

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/89/2023
WPO/634/2023
OCOT/3/2023
IA NO.GA/1/2023

M/S. KZAR PROPERTIES PVT. LTD. AND ORS.

-Versus-

THE KOLKATA MUNICIPAL CORPORATION AND ORS.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Raghunath Chakraborty, Adv.
 Ms. Amrita De, Adv.
 Ms. T. Das, Adv.

For the KMC : Mr. Alak Kumar Ghosh, Adv.
 Mr. Gopal Chandra Das, Adv.
 Ms. Manisha Nath, Adv.

For the State : Mr. D. Mukherjee, Adv.
 Ms. Kalpita Paul, Adv.

Judgment On : 19.10.2023

Apurba Sinha Ray, J. :-**Back Ground:-**

1. The judgment and order dated 23.03.2023 passed in WPO 634 of 2023 has been challenged by both the parties to the said writ petition by filing this appeal and cross objection.
2. The writ petitioners have filed the appeal being APOT No. 89 of 2023 whereas KMC has filed the cross-objection.
3. The factual matrix as well as the respective cases of the parties have been vividly and succinctly recorded by the Learned Single Judge in Her Ladyship's judgment. Moreover, the relevant law has also been discussed.
4. As regards the present appeal and cross-appeal, suffice it to say that the writ petitioner's, being the developer and constituted attorney of the owners of the concerned property, raised a (G+V) construction on the said property after obtaining a valid sanctioned plan from the KMC Authority. Subsequently, an additional floor was raised over (G+V) construction without any sanction or permission from the Corporation. According to the writ petitioners, they had prepared shuttering for construction over (G+V) construction which was disputed by the KMC. Though notice under Section 401 of the Act, 1980, was secured and an FIR was lodged under Section

401A of the said Act, the KMC Authority took a drastic step under Section 400(8) of the Act, and thereby deprived the writ petitioners of their right to plead for retention of the construction before the appropriate Authority under Section 400 of the Act, and further their right to appeal against rejection of their proposed retention prayer. It was also alleged that the KMC Authority did not follow the mandatory procedure as laid down in Transaction of Business of the Mayor-in-Council, Regulations 1986 of the Corporation nor followed the relevant case laws.

5. Keeping the demolition order in abeyance, the Learned Single Judge remanded back the matter to KMC Authority for passing an order afresh after re-verifying the documents, facts and figures and also for giving an opportunity of hearing to the writ petitioner only in the event there is no immediate threat perception in respect of such unauthorized construction. In the impugned judgment the Learned Single Judge observed, inter alia, that if imminent threat to life and property is absent, then the drastic action under Section 400(8) of the Act, 1980 ought not to have been taken at the very first stage. Order of demolition should normally be passed after giving the offender an opportunity of being heard. Learned Single Judge has further observed that the KMC Authority being a statutory body is bound to act reasonably, in terms of the statute and cannot apply the law to the disadvantage of an individual. Even an errant offender is to be dealt with in accordance with the statutory provisions and not an impulsive decision taken without adhering to the settled principle of law. The authority ought to

act diligently to prevent unauthorized construction at the very initial stage and not permit the construction to come up to a considerable level before taking action to stop it.

6. Even the said order gave the writ petitioners, as is evident, immense dissatisfaction and for which they preferred the present appeal contending, inter alia, that the matter ought not to have been referred back to the KMC Authority and the Learned Single Judge should have disposed of the writ petition after asking the parties to exchange affidavits. The Learned Counsel for the appellants, Mr. Chakraborty, placed reliance on the case laws **reported at (1989) 1 SCC 764 (H.L. Trehan and Others. Vs. Union of India and Others), (2017) 4 CAL LT 564 (HC) (Sri Prahlad Singh Jaggi & Ors. Vs. KMC & Ors.)**. The Learned Counsel has also drawn the attention of this Court to the office Circular No. 02 of 2015-2016 dated July 11, 2015, allowing the permissibility of additional floor beyond sanctioned plan, and further the judgment dated 02.06.2023 of the Learned Additional District & Sessions Judge, 1st Fast Track Court, Bichar Bhawan, Calcutta, for apprising this court that unless there is sufficient evidence to show that the construction of additional floor without sanctioned plan endangers human life or property of the Corporation where upon the water supply, drainage or sewerage on the road traffic is or likely to be disrupted or is likely to cause fire hazard, it cannot be held that the person responsible has committed the offence under Section 401A of the Act, 1980.

