

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

THE HON'BLE JUSTICE ARIJIT BANERJEE

And

THE HON'BLE JUSTICE PARTHA SARATHI SEN

MAT 2279 of 2023

With

IA No: CAN 2 of 2023

Bijay Biswakarma..

-Vs-

Rajkumari Devi Singh & Ors.

For the Appellants : Mr. Arindam Banerjee, Adv.
Ms. Amrita Pandey, Adv.,
Ms. Anamika Pandey, Adv.,
Mr. Ghanshyam Pandey, Adv.

For the KMC : Mr. Biswajit Mukherjee, Adv.,
Ms. Manisha Nath, Adv.

For the private respondents : Mr. Rupak Ghosh, Adv.
Mr. Surendra Kumar, Adv.,
Ms. Sneha Singh, Adv.

For the State : Mr. Suman Ghosh, Adv.,
Mr. Soumen Chatterjee, Adv.

Hearing concluded on: 10.04.2024.

Judgment on: 28.06.2024.

PARTHA SARATHI SEN, J. : -

1. In this appeal the order dated 30.08.2023 as passed in WPA 3189 of 2023 (*Rajkumari Devi Singh vs. Kolkata Municipal Corporation*

and Ors.) as passed by the learned Single Bench of this Court has been assailed. Since the present appellant was not a party in WPA 3189 of 2023, an application for leave to prefer an appeal vide; CAN 1 of 2023 was filed and moved before us which was allowed by us vide; our order dated 28.11.2023.

2. The subject matter involved in the instant appeal is the premises No. B/136/H/22, Maulana AbulKalam Azad Sarani (erstwhile Narkeldanga Main Road) Ward no.30, Borough III, Kolkata 700011 (hereinafter referred to as 'the disputed building' in short) wherein the present appellant claimed himself to be a tenant under one Shanti Devi Singh.

3. For the effective disposal of the instant appeal some admitted facts are required to be stated and those are under:-

- i. One Baljit Singh filed WPA 7911/2023 which was disposed of on 04.07.2023 by a learned Single Judge of this Court praying for demolition of the disputed building which has been allowed and learned Single Judge directed Kolkata Municipal Corporation(hereinafter referred to as 'KMC' in short) to carry out the demolition of the disputed building since the said court found that the entire construction in the disputed building is unauthorized.
- ii. One Shanti Devi Singh, the landlord of the present appellant has assailed the said judgement dated

04.07.2023 in appeal by filing MAT 1465 of 2023 and the said appeal was again dismissed wherein the following has been held:-

“We have considered the rival contentions of the parties. It is not in dispute that the impugned construction was raised by the appellants without there being any sanctioned building plan. It is our considered view that the citizens, who take law into their own hands and make constructions without obtaining prior sanction from the competent authority, deserve no sympathy of the Court. The law generally does not contemplate making of construction without prior permission and then applying for legalizing the same. People, who indulge in illegal construction without obtaining prior permission from the appropriate authority, are reckless and deserve no leniency.”

- iii. Subsequently one Rajkumari Devi Singh filed another writ petition being WPA 3189 of 2023 (*Rajkumari Devi Singh vs. Kolkata Municipal Corporation and Ors.*) which was disposed of by the learned Single Judge dated 30.08.2023 directing the Kolkata Municipal Corporation to take steps for demolition of the entire unauthorized construction being the disputed building.

4. As discussed above the said order of the learned Single Judge as passed on 30.08.2023 has been assailed before us by filing the instant appeal.

5. In support of the instant appeal Mr. Banerjee, learned counsel appearing on behalf of the appellant at the very outset draws attention of ours to Section 400 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the 'said Act' in short). It is argued by Mr. Banerjee that the present appellant being the tenant of the disputed building has not been served with any notice as per the first proviso of Section 400(1) of the said Act prior to the passing of the order of demolition by the Municipal Commissioner. It is argued that the present appellant was also not made party in WPA 3189 of 2023. It is further submitted by Mr. Banerjee, learned counsel for the appellant that since the appellant was not served with the aforementioned notice, the order of demolition as contemplated under Section 400(1) of the said Act cannot be carried out. It is further argued that since the present appellant is going to be affected by the order of demolition as has been passed by the Municipal Commissioner the present appellant comes under the purview of 'such person' within the meaning of the said proviso of Section 400(1) of the said Act.

6. Drawing attention to the two reported decisions namely; ***State of Punjab vs. Amar Singh Harika*** reported in ***AIR 1966 SC 1313*** and ***Bachhittar Singh vs. State of Punjab and Ors*** reported in ***AIR 1963 SCC 395*** it is contended on behalf of the appellant that the learned Single

Judge while disposing WPA 3189/23 has failed to visualize that the order of demolition as passed by the Municipal Commissioner would not have any effect unless it is communicated to the occupier of the disputed building and thus such an order cannot be implemented to the detriment of any person without being first communicated the same to the person aggrieved.

7. In course of his argument Mr. Banerjee also draws out attention to sub-sections (3) and (6) of Section 400 of the said Act. It is submitted on behalf of the appellant that on conjoint perusal of the sub-sections (3) and (6) of Section 400 of the said Act it would reveal that it is the legislative intent that '*any person aggrieved*' by an order of Municipal Commissioner under Section 400(1) may within 30 days from the date of such order can prefer an appeal before the Municipal Building Tribunal and every order made by such Tribunal on appeal shall be final and conclusive.

