

D/L  
Item No. 05  
01.02.2024  
KOLE

**MAT 219 of 2024  
With  
IA CAN 1 of 2024  
With  
IA CAN 2 of 2024**

**Mohammed Shahid Khan & Ors.  
-Vs.-  
Imran Ali & Ors.**

*Mr. Alok Kumar Ghosh,  
Mr. Gopal Chandra Das,  
Mr. Rudranil De,  
Ms. Ananya Das*

*...for the appellants.*

*Ms. Mitali Mukherjee,  
Mr. Supriyo Majumdar,*

*...for the State.*

*Mr. Fazlul Haque,  
Mrs. Poushali Banerjee,*

*...for the KMC.*

**IN RE: CAN 1 of 2024:-**

This is an application for leave to appeal against a judgment and order dated January 17, 2024, whereby the writ petition of the respondent no. 5 herein being WPA No. 24890 of 2023 was disposed of by a learned Single Judge of this Court.

The applicants were not parties to the writ petition. They say that their predecessor-in-interest one Hinga Bibi was a thika tenant in respect of the construction which is sought to be demolished by Kolkata Municipal Corporation (in short 'KMC') in exercise of power under Section 400 (8) of the KMC Act, 1980. They say that they are vitally affected by the threatened action of KMC. The learned Single Judge

has directed demolition of the property. Hence, the applicants want to assail such order by way of appeal.

Having heard Mr. Das, learned Advocate for the applicants, we are of the view that they may have something to say about the impugned order. Hence, leave is granted to prefer appeal.

CAN 1 of 2024 is, thus, disposed of.

**IN RE: MAT 219 of 2014 with CAN 2 of 2024:-**

By consent of the parties, the appeal and the connected application are taken up for hearing together.

It appears that an unauthorized construction has been raised at 155/H/1 Keshab Chandra Sen Street, Ward No. 38, Borough-IV of KMC. The entire building is without any sanctioned plan.

The respondent no. 1 herein approached the learned Single Judge for an order directing KMC to demolish the unauthorized structure. The learned Judge noted that KMC has invoked Section 400 (8) of the KMC Act, 1980 and has demolished part of the impugned structure. It was submitted before the learned Judge by the writ petitioner that illegal construction is still going on and the demolition is a mere cosmetic one.

The learned Judge disposed of the writ petition with the following observations and directions:-

*“As the Corporation appears to have invoked section 400(8) of the 1980 Act, accordingly it is incumbent for the Corporation to demolish the entire unauthorised construction without any further delay. Any delay in demolishing the same may create further legal*

*ramifications, as the person responsible may transfer/alienate the unauthorised structure in favour of any unsuspecting buyers and may resort to various methods for stalling the demolition. The Corporation ought to implement the order of demolition forthwith by fixing dates of demolition in such a manner that the demolition is conducted and concluded at the earliest and in any event positively by February 29, 2024.*

*The Commissioner of Police, North and North Suburban Division, Kolkata Police is directed to render all necessary help and assistance to the men and agents of the Corporation by providing enough police personnel at the locale at the time of demolition of the subject structure.”*

Being aggrieved, the appellants are before us.

Mr. Das, learned Advocate for the appellants says that the appellants reside at 155/A, Keshab Chandra Sen Street, Kolkata 700009 and presently are residing at 147/H/26, Keshab Chandra Sen Street. The KMC authorities should not touch their premises while demolishing 155/H/1, Keshab Chandra Sen Street, Kolkata. We have not really understood what the apprehension of the appellants is. If the action taken by KMC under Section 400(8) of the KMC Act, 1980, which is an emergency provision is directed against 155/H/1, Keshab Chandra Sen Street, then we see no reason for the appellants to be apprehensive. This makes us a little suspicious about the motive of the appellants.

However, we only clarify that the demolition activity that the KMC authorities will undertake will be in respect of 155/H/1, Keshab Chandra Sen Street, Kolkata 700009. We affirm the order of the learned Single Judge.

Since we have not called for affidavits, the allegations made in the stay application, are deemed not to be admitted by the respondents.

With the aforesaid clarification, this appeal and the connected application are disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**(Arijit Banerjee, J.)**

**(M. V. Muralidaran, J.)**