7. Learned Counsel of the appellants /writ petitioners has also referred to the decision of this Bench in APOT No. 21 of 2023 (Nirmal Kumar Das Vs. Kolkata Municipal Corporation & Ors.) contending that the same is not applicable in the present case since in the said case there was no sanctioned plan in respect of the entire building whereas in the present case the writ petitioners constructed the (G+V) construction after obtaining valid sanctioned plan but they had made shuttering for additional floor without any sanctioned plan. Further, in the case of Nirmal Das, there was an allegation that construction was made on the encroached portion of a water body, but in this case there is no such allegation.

8. Learned Counsel, Mr. Ghosh, appearing for the KMC has also assailed the impugned judgment on the ground, inter alia, that the Learned Single Judge was unable to appreciate the scope and effect of the proviso to Section 400(1) of Kolkata Municipal Corporation Act, 1980 and when there was an admission on the part of the appellants that they made construction of additional floor without sanctioned plan, there was no reason to remand the matter back to KMC. It was also argued that the procedural irregularities, if any, in the decision making process cannot vitiate the order of demolition passed under Section 400(8) of the Act, 1980, particularly when there is substantive compliance with the provision of Section 400(8) of the Act. According to KMC's learned counsel the appellants having no right over unauthorizedly constructed property, did not have any locus standi to present the writ petition questioning the correctness of the order under

Section 400(8) of the Act, 1980, and therefore, the Hon'ble Court should not have entertained the writ petition.

9. Learned Counsel for the KMC has vehemently argued that the findings of the Learned Single Judge that the KMC has inflicted highest punishment to the petitioners for which the petitioners lost the opportunity of hearing and lost the chance to prefer appeal against the order of demolition, and also the findings that prior to depriving an opportunity of hearing and shutting away the forum for preferring appeal, necessary ground work required to be done and the KMC authority cannot apply the law to the disadvantage of an individual, have been made due to misconception of law. The Learned Judge, according to the said Learned Counsel has also committed gross error in making the observation that only if there is grave emergency and immediate demolition is the only remedy in view of the safety norms, the Authority can go ahead with demolition, otherwise an opportunity of hearing should be given to the person responsible. As such, it is prayed that impugned judgment and order dated 23.03.2023 is liable to be set aside and the order of the Mayor-in-Council under Section 400(8) of the Act, 1980 be restored. The Learned Counsel has also relied on the case of Nirmal Kumar Das Vs. KMC & Ors. (supra).

Court's View

10. Mr. Chakraborty, Learned Advocate for the appellants has relied heavily upon the Office Circular No. 2 of 2015-2016 dated July 11, 2015

issued by the Building Department, Kolkata Municipal Corporation. For the sake of convenience, the said circular is reproduced below:-

“THE KOLKATA MUNICIPAL CORPORATION
BUILDING DEPARTMENT 5.S.N. BANERJEE ROAD.
KOLKATA-700 013

Dated: the 11 July, 2015

OFFICE CIRCULAR NO. 02 OF 2015-2016

Mayor-in-Council in its meeting dt. 30.06.2015 vide Agenda Item No. M4.4 has approved the proposal for allowing additional floor with set back within permissible limit of FAR & Height for partial extension over already sanctioned building under prevailing Bldg. Rules, 2009 which are within permissible FAR & Height but infringes the open space requirement.

Following criteria should be fulfilled for such approval:-

- a) Sanction for additional floor u/s 394 of KMC Act, 1980 with set back over sanctioned and constructed building in conformity with provision of rule 62 of Bldg Rules, 2009 within permissible limit of FAR, height & parking space requirement & other statutory requirement including observation of WBF&ES if required, in no case more than one floor will be allowed subject to submission of certificate from ESE that the foundation and the structure is capable to carry additional load.
- b) To accept proposals for addition after obtaining completion certificate or completion of RCC framed structure for the building sanctioned In accordance with prevailing bldg rules & to approve by MIC Authority case to case basis, considering the location of plot on payment of five times of regular sanction fees for the additional proposal.
- c) Proposal must be certified by ESE, LBS/Architect
- d) Submission of documents as required for proposals u/s 394 of KMC Act, 1980.

The department should give immediate effect of the Office Circular to process such cases for sanction.

Director General (Building)

Com to:
Hon'ble Mayor & M.M.I.C.(B)
Mpl. Commissioner.
DG(B)II
Dy. Ch Engineer (Bldg).North/South
All Dy Ch Engineers/Ex. Engineers of Bldg Deptt.
All Concerned
AO-it-for immediate circulation

Director General (Building)”

11. According to Mr. Chakraborty, if such circular allows retention of an additional floor beyond the sanctioned plan on payment of fees the appellants should have been given opportunity to reap the benefit of such circular. But the KMC Authority has itself violated the order of Mayor-in-Council contained in the resolution of the meeting dated 30.06.2015 vide Agenda Item No. M4.4.