8. It is argued by Mr. Banerjee, learned counsel for the appellant that admittedly the present appellant being the tenant of the disputed building is in possession of the portion of the property which is alleged to be illegal one and therefore the present appellant very much comes under the purview of '*any person aggrieved*' within the meaning of the said Act. It is thus argued on behalf of the appellant that for not serving the notice under the first proviso of Section 400(1) of the said Act as well as for not providing the copy of the order of demolition of the disputed building as passed by the Municipal Commissioner, not only the principle of natural justice has been violated at the instance of the respondent no.2 /Kolkata

Municipal Corporation but at the same time the present appellant being a lawful tenant of the disputed building having an interest in the said property is being deprived of a valuable right to prefer an appeal as per the provision of Section 400(3) of the said Act. It is thus argued on behalf of the appellant that the above mentioned act of the respondent no.2/Kolkata Municipal Corporation tantamounts to violation of principle of natural justice as well as violation of the provision of Article 14 of the Constitution of India which the learned Single Bench has failed to visualize while directing the implementation of the demolition order as passed by the Municipal Commissioner.

9. It is further argued on behalf of the appellant that the present appellant being the tenant in respect of the disputed building ought to have given an opportunity of right of audience before the Municipal Commissioner at the first instance before passing the order of demolition in respect of the disputed building and at the same time the present appellant also ought to have been provided with a copy of the said order of demolition so as to enable him to exercise his Right of Appeal under Section 400(3) of the said Act before the Tribunal. It is thus submitted that from the facts and circumstances as involved in the instant lis, it would reveal that the respondent No. 2/KMC has failed to discharge its obligation to the present appellant which is statutory in nature and thus the impugned order as passed in WPA 3189 of 2023 as well as the order of demolition as passed by the Municipal Commissioner in respect of the disputed building may be set aside.

10. In course of his submission Mr. Banerjee, learned counsel for the appellant also places his reliance upon a reported decision namely; ***Bhaggo Dhar Manna vs. State of West Bengal*** reported in **1997 SCC Online Cal 88 : (1997)2 Cal LT 380**.

11. Per contra, Mr. Mukherjee, learned counsel appearing on behalf of the respondent no.2/KMC at the very outset submits before this Court that the entire construction of the disputed building has been done without sanction plan and thus the same is totally illegal and unauthorized one. Placing his reliance upon a reported decision namely; ***CMC and Anr. vs. Abid Hossain*** reported in **2001 (1) CHN 4** it is argued that in view of the proposition of law as decided in the said case of **Abir Hossain (supra)** the present appellant being the tenant of the disputed building has no right at all to challenge the finding of the Municipal Commissioner as well as the order impugned in view of the fact that the disputed building has been constructed without sanction and such construction of building being an illegal one, no right to property flows therefrom and therefore the appellant has got no locus to invoke the writ jurisdiction of High Court under Article 226 of the Constitution of India. It is further argued by Mr. Mukherjee that the ratio of decision of **Abid Hossain (supra)** have been constantly followed in the reported decision of ***Nirmal Kumar Das vs. Kolkata Municipal Corporation and Ors.*** reported in **(2023) SCC Online Cal 2425, in the judgment as passed in APOT/89/23, OCOT 3/23 (M/s Kzar Properties Pvt. Ltd.&Ors. Vs the Kolkata Municipal Corporation and Ors)** disposed of on 19.10.2023 by

a Co-ordinate Bench of this Hon'ble Court and also in ***MAT 1926 of 2023 (Kolkata Municipal Corporation vs.SK. Md. Sharfuddin)*** disposed on 24.11.2023.

12. In course of his submission Mr. Mukherjee also draws our attention to Section 400 of the said Act. It is submitted by Mr. Mukherjee, learned counsel for the respondent no.2/ Kolkata Municipal Corporation that by no stretch of imagination the present appellant is entitled to get a notice under the first proviso of Section 400 (1) of the said Act inasmuch as the present appellant is not the person at whose instance the illegal erection or the work of construction has been carried out. It is argued by Mr. Mukherjee that the word '*any person aggrieved*' as mentioned in Section 400(3) is exhaustive in nature and the said three words '*any person aggrieved*' clearly indicates the person who had illegally raised any construction and not others which would be evident on cursory reading of Section 400(1) together with its first proviso and the explanation of the said Act.

13. It is thus argued by Mr. Mukherjee that in view of the aforesaid legislative intent it cannot be said that by not serving any notice under the first proviso of Section 400(1) of the said Act principle of natural justice has been violated at the instance of the respondent no.2/KMC.

14. Drawing our attention to Section 400(3) of the said Act it is further argued by Mr. Mukherjee that the words '*any person aggrieved*' ought to have been construed in a restricted manner and while interpreting as to who comes under the purview of '*any person aggrieved*' the provision of

Section 400(1) are to be kept in to mind. It is further argued by Mr. Mukherjee that the words '*any person aggrieved*' as mentioned in Section 400(3) ought not to be read in isolation and on the contrary the same is to be construed keeping in mind the legislative intent as enshrined in Section 400(1) including its first proviso and the explanation. It is further argued by Mr. Mukherjee that the words '*any persons aggrieved*' do not cover any or all the occupiers of the disputed building and on the contrary the said words are to be construed in respect of the person who is responsible for the illegal construction only.

15. In support of his contention Mr. Mukherjee, places his reliance upon a reported decision namely; ***Ram Awatar Aggarwal and Ors vs. Corporation of Calcutta and Ors*** reported in ***AIR (1982) Cal 314***.

