the Hon’ble Apex Court, observed as follows:-

“55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise

builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

The Apex Court observed that if unauthorised constructions were allowed to stand or are “given a seal of approval by Court”, it was bound to affect the public at large. In ***EshaEkta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai*** reported in **(2013) 5 SCC 357**, the Hon’ble Apex Court observed as follows:-

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

In the matter of ***Supertech (Supra)***, the Hon’ble Apex Court discussed the duties of the civic bodies and lamented the sorry state of affairs as under:-

“167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the

following observations : (EshaEkta Apartments case [EshaEkta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC p. 363, para 1)

“1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise.”

168. Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularise a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held : (EshaEkta Apartments case [EshaEkta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC pp. 394-95, para 56)

“56. ... We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.”

169. These concerns have been reiterated in the more recent decisions of this Court in Kerala State Coastal Zone Management Authority v. State of Kerala [Kerala State Coastal Zone Management Authority v. State of **Kerala**, (2019) 7 SCC 248] , **Kerala State Coastal Zone Management Authority v. Maradu Municipality** [Kerala State Coastal Zone Management Authority v. Maradu Municipality, (2021) 16 SCC 822 : 2018 SCC OnLine SC 3352] and **Bikram Chatterji v. Union of India** [Bikram Chatterji v. Union of India, (2019) 19 SCC 161] .”

In the same decision **Supertech (Supra)**, the Hon’ble Apex Court concluded as follows:-

“**172.** For the reasons which we have indicated above, we have come to the conclusion that:

172.1. The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference

and the direction for demolition issued by the High Court is affirmed.

172.2. The work of demolition shall be carried out within a period of three months from the date of this judgment.

172.3. The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of Noida. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing buildings, Noida shall consult its own experts and experts from Central Building Research Institute Roorkee ("CBRI").

172.4. The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by Noida.

172.5. The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant.

172.6. The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment.

172.7. The appellant shall pay to the RWA costs quantified at Rs 2 crores, to be paid in one month from the receipt of this judgment."

In the matter of ***Kaniz Ahmed vs Sabuddin & Ors.*** reported in **2025**

INSC 610, the Hon'ble Apex Court held as follows:-

"5. In one of our recent pronouncements, in the case of Rajendra Kumar Barjatya and Another v. U.P. Avas Evam Vikas Parishad and Others reported in 2024 INSC 990, we have made ourselves very explicitly clear that each and every construction must be made scrupulously following and strictly adhering to the rules and regulations. In the event of any violation, being brought to the notice of the courts, the same should be dealt with iron hands and any leniency or mercy shown to the person guilty of unauthorised construction would amount to showing misplaced sympathy. In our decision referred to above, we have issued the following directions:

"(i) While issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to

the owners/beneficiaries only after obtaining completion/occupation certificate from the authorities concerned.

(ii) The builder/developer/owner shall cause to be displayed at the construction site, a copy of the approved plan during the entire period of construction and the authorities concerned shall inspect the premises periodically and maintain a record of such inspection in their official records.

(iii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate should be deferred, unless and until the deviations pointed out are completely rectified.

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider / Board to the buildings only after the production of the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation / violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder / owner / occupant; and the official, who is responsible for issuance of wrongful completion / occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission /licence to conduct any business/trade must be given by any authorities including local bodies of States/Union Territories in any unauthorized building irrespective of it being residential or commercial building.

(vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.

(viii) Whenever any request is made by the respective authority under the planning department/local body for co-operation from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against the erring officials once it is brought to their knowledge.

(ix) In the event of any application / appeal / revision being filed by the owner or builder against the non-

issuance of completion certificate or for regularisation of unauthorised construction or rectification of deviation etc., the same shall be disposed of by the authority concerned, including the pending appeals / revisions, as expeditiously as possible, in any event not later than 90 days as statutorily provided.

(x) If the authorities strictly adhere to the earlier directions issued by this court and those being passed today, they would have deterrent effect and the quantum of litigation before the Tribunal / Courts relating to house / building constructions would come down drastically. Hence, necessary instructions should be issued by all the State/UT Governments in the form of Circular to all concerned with a warning that all directions must be scrupulously followed and failure to do so will be viewed seriously, with departmental action being initiated against the erring officials as per law.

(xi) Banks / financial institutions shall sanction loan against any building as a security only after verifying the completion/occupation certificate issued to a building on production of the same by the parties concerned.

(xii) The violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws.”

6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularisation of the unauthorised construction. We do not find any merit in such submission. A person who has no regards for the law cannot be permitted to pray for regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.

7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just

and orderly society.[See: Ashok Malhotra v. Municipal Corporation of Delhi, W.P. (c) No. 10233 of 2024 (Delhi High Court)]”

On the law discussed hereinabove, we do not find any illegality and/or perversity in the order of Her Lordship.

Accordingly, both the appeal and the application, GA/2/2026 stand dismissed.

(SHAMPA SARKAR, J.)

(ARJUN RAY MUKHERJEE, J.)

S. Kumar / pkd