12. Undoubtedly, the above circular allows the person responsible to retain one additional floor beyond sanctioned plan subject to certain conditions. But nowhere this circular says about the post-facto sanction of one additional floor beyond sanctioned plan. It cannot be and should not be the intention of the makers of such circular that it permits the post-facto sanction of one additional floor. In other words, when KMC Act, 1980 by sections 390(l)(k), 392 & 394 and also Rule 4 of KMC Building Rules, 2009 have specifically mentioned that addition to building cannot be done without previous sanction of the Corporation, it is wrong to assume that the Circular No. 2 of 2015-2016 dated July 11, 2015 has erased the specific provisions of the statutes regarding such prior sanction of the Authority. We can say it other way round that situation may arise when due to scarcity of space, the person responsible who has already made a building on the basis of a sectioned plan, wants to make further addition to such building, and in that case if he applies for sanction for one additional floor, the Authority may allow his such prayer subject to compliance of certain conditions. Therefore, it is not correct interpretation that the person responsible has been

permitted by the said circular to raise one additional floor beyond sanctioned plan and then to apply for retention of such additional floor on payment of fees.

13. Another important aspect of the case, which should not be lost sight of is that the KMC took steps against the appellants when they were constructing one additional floor on the subject building, and it was not that such deviation was detected long after the construction was over. The report of the KMC shows that area of unauthorized construction was 621.09 sq.m (approximately) & shuttering made for area 342.150 sq.mt. Therefore who knows that it was not the desire of the appellants to raise more additional floors than one. Accordingly, it is not clear whether the person responsible was desirous of raising only one additional floor or more than one additional floor on the property. Had he actually intended to raise construction for only one additional floor, then he should have made application to KMC for previous sanction since the relevant circular empowers him to raise one additional floor beyond sanctioned plan subject to certain conditions. Needless to say, in the absence of sanctioned building plan for additional work the KMC may well be suspicious that the appellants may construct more than one additional floor, and such suspicion, if any, cannot be said to be a misplaced one.

14. As regards the plea that Transaction of Business Regulations 1986 were not complied with by the statutory Authority like KMC, we would like to reiterate what we have discussed in Nirmal Kumar Das's case (supra).

15. If we go through the Transaction of Business of the Mayor-in-Council Regulations, 1986, we shall find that by Regulation 15(1) it has been specifically mentioned as hereunder:-

“When it has been decided to bring a case before the Mayor-in-Council, the department to which the case belongs shall, unless the Mayor otherwise directs, prepare a Memorandum indicating with sufficient precision the salient facts of the case and the points for decision. Such Memorandum and such other papers as are necessary to enable the case to be disposed of shall be circulated to the Members after the Municipal Commissioner has seen them. If a case concerns more than one department, the Members supervising the works of concerned departments shall attempt by previous discussions to arrive at an agreement.”

16. From the above it is clear that unless the Mayor otherwise directs, the concerned department to which the case belongs, shall prepare a memorandum indicating with sufficient precision the salient facts of the case and also the points for decisions. Therefore, it goes to show that the department to which the case belongs shall state the facts of the case precisely and mention the points for decision, that means, the department has been given power to consider the factual aspects of the case and also to specify the points on which the decision on a particular case has to be

taken. It is not that the Mayor-in-Council will decide the issues. Rather, Mayor-in-Council along with the Mayor have been entrusted to see whether the facts and the points on which decision is going to be taken in a particular case are being confirmed by them or not. In fact the Mayor-in-Council is entrusted as a final authority to concur or not to concur with the departmental note or the suggested points for decision as specified by the department. The Mayor-in-Council is to check as a final authority whether the factual aspects and the proposed decision are, in their opinion, correct or not. Therefore, as the matter in every case relates to unauthorized construction without sanctioned plan or deviation from sanctioned plan, and the demolition thereof, there is no scope for the Mayor-in-Council to use different language or different parts of speech for every case in disclosing that they are ad idem with the proposed decision. Therefore, even if the languages are same, the same cannot be doubted. On the other hand it is to be seen whether or not the departmental note actually depicted the correct position of the factual issues. The departmental note in this case is as hereunder:-

“This is a case of unauthorized construction of encroachment of mandatory open spaces and shuttering done for one additional floor (6th floor) over sanctioned G+V storied residential building [B.P. No. 2021060034 dated 27/11/2021]. Accordingly, this department issued stop work notice u/sec. 401 of the KMC Act, 1980 on 20/02/2023 along with Police Intimation sent to Beniapukur Police Station on 20/02/2023. Upon further inspection it was found that the PR resumed the work defying stop work notice for which this department lodged F.I.R u/sec. 401A of the KMC Act, 1980 on 21/02/2023.