16. It is argued by Mr. Mukherjee that in the reported decision of ***Ram Awatar Aggarwal***(supra) it has been held by a Co-ordinate Bench of this court that the person responsible for illegal construction alone has his right to challenge the order of demolition and no others. It is further argued that in the reported decision of ***Ram Awatar Aggarwal (supra)***it has been held that in the event an occupier is not a person responsible, he cannot challenge the demolition order on the ground that the construction is authorized and lawful. It is lastly submitted by Mr. Mukherjee that in the reported decision of ***Sanjay Mehta and Ors. vs. Kolkata Municipal Corporation and Ors*** reported in ***(2006)SCC Online Cal 447: (2007) 1 CLT 526*** a Single Bench of this court had occasion to consider the true meaning and purport of the words '*any person*

aggrieved' as mentioned in Section 400 (3) of the said Act wherein it has been held relying on the judgement of **Ram Awatar Aggarwal (supra)** that the words '*any person aggrieved*' carries a restrictive meaning and it means the owner and/or occupier and /or any other person who is responsible for such illegal construction and not others.(emphasis supplied by me)

17. Mr. Mukherjee, learned counsel for the respondent no.2/Kolkata Municipal Corporation thus submits before this Court that the present appellant being a mere occupier and an alleged tenant of the disputed building thus cannot have any locus to challenge the order of demolition by filing an appeal before the tribunal and therefore the instant appeal may be dismissed holding that the same is not maintainable.

18. I have perused the materials as placed before us from the Bar. I have duly considered the rival submissions made by the learned advocates for the contending parties.

19. For effective adjudication of the instant lis, I propose to look to the provisions of Section 400 of the said Act which is reproduced hereunder in verbatim:-

“400. Order of demolition and stoppage of buildings and works in certain cases and appeal. (1) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 396 or in contravention of any of the provisions of this Act or the rules and the regulations made thereunder, the Municipal

Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefore has been delivered to such person, as may be specified in the order:

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Municipal Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:. * * * * *

Explanation.-In this Chapter, "the person at whose instance" shall mean the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations if any, or does it by himself.

(2) The Municipal Commissioner may make an order under sub-section (1), notwithstanding the fact that the assessment of such building has been made for the levy of the "[property tax] on lands and buildings.

(3) Any person aggrieved by an order of the Municipal Commissioner made under sub-section (1) may, within thirty days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under section 415.

(4)

(6) Every order made by the Municipal Banking Tribunal on appeal and, subject to such order, the order made by the

Municipal Commissioner under sub-section (1) shall be final and conclusive.

(7).....

(8).....”

20. Keeping in mind the aforementioned legislative provision if I look to the facts and circumstances as involved in the instant appeal it is undisputed and rather it has been constantly held by this court in WPA 7911 of 2023, MAT 1465 of 2023 and WPA 3189 of 2023 that the construction over disputed building is illegal and that has been erected without any valid sanction plan. The moot question which arises for our consideration in this appeal is as to whether the present appellant being an occupier/tenant of the disputed building under the person responsible namely; Shanti Devi Singh has got any locus to participate in the proceeding before the Municipal Commissioner in view of the provision of Section 400 (1) of the said Act. Another question which we are requested to decide as to whether by not serving any notice under the first proviso of Section 400 (1) of the said Act prior to passing an order of demolition the principle of natural justice has been violated at the instance of the respondent no.2/Kolkata Municipal Corporation.

21. It is also to be decided as to whether the present appellant has got any right to prefer an appeal before the Tribunal challenging the order of demolition by the Municipal Commissioner in respect of the disputed building being a tenant/occupier thereof.

22. On a cursory perusal of Section 400(1) of the said Act it appears to me that the legislatures in the said sub-section (1) consciously used the

words ‘.....*person at whose instance the erection or the work has been commenced or is being carried on or has been completed.....*’ It thus appears to this Court that Section 400(1) clearly postulates that the Municipal Commissioner on detection of a construction and /or erection in contravention to the sanctioned plan or without sanctioned plan may make an order for demolition of the said illegal construction by the person who is responsible for the same.

23. It further appears to me that the words ‘*such person*’ as mentioned in the first proviso of Section 400(1) says about the said person responsible and not others. In my considered view the words ‘*such person*’ as has been used by the legislature in the first proviso to Section 400(1) cannot have any broad meaning and it includes no other person than the person who is responsible for the said alleged illegal construction which has again been explained in ‘Explanation’ to Section 400(1). In continuation of the discussion as made supra, if I look to the provision of Section 400(3) of the said Act, it reveals that the legislatures have used the words ‘Any person aggrieved’ as the opening words of the said sub section. It appears to me that in order to understand the true meaning and implication of the words ‘any person aggrieved’ it ought not to be read in isolation and on the contrary those ought to be read in continuation of the earlier sub sections. On conjoint perusal of Section 400(1), its first proviso, its explanation and Section 400(1) of the said Act, it appears to me that the words ‘any person aggrieved’ means the person who is responsible for the illegal construction and none else.

24. At this juncture I propose to look to the reported decision of **Ram Awatar Aggarwal (supra)** which has been passed by a Co-ordinate Bench. In the case of **Ram Awatar Aggarwal (supra)** a similar question arose as to whether an occupier of an illegal construction being not responsible for such illegal construction comes under the purview of ‘any person’ and whether the said occupier is at all entitled to any notice as contemplated in the first proviso of Section 400(1) of the said Act. While answering the questions the Lordships expressed the following view:-

“19. Section 414 provides for demolition or alteration of building work unlawfully commenced, carried on or completed. Under sub-sec. (1) of S. 414 the Commissioner may by written notice require the person responsible to demolish such erection, alteration, addition or other work or to make the alteration, as the case may be, or to show cause why such erection, alteration, addition or other work should not be demolished or the alteration should not be made. The written notice will be served only on the person responsible. Under sub-sec. (3) of S. 414, if the person responsible fails to demolish or to show sufficient cause to the satisfaction of the Commissioner, as the case may be, the Commissioner may order the demolition of the erection, alteration, addition or other work, or the making of the alteration. Under the first proviso to sub-sec. (3), a copy of the order shall be served upon the owner and the occupier thereof and no such action shall be taken until the expiry of thirty days from the date of the service of the said order. Sub-sec. (5) of S. 414 defines the expression “person responsible”. It is clear from the provisions of sub-sec. (1) and sub-sec. (5) of S. 414 that the expression “person responsible” only relates to a person who has something to do with the work of construction or who is in a position to comply with an order of demolition. The said expression does not include an occupier of the unauthorized construction, who has nothing to do with the work of such construction or any addition to it. There is no dispute with regard to the above interpretation of the

expression "person responsible". It is not also disputed by the appellants that none of them is a "person responsible" within the meaning of sub-sec. (5) of S. 414 of the Act. The appellants claim to be the occupiers of the building in respect of all the floors excepting the first floor of which the Rajasthan Bank of India Ltd. is the occupier. It is also claimed by the appellants that they became tenants of the said building under the respondent No. 11, Shyam Lal Agarwalla, before the first demolition order dated May 15, 1978 was passed by the Corporation.