Area of unauthorized construction is 621.09 sq.m (approximately) & shuttering made for area 342.150 sqm (approximately)

The PR has continued with the unauthorized construction at the captioned site defying all the actions taken by KMC.

Department also prepared proposal u/sec. 400 of the KMC Act, 1980 along with D-Sketch and infringement statement. The proposal infringes several KMC Bldg. Rules, 2009.

Moreover, the said unauthorized construction, if allowed to stand, may collapse at any moment of time leading to accident resulting in loss of human life and property and will also create several hazards like fire hazards and environmental hazards etc.

Considering the gravity of the situation and safety of public in general, department recommends demolition of unauthorized structure forthwith under Section 400(8) of the KMC Act, 1980.

The matter is placed before the meeting of Mayor-in-Council, KMC for approval.”

17. For the purpose of the present discussion we should reproduce the provisions of Section 400(8) as under:-

“Notwithstanding anything contained in this chapter, if the Mayor-in-Council is of the opinion that immediate action is called for in relation to a building or a work carried on in contravention of the provisions of this Act it may for reasons to be recorded in writing, cause such building or work to be demolished forthwith.”

18. It is found from the said provision that there is no pre-requisite condition mentioned in sub-section (8) of Section 400, that there must be some grave emergency or imminent danger to public safety or something like that. In my considered opinion it is a settled principle of law of interpretation

that when letters of law are not ambiguous or are not susceptible to different meanings, neither any word nor sentence can be added to such clear unambiguous provision of law. Taking a cue from the said rule of interpretation, in my view, if the Mayor-in-Council opines that immediate action is required for demolition of a building or work which is being carried on in contravention of the provisions of the Act, 1980 the Mayor-in-Council after recording reasons may ask the concerned department to proceed with the demolition work forthwith. The said provision of law does not require the Mayor-in-Council to consider whether or not there exists any grave emergency towards public safety or imminent danger for such unauthorized construction. But on the other hand, it is sufficient that if, after considering the contraventions made by the person responsible, the Mayor-in-Council is of the opinion that immediate action for demolition of the building or work as aforesaid is necessary. The case in hand is one of the instances when such immediate action has been directed to be taken on the basis of opinion of the Mayor-in-Council since it was found that the construction work was not stopped in spite of service of stop work notice and even after lodging of FIR. The record shows that the appellants did not comply with the provisions of Sections 390(1)(k), 392, 394 of the Act, 1980 nor Rule 4 of the KMC Building Rules, 2009. Moreover, the appellants did not stop work even after service of notice under Section 401 of the Act, 1980 as already mentioned above. In the backdrop of such serious disobedience on the part of the appellants if drastic steps under Section 400(8) of the Act, 1980 were not taken, there were chances for making the situation complicated from the

side of the person responsible to evade demolition of unauthorized construction.

19. The decision reported at **2007 SCC OnLine Cal 613 (Sunil Chandra Dey Vs. State of West Bengal & Ors.)** has thoroughly discussed the provisions of KMC Act, 1980 as well as Transaction of Business of the Mayor-in-Council Regulations, 1986. In the said case law the Mayor-in-Council under Section 400(8) has been described as the sole judge of the facts but if we take a conjoint reading of Section 400(8) of the Act, 1980 and Regulations 1986, we shall find that on the factual aspects as depicted in the departmental note with points for decision, the Mayor-in-Council under Section 400(8) of the Act has been asked to opine whether or not the department should proceed with immediate action for demolition of the building or a work which is being carried on in contravention of the provisions of this Act. The Mayor-in-Council has to form an opinion on the factual aspects reflected in the note prepared by the department concerned. Sub-section (8) of Section 400 of the Act, 1980 requires the opinion rather than the decision of the Mayor-in-Council and undoubtedly the provisions of the Act, 1980 have precedence over the Regulations, 1986. Section 400(8) does not require the Mayor-in-Council to make a judicial decision or to judge on the factual aspects or points for decisions as prepared by the department. If there is no such requirement under sub-section (8) of Section 400 of the Act, 1980, in our considered view, Mayor-in-Council cannot be required to

act as a Judge on the factual aspects and points for decisions prepared by the department concerned.

20. I have also gone through the decision in **Sri Prahlad Singh Jaggi & Ors. (supra)** and found that the facts of the said case were completely different in the sense that in the said case the concerned partnership firm by virtue of the relevant tenancy agreement decided to commence execution of work at the tenanted premises by erecting an internal wooden partition wall and repairing the existing wooden mezzanine floor and appointed a contractor for such purpose and the contractor advised that the existing wooden mezzanine floor was required to be replaced as it would be used for storage purpose for which no prior sanction of the municipal corporation was required. But in spite of that, the partnership firm sent letters to the concerned officer for permission but as there was no response the partnership firm commenced the work.

21. This goes to show that the factual matrix in the said case was totally different since the repair works in that case were covered within the scope of Rule 3(2) of the Kolkata Municipal Corporation Building Rules, 2009. It is also pertinent to mention that the person responsible in the aforesaid reported decision had initially intimated the Authority his desire to commence the work but in our case additional construction was being made without prior sanction or permission from the Kolkata Municipal Corporation in violation of Sections 390(1)(k), 392, 394 of KMC Act, 1980 as

well as Rule 4 of the Kolkata Municipal Corporation Building Rules, 2009. Therefore, the conduct of the person responsible in the said reported decision cannot be equated with that of the person responsible in the present case.

22. The decision in **H.L. Trehan and Others (supra)** deals with the principles relating to opportunity of hearing. In this regard a reported decision of this Hon'ble Court at **2001 (1) CHN 4 (C.M.C. & Another Vs. Abid Hossain with C.M.C. Vs. Maula Bux with Ziauddin Vs. Mayor-in-Council (Building) and Arif Iqbal Vs. State of West Bengal)** can be referred to, to show that an unauthorized construction cannot vest any legal right on the person who raised such construction. The above reported decision was not considered by the Learned Single Judge in the decision reported in **Sunil Chandra Dey (Supra) and also in Sri Prahlad Singh Jaggi & Ors. (Supra)**. The Division Bench in the case of **Maula Bux, (Supra)**, observed in para 12 of the judgment as follows:-

*“12. It is true that right to property is recognized as a right of a citizen in the Constitution itself. A citizen may be deprived of such right only by the authority of Law. This right to property cannot be construed in abstract. A building erected by a person, who owns the land or who is authorized to erect a building on a piece of land, has a right to property in the building erected on such land. If a person erects a building on a land which belongs to the public, he has no right to property in the building. Similarly the building must be erected in accordance with the sanction. If a building has been erected without sanction, such erection being an illegal erection, no right to property flows therefrom. **Similarly a person, who is authorized***

to erect a building in accordance with sanction, erects a building in excess of the sanction or contrary to the sanction, to the extent the erection is beyond sanction or contrary to sanction, the person concerned cannot be said to have any right to property therein. By sub-section (8) of section 400 of the Act, power has been vested to demolish only such portion of the erection in which there is no right to property. The demolition of a dilapidated building or a part thereof is not at all comparable with demolition of an unauthorized erection. In the case of demolition of a dilapidated building or a part thereof, but not an unauthorized building, the right to property is affected. The right to property in such a dilapidated building can be taken away having regard to public safety. Appropriate provisions therefore have been made in the Act itself. In the instant case we are considering totally unauthorized erection for the same is either without sanction or in contravention or contrary to or in deviation of sanction. There is no right to property in such erection.”

23. The Division Bench also made certain observations in paragraphs 13 and 14 of the judgment which may be helpful to note for our present discussion:-

“.....If it appears that an erection is being made without sanction on a land owned by the person, who is making the erection, thereby causing public inconvenience, and notice has been given to stop such erection, but the person concerned does not stop such erection, would it be proper for the Corporation to remain a mute spectator? In the normal circumstances such stop-work order is enforced by the Police, but then the Police Personnel are not under the control of the Corporation. Therefore, if by reason of either the connivance of the Police Personnel or taking advantage of their carelessness or ineffectiveness, the person concerned refuses to comply with the stop-work order, would the Corporation remain an idle spectator? In order to exercise the power the person exercising the power must subjectively determine that the exercise of power is of immediate necessity. Therefore, in the section itself enough guidelines have been given as to when extraordinary power has to be exercised under sub-section