20. The contention of the appellants is that, as the copies of the subsequent demolition orders dated April 21, 1981 were not served on them, the action of the Corporation in proceeding to demolish the building is highly illegal and ultra vires the first proviso to sub-section (3) of S. 414 of the Act. It is submitted on behalf of the appellants that if the copies of the demolition orders had been served on them they could have preferred appeals before the Building Tribunal under S. 414A of the Act. In this connection, it may be stated that although S. 414A provides that the appeal shall be filed within thirty days from the date of the order, in our opinion, on a proper construction of the provision, it should be held that the period of thirty days should be computed not from the date of the order, but from the date of the service of the copy of the order on the owner and the occupier or from the date of knowledge of the order of such owner and occupier. It is, accordingly, submitted on behalf of the appellants that so long as the copies of the subsequent demolition orders are not served on the appellants, the Corporation has no jurisdiction to demolish the further unauthorized construction. It is urged that non-service of the copies of the demolition orders on the appellants has deprived them of their valuable right of appeal under S. 414A of the Act. On this ground, the appellants submit that the Corporation should be prohibited from demolishing the building without complying with the provision of the first proviso to S. 414(3). The further submission of the appellants is that the copy of the demolition order has to be served not only on the occupier who was in occupation of the unauthorized structure at the time when the demolition order was passed, but

also on the occupier who came later. In other words, the contention of the appellants is that whenever any occupier comes to occupy the unauthorized structure before the execution of the demolition order, the execution should be deferred until the expiry of thirty days from the date of service of the order on such occupier.

21. On the other hand, Mr. Pradip Ghosh, learned counsel appearing on behalf of the respondents Nos. 1 to 5 including the Corporation of Calcutta submits that on a proper construction of the first proviso to sub-sec. (3) of S. 414 of the Act, it should be held that only that occupier who was there in the unauthorized structure at the time of passing of the demolition order is required to be served with a copy of the demolition order, and not any other occupier who comes to occupy the unauthorized structure subsequent to the demolition order. It is the case of the respondents Nos. 1 to 5 that at the time the first demolition order dated May 15, 1978 was passed, there was only one recorded occupier viz., Shyam Lal Agarwalla, the respondent no. 11, and a copy of the demolition order having been served on him, the corporation is not required to serve copies of the subsequent demolition orders on any other occupier or the appellants who were not in occupation of the unauthorized structure before May 15, 1978. So it is contended on behalf of the said respondents that there is no substance in the contention of the appellants about non-service on them of the copies of the demolition orders.

22. One significant fact that may be noticed is that although the appellants claim to be in occupation of the building from before the first demolition order, they have not made any grievance on account of non-service of the copies of the first demolition order. They are only insisting on the service of copies of the two subsequent demolition orders, both dated April 21, 1981. The first proviso to sub-sec. (3) of S. 414 clearly provides for the service of a copy of the demolition order on the owner and the occupier and enjoins that no action shall be taken until the expiry of thirty days from the date of service of the order. The object of the service of the copy of the demolition order on the owner and the occupier is clear, namely, it

will enable them to vacate the structure within thirty days of such service.

23. *It is contended on behalf of the appellants that if the copies of the demolition orders had been served on them, they could have preferred appeals under S. 414A of the Act Section 414A confers a right of appeal to the Building Tribunal on “any person” dissatisfied with the order of demolition. The expression “any person”, in our opinion, will undoubtedly include an occupier. But, where an occupier is not a person responsible, he cannot, in our opinion, challenge the demolition order on the ground that the construction is authorized and lawful as having been made in accordance with the provisions of the Act and the Building Rules. In such an appeal preferred by an occupier, other than a person responsible, the only relief that can be sought for by him is some more time so as to enable him to vacate the unauthorized structure. In any event, in the instant case, the building being admittedly unauthorized, there will be no scope for any argument in any appeal by an occupier in justification of the construction of the building.”*

25. In the reported decisions of **Sanjay Mehta(supra)** as passed by a Single Bench of this Court, a similar question arose as to whether Section 400(1) of the said Act recognizes the right of an occupier of an unauthorized construction to represent himself in a demolition proceeding. The question arose in the said case as to whether each and every occupier of a disputed building enjoys such right or not. In answering to such question the learned Single Bench expressed the following view:-

“22. *No doubt section 400(1) of the said Act recognises the right of an occupier of an unauthorised construction to represent himself in a demolition proceeding. A question now emerges: Does each and every occupier enjoy such right?*

23. *In order to answer the said question, this Court is required to refer to the explanation added to section 400(1) of the said Act wherein the right of an occupier to participate in the hearing in terms of the first proviso to section 400(1) of the said Act, is recognised. The said explanation runs as follows:*

“Explanation.—In this Chapter, “the person at whose instance” shall mean the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations if any, or does it by himself.”

24. *The first proviso to section 400(1) of the said Act provides that no order of demolition shall be passed unless such persons (viz., the person at whose instance, the erection or the work has been commenced or is being carried on or has been completed), has been given, by means of the notice served in such manner as the Municipal Commissioner may think fit, a reasonable opportunity of showing cause as to why such order shall not be made.*

25. *The said proviso read with the explanation added to section 400(1) of the said Act, thus, makes it clear that the right of hearing is recognised for such owner, occupier or any other person who causes erection of any building or execution of any work to be done, including alterations if any or does it by himself. In other words, the said proviso recognises the right of hearing of the person who is actually responsible for such unauthorised construction.*

26.....

27. *As such, while examining the locus of the petitioners, this Court can certainly take the help of the decision of the Division Bench of this Hon'ble Court in the case of Ram Awatarv. Calcutta Corporation (supra), for finding out the exact meaning which can*

be given to the expression, “the person at whose instance” used in section 400(1) of the present Act.

28. This Court is unable to accept the submission of Mr. Panja to the effect that section 400(1) of the said Act recognises the right of hearing of all the occupiers in the building irrespective of the fact that he is not a person responsible for such unauthorised construction. Such submission of Mr. Panja is completely against the spirit of the Division Bench decision of this Court in the case of *Ram Awatar v. Calcutta Corporation* (supra). Furthermore, if such contention of Mr. Panja is accepted, then the ultimate object of the Act to control and/or regulate unauthorised construction, will be frustrated. A person responsible for such unauthorised construction may introduce new occupier everyday in an unauthorised construction to frustrate the demolition proceeding. To obviate such eventuality, the legislature has added an explanation to section 400(1) of the said Act which clarifies that the expression, viz., “the person at whose instance” means the person who is actually responsible of such construction. As such, this Court has no hesitation to hold that the said provision does not contemplate the right of hearing of any person, other than those who are responsible for such unauthorised construction.

29. The other Division Bench decision in the case of *C.M.C. v. Abid Hossain* (supra) which was relied upon by Mr. Ghosh also makes it abundantly clear that no legal right is created in favour of a person in respect of any building which has been erected without sanction.

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36. *First proviso to sub-section (1) of section 400 of the said Act recognises the right of the person at whose instance the erection of the work has been commenced or is being carried on or has been completed. Explanation added to sub-section (1) of section 400 of the said Act explains the meaning of the expression “person at whose instance” appearing in sub-section (1) thereof. It is stated in the said explanation that in this Chapter “the person at whose instance” shall mean the owner, occupier or any other person, who causes the erection of any building or execution of any work to be done including alterations if any, or does it by himself. Thus, “the person at whose instance” is an inclusive expression which not only includes the owner or the occupier but also includes any other person who causes erection of any building or execution of any work to be done including alterations if any or does it by himself.*

37. *In short, the right of hearing is recognised for such owner, occupier or any other person who is actually responsible for such unauthorised construction.*

38. *Let me now consider the provision relating to appeal.*

39. *Section 400(3) of the said Act confers a right of appeal upon “any person” who is aggrieved by an order made under section 400(1) of the said Act.*

40. *Does the expression “any person” mean and/or include all persons affected by the order of demolition?*

41. *My answer to this question is “no”. The reason is very simple. The person whose, right of hearing is not recognised at the trial stage, cannot claim any right of appeal, as appeal is a continuation of the original proceeding. Then I will have to find out the persons whose right of participation in the proceeding at the initial stage is recognised and the person whose such right is not recognised.*

42. *I repeat once again that it is only those owner, occupier and/or any other person who is responsible for such construction, is the person whose right of participation in the proceeding under section 400(1) of the said Act is recognised. Needless to mention here that such right of participation of the other owner, occupier who is not responsible for such construction, is not recognised. If that be the position in law, then this Court has no hesitation to hold that “any person” carries a restricted meaning with it.*

43. *Thus, this Court holds that the owner and/or occupier who is not responsible for such construction, cannot prefer any appeal under section 400(3) of the said Act. “Any person” means any of three categories of persons, viz., owner, occupier or any other person who is actually responsible for such construction.*

44. *Furthermore, a tenant being an occupier of an unauthorised construction cannot oppose demolition of an unauthorised construction by contending, inter alia, that though such construction is unauthorised but still then such construction should be retained to protect the tenant's occupation therein. In case of demolition of any unauthorised construction, a tenant may at best claim compensation for loss of his tenancy against his landlord who has inducted the tenant in an unauthorised construction without disclosing the nature of such construction, but the tenant cannot resist demolition of an unauthorised construction on a plea of loss of his tenancy right. The Municipal authority is not a party to the tenancy agreement and as such, the Municipal authority has no duty to look into the sufferance of the tenants due to demolition of the unauthorised construction.”*

26. In view of the proposition of law as laid down in the reported decision of **Ram Awatar Aggarwal (supra)** and **Sanjay Mehta (supra)** I am in complete agreement with their Lordships that on conjoint perusal of

first proviso of Section 400(1) and its explanation read with Section 400(3) read with Section 400(6) of the said Act it appears to me also that explanation of Section 400(1) and the first proviso of the Section 400 (1) of the said Act makes it clear that it is not obligatory on the part of the Municipal Commissioner to serve notice upon any person other than a person who is responsible for the illegal construction prior to issuance of a direction for demolition of such structure and it was never the legislative intent that the words '*any person aggrieved*' as has been used in Section 400 (3) of the said Act covers any other person including any occupier of the unauthorized construction to participate in the appeal especially when the statute expressly barred the said class of person from participating in the proceeding before the Municipal Commissioner under Section 400(1) of the said Act.

27. In view of the discussion made hereinabove and in view of the consistent view taken by our High Court both in the Single Bench and in the Division Bench, I am constrained to hold that the present appellant being an occupier/tenant of the disputed premises has neither any right to participate in demolition proceeding before the Municipal Commissioner under the Section 400(1) of the said Act nor the said occupier/tenant has also any right to prefer any appeal before the Tribunal challenging the said order of demotion and therefore the question of serving any notice and/or communication of order of demolition upon the present appellant does arise in view of the statutory restriction as enshrined in Section 400 (1) of the said Act.