(8) of section 400 of the Act either in lieu of exercise of power under sub-sections (1) to (7) of section 400 of the Act or in addition thereto. The purpose and object of exercise of power in both the situations are one and the same, to prevent contravention of the provisions of the Act in relation to a building or a work being carried on. The extraordinary power has not been granted to the Municipal Commissioner. The same has been granted to the Mayor-in-Council which is the second highest body entrusted to carry out the duties of the Corporation. That itself is a safe-guard. And in any event if this safety valve does not save the person in question, as aforesaid, the person may be compensated adequately. Sub-section (8) of section 400 therefore, cannot be struck down on the ground that conferment of such power is arbitrary. In a given case, however, it may be shown that user of such power was not proper and power under sub-section (1) of section 400 ought to have been used. In such circumstances too the person affected may be adequately compensated.

14. As pointed above, conceptually it is not conceivable that a citizen in India has personal liberty to make an unauthorized construction. In that view of the matter, it cannot be said that sub-section (8) of section 400 of the Act is violative of Article 21 of the Constitution.”

24. From the above it is crystal clear that the appellants have no absolute right to claim that their valuable right of hearing has been violated by the Corporation by taking steps under Section 400(8) of the Act, 1980.

25. In view of above discussion, the contention of the appellants that by remanding the matter to the KMC, the Learned Single Judge encouraged the exercise of empty formalities cannot be said to be correct.

26. But the question is whether, in the backdrop of non-observance of statutory Rules and Regulations, the appellants, who have no legal right

over their admitted unauthorized construction, should be given any opportunity to re-agitate the relevant issue before the KMC Authority once again?

27. Section 401(1) provides that where the demolition of any heritage building or the erection of any building or the execution of any work has been commenced or is being carried on without or contrary to the sanction referred to in section 396 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or the rules or the regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, by order, require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.

28. Section 401(2) of the KMC Act mandates that no Court shall entertain any suit, application or other proceeding for injunction or other relief against the Municipal Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

29. It goes to show that the legislative wisdom is in favour of strict interpretation of the provisions of the KMC Act, 1980. It is seen that after violating the mandatory conditions for construction of building including any addition thereto, the persons responsible approached the High Court in

its writ jurisdiction under Article 226 of the Constitution, and the Court in several cases have asked the Authority to consider the plea of the persons responsible and to hear them afresh. In spite of such latitude shown to the persons responsible, a large section of our society remains undisciplined and carries on with unauthorized construction merrily in anticipation that such unauthorized construction cannot be demolished without hearing them or at least without giving them an opportunity of hearing.

30. As a result the number and extent of unauthorized construction has become alarmingly high and such beneficent interpretation of the provisions of KMC Act by the Courts were unable to check the temptation of raising unauthorized construction in every nook and corner of our city. Undoubtedly, unauthorized and illegal constructions have become a menace to our society. Therefore, in our view as the flavour of provisions of KMC Act, 1980 points to strict interpretation of certain provisions of the KMC Act, 1980, we do think that the provisions of KMC Act, particularly the provisions relating to chapter XXII are to be interpreted strictly, like penal or taxing statutes. If the same are not interpreted strictly from the side of the Hon'ble Court, arresting of unauthorized construction would remain a distant reality. If such unauthorized and unbridled constructions are required to be checked, the provisions as discussed above should be interpreted strictly since we do not find any ambiguity in the relevant provisions of the above Act.

31. As it is found that the appellants have violated the relevant provisions of the KMC Act, 1980 and Rules framed thereunder in respect of the construction of an additional floor over G+V construction we are unable to agree with the directions issued by the Learned Single Judge and further as we find that substantial compliance of relevant provisions of the Act 1980, Rules 2009 and Regulations 1986 have been done from the side of the Kolkata Municipal Corporation we are not inclined to allow the present appeal. APOT No. 89 of 2023 is dismissed with no order as to costs. Moreover, as we have found that the KMC authorities have substantially complied with the provisions of the Act, 1980, Building Rules 2009 and Regulations 1986, we allow the cross-objection filed by KMC. The cross-objection being OCOT 3 of 2023, thus, is allowed, without any order as to costs. The impugned judgment dated 23.03.2023 passed in WPO 634 of 2023 is hereby set aside. The connected applications are also disposed of.

32. However, we make it clear that after completion of the demolition work at the relevant premises, if the writ petitioners/appellants file an application for sanction of one additional floor afresh, in respect of the subject premises, the KMC authority shall consider the same and shall pass appropriate order thereon, without being influenced by any of the observations of this court in this judgment.

33. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)