28. The instant appeal has another facet. I am in respectful disagreement with the submission of Mr. Banerjee, learned counsel for the appellant that his client being the tenant of the disputed building has an interest over the said property and thus is entitled to get a copy of the order of demolition so as to enable the appellant to prefer an appeal before the Municipal Commissioner. In the reported decision of **Abid Hossain (supra)** Right to Property of a citizen which is admittedly a constitutional right has been discussed in the following manner:-

“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.”

29. On perusal of the aforesaid proposition of law it thus appears to this Court that it is the view of the Division Bench of this Hon'ble Court that Right to Property recognizes right of the citizen in the Constitution itself but such right cannot be invoked in respect of a property and/or a building which is constructed without sanction. Admittedly the disputed building is totally unauthorized one and therefore neither the present appellant nor the landlord i.e. Shanti Devi Singh can claim any right or equity over such illegal construction.

30. I am in agreement with the view taken by the learned Single Bench in the reported decision of **Sanjay Mehta (supra)** that the present appellant being a tenant cannot claim any right or equity to protect his possession in respect of an unauthorized occupation and at best his remedy lies in seeking a compensation for loss of his tenancy against his landlord.

31. In considered view of this Court the reported decision of **Amar Singh Harika (supra)** and **BachhitaSingh (supra)** as cited from the side of the appellant has got no bearing in the facts and circumstances as

involved in this appeal since non-communication of order of demolition by the Municipal Commissioner under the first proviso of Section 400(1) does not cause any prejudice to the present appellant. In view of my discussion (supra) that the present appellant being the person not responsible for the illegal construction is not entitled to such notice in view of the legislative mandate under Section 400(1) of the said Act.

32. The reported decision of ***Bhaggo Dhar Manna (supra)*** as has been cited from the side of the appellant is also no way significant in my considered view for effective disposal of the instant appeal.

33. Before parting with, I once again reiterate that the present appellant has got no locus either to participate in the proceeding before the Municipal Commissioner or at the same time he has no right to prefer any appeal under Section 400(3) of the said Act before the Municipal Commissioner in view of the fact that it is the legislative intent as well as it has been consistently held that the words '*any person aggrieved*' as mentioned under Section 400(3) of the said Act has to be construed keeping in mind the provision of Section 400(1), its first proviso and its explanation and the words '*any person aggrieved*' cannot include any person and/or any other occupier and/or any other tenant **who is not responsible for the illegal construction or erection of any building.**

34. I thus find no merit in the instant appeal and the instant appeal is thus dismissed.

35. All connected interim applications are also dismissed.

36. Interim order of stay as passed in this appeal and as has been extended time to time stands hereby vacated.

37. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(ARIJIT BANERJEE,J.)

(PARTHA SARATHI SEN, J.)

Arijit Banerjee, J. :-

1. I have read the judgment authored by my Learned Brother. I am in complete agreement with the reasoning and conclusion recorded in the said judgment. However, I take the liberty of writing a concurring judgment.

2. The facts of the case have been recorded by my Learned Brother in His Lordship's judgment and I do not repeat the same. Suffice it to say that the order under appeal was passed on a writ petition filed essentially for implementation of an earlier order dated July 4, 2023, passed in WPA 7911 of 2023, whereby the Executive Engineer of the concerned Borough, was "directed to take steps for demolition of the entire unauthorised structure at the earliest, if not demolished in the meantime."

3. In the present writ petition the appellant was not a party. We granted leave to the appellant to file the present appeal.

4. Essentially two questions arise for our consideration. Firstly, in a demolition proceeding initiated under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 (in short 'the KMC Act'), directed against an unauthorised structure, is it necessary to grant an opportunity of showing cause to a person who is not in any manner connected with or responsible for the unauthorised construction, as to why the unauthorised construction should not be demolished? The second issue is, who is entitled to prefer a statutory appeal (under section 400(3) of the KMC Act) before the Municipal Building Tribunal, against a demolition order issued by the Municipal Commissioner or his delegate under Section 400(1) of the KMC Act? My Learned Brother, in his judgment has set out Sections 400(1) and 400(3) of the Act and to avoid prolixity, I refrain from doing so.

5. The Kolkata Municipal Corporation Act, 1980 (in short 'the KMC Act') is not merely a fiscal statute empowering KMC to impose and realise property tax in respect of land and buildings situate within its territorial limits. It is a regulatory piece of legislation designed to achieve at least two other objectives, which are not wholly unrelated. The first is to ensure that no construction can be raised on any land within the territorial limits of KMC without obtaining prior sanction of the Municipal Commissioner and in accordance with the provisions of Chapter XXII of the KMC Act and the Rules and Regulations made under the said Act in relation to erection of buildings. This is the mandate of Section 392 of the KMC Act. This provision has been included in the statute in aid of planned development

of the city of Kolkata or such portion thereof as comes within the purview of the KMC Act. Indiscriminate raising of construction any and everywhere at the sweet will of a person would be wholly inimical to planned development of the city. It may result in the city turning into a hideous concrete jungle having extremely adverse effects on the ecology and environment. Such unplanned buildings would also put undue pressure on the civic amenities like water supply system, sewerage, garbage removal system, etc., developed by KMC for the benefit of the residents of the city.

6. The other object of the KMC Act, as I understand, is to ensure that a construction is raised in accordance with accepted architectural standards lending structural stability thereto. This is important for the safety and security of not only the residents of a building but also for people in the vicinity of such construction. That is why, a person proposing to put up a construction is required to submit a draft building plan to KMC for its approval. Only upon KMC sanctioning such draft plan, the person concerned may raise the construction in accordance with such sanctioned plan. Therefore, prior permission of the KMC authority is required before one can construct a building within the territorial limits of KMC.

7. The provisions of Section 400 of the KMC Act which pertain to demolition proceedings and stoppage of construction works in certain cases, must be interpreted keeping in mind the objects of the KMC Act. Section 396 of the KMC Act stipulates that the Municipal Commissioner

shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub sections 2 or 3 of that section or the provisions of Section 405 or 406. If the Municipal Commissioner finds that a building is being or has been erected or execution of any work has been commenced or is being carried on or has been completed without or contrary to the sanction referred to in Section 396 of the KMC Act, or in contravention of any of the provisions of the said Act or the Rules and Regulations made thereunder, he may make an order directing that such erection or work shall be demolished “by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed”, within such period, not been less than five days and more than 15 days from the date on which a copy of the demolition order with a brief statement of the reasons therefor has been delivered to “such person”, as may be specified in the order. This is provided in Section 400(1) of the KMC Act. The first proviso to the said sub section stipulates that no order of demolition shall be made unless “such person” has been given, by means of a notice served in such manner as the Municipal Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made. The Explanation appended to the said sub section clarifies that in Chapter XXII of the KMC Act, “the person at whose instance” shall mean the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations if any, or does it by himself. One of the questions that arises for our

consideration is whether or not a person who is not responsible for erection of a building which is perceived to be unauthorised by KMC, has the right to be granted an opportunity to show cause as to why such building should not be demolished. For example, would a tenant of a building constructed illegally, without or in contravention of a sanctioned plan, have the right to show cause, or would a purchaser of a building constructed unauthorisedly by the original owner, have a right to show cause, prior to a demolition order being issued by the Municipal Commissioner or his delegate?

8. The other question that falls for our determination is who can prefer a statutory appeal before the Municipal Building Tribunal against an order of demolition issued by or on behalf of the Municipal Commissioner under sub section (1) of Section 400 of the KMC Act? Section 400(3) provides that “any person aggrieved” by an order of the Municipal Commissioner made under sub section (1) may, within 30 days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under Section 415. We are required to interpret the phrase “any person aggrieved”. Would that phrase mean any and everybody under the sky who feels aggrieved by a demolition order? In that event, a tenant of a building constructed illegally or a subsequent purchaser of such building or even a licensee occupying such building or a portion thereof may have the right of appeal to the Tribunal. Or, should a restricted meaning be given to the said phrase “any person aggrieved” so as to limit the category of persons entitled to assail a demolition order by

way of statutory appeal under Section 400(3) of the KMC Act before the Municipal Building Tribunal?

9. Before addressing the said questions, I would like to note that the Hon'ble Supreme Court in various cases has expressed deep concern about illegal and unauthorised constructions put up by unscrupulous builders without or in deviation from sanctioned plans. In ***Dipak Kumar Mukherjee v. Kolkata Municipal Corporation &Ors., reported at (2013) 5 SCC 336***, the Hon'ble Court observed that in the last four decades, the menace of illegal and unauthorised construction of buildings and other structures in different parts of the country has assumed monstrous proportions. Planned development of the cities is of utmost importance.

10. Let us note the observations of the Hon'ble Supreme Court in some of the other cases.

11. In ***Pratibha Coop. Housing Society Ltd. v. State of Maharashtra, reported at (1991) 3 SCC 341***, the Hon'ble Supreme Court approved the order passed by the Bombay Municipal Corporation for demolition of the illegally constructed floors of a building and observed:-

“7. ... Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and bye-

laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits.”

12. In ***Friends Colony Development Committee v. State of Orissa, reported at (2004) 8 SCC 733*** the Hon’ble Supreme Court noted that a large number of illegal and unauthorised constructions were being raised in the city of Cuttack and observed as follows:-

“20. Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with

demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders.....

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent

prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also

legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

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.”

13. In ***Shanti Sports Club v. Union of India, reported at (2009) 15 SCC 705***, the Hon’ble Supreme Court approved the order of the Delhi High Court declaring the construction of a sports complex on the land acquired for planned development of Delhi to be illegal and observed:-

“74. In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of

illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart

from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans,

zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.”

14. In ***Priyanka Estates International (P) Ltd. v. State of Assam, reported (2010) 2 SCC 27***, the Hon’ble Supreme Court while refusing to order regularisation of the concerned illegal construction, 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.”

15. Going back to the case of Dipak Kumar Mukherjee, at paragraphs 8 and 9 of the reported judgment, the Hon’ble Supreme Court observed as follows:-

“8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised

constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggijhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their sub-servient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short, 'the Corporation') have been extremely vigilant and taken steps for enforcing the provisions of the Kolkata Municipal Corporation Act, 1980 (for short, 'the 1980 Act') and the rules framed thereunder for demolition of illegal construction raised by respondent No.7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and

unauthorised constructions and those indulging in such activities will not be spared.”

16. Keeping the aforesaid observations of the Hon’ble Apex Court in mind, as regards the first question as to who should be granted a reasonable opportunity of showing cause before a demolition order is made by the Municipal Commissioner under Section 400(1) of the KMC Act, I am of the considered view that it is only an owner or occupier or any other person who is responsible for the impugned construction, who is entitled to such an opportunity. This is because the Explanation appended to Section 400(1) defines the phrase “the person at whose instance” as the owner, occupier or any other person who causes the erection impugned or raises such erection himself. It is an exhaustive definition. It is not an inclusive definition. The explanation clarifies what the phrase “the person at whose instance” used in Section 400(1) means. There is no ambiguity in the language of the Explanation.

17. Indeed, if one thinks logically, why should anyone else, excepting the person who has made or has caused the impugned construction to be made, be granted an opportunity of showing cause as to why the unauthorised construction should not be demolished? That person may be the owner or occupier or any other person e.g., developer. I see no reason why a subsequent purchaser or a transferee of the illegal construction or a tenant or licensee in occupation of such construction or portion thereof, or any other person not responsible for the impugned

construction should be granted an opportunity to show cause as to why the illegal construction should not be removed. One of the main objects of the KMC Act is to prevent unauthorised construction. A provision in the Act pertaining to unauthorised construction and demolition thereof should be given a strict interpretation so as to achieve the object of the statute. If any and everybody claiming to be in occupation of an unauthorised construction demands an opportunity of showing cause and if Section 400(1) of the Act is interpreted to mean that any occupant of an unauthorised building must be granted an opportunity of showing cause prior to a demolition order being issued, the object of the KMC Act will be frustrated. Theoretically speaking and taking an extreme example, an unscrupulous person at whose instance the unauthorised structure has been erected, may be successful in postponing demolition of such structure indefinitely by inducting in such erected structure a new occupant everyday. In that case, each such new occupant would have to be given an opportunity of showing cause against issuance of the demolition order. This could hardly be the intention of the legislature.

18. In this connection, one may refer to the Division Bench judgment of this Court in the case of ***Ram Awatar Agarwal &Ors. v. Corporation of Calcutta &Ors., reported at AIR 1982 CAL 314***. In that case, Sections 414 and 414A of the Calcutta Municipal Corporation Act, 1951 fell for consideration by this Court. The said provisions read as follows:-

“414. If the Commissioner is satisfied-

(i) that the erection of any building-

(a) has been commenced without obtaining any permission required to be obtained by or under this Act, or

(b) is being carried on or has been completed otherwise than in accordance with the particulars on which such permission was based, or

(c) is being carried on or has been completed in breach of any provision contained in this Act or in any rules or bylaws made thereunder or, of any direction or requisition lawfully given or made under this Act or under such rules or by-laws, or

(ii) that any alteration of, or addition to, any building or any other work made or done for any purpose in, to or upon any building, has been commenced or is being carried on or has been completed in breach of, or otherwise than in accordance with, any sanction granted under Section 387 in contravention of the provisions of Section 396 or 397, or

(iii) that any alteration required by any notice issued under Rule 22 of Schedule XVI has not been duly made, he may, without prejudice to any action that may be taken under any other provision of this Act, by written notice require the person responsible to demolish such erection, alteration, addition or other work or to make the alteration, as the case may be, or to show cause why such erection, alteration, addition or other

work should not be demolished or the alteration should not be made.

(2) The Commissioner may issue a notice under Sub-section (1) notwithstanding the fact that the valuation of such building has been made under Chap. XI for the assessment of the consolidated rate.

(3) If the person responsible fails -

(a) to demolish such erection, alteration, addition or other work, or to make the alteration, or

(b) to show sufficient cause to the satisfaction of the Commissioner as the case may be, why such erection, alteration, addition or other work, should not be demolished, or the alteration should not be made, the Commissioner may order -

(i) the demolition of the erection, alteration, addition or other work, or

(ii) the making of the alteration :

Provided that a copy of the order shall be served upon the owner and the occupier thereof and no such action shall be taken until the expiry of thirty days from the date of the service of the said order.

Provided further that where the structure does not contravene any of the provisions of this Act or the Rules made thereunder, the Commissioner may, without prejudice to any other action

that may be taken against the person concerned under the provisions of this Act or the Rules made thereunder, allow him to submit proper plan under the rules referred to in Schedule XVI and sanction such plan.

(4) Notwithstanding anything contained in the foregoing Sub-sections, no action shall be taken under this section in respect of any erection, alteration, addition or other work executed more than twelve years before the issue of the notice under Sub-section (1):

Provided that the onus of proving that the work was done more than twelve years previously shall lie on the person responsible.

(5) In this section the expression "person responsible" include the owner, the occupier and any other person who executes the erection, alteration, addition or other work or who is liable to mark any alteration , required by any notice issued onder Rule 22 of Schedule XVI.

414A. Appeal. Any person dissatisfied with the order of the Commissioner made under Sub-section (3) of Section 414 may, within thirty days from the date of the order, present an appeal accompanied by a copy of the order of the Tribunal constituted under Section 391B, and the President of the Tribunal may stay the execution of the order for such period or periods as he may think fit or until the disposal of the appeal."

The said provisions are in *parimateria* with the provisions of Section 400(1) of the KMC Act, 1980.

19. In the aforesaid case, one of the arguments advanced on behalf of the appellants who were occupiers of a portion of the unauthorised building in question, was that even assuming that the statute does not make any provision for granting an opportunity of being heard to the occupants, rules of natural justice require that such opportunity be given to the occupiers of an unauthorised structure before the structure can be demolished. Several decisions of the English Courts as also of the Indian Courts were relied upon by learned Counsel for the appellants. Negating such argument, at paragraph 33 of the reported judgment, the Division Bench held as follows:-

“33. We have already discussed above that Section 414(1) provides for the service of a notice on the person responsible so as to give him an opportunity of being heard. The appellants who are the occupiers of the building in question and having no connection whatsoever with the construction of the building have no right to claim an opportunity of being heard against the demolition orders of the building. They are only entitled to a reasonable time to shift to some other place. The first proviso to sub-sec. (3) of Section 414 has prescribed a period of thirty days from the date of service of a copy of the order of demolition on the occupier during which the demolition order will not be

enforced. This really means that the occupier is given a reasonable time to vacate the unauthorised structure. In the circumstances, we do not think that the above decisions cited on behalf of the appellants are of any help to them. In the Supreme Court decision, in Haji Vali Mohammed's case (supra) 24 hours' notice for the purpose of vacating the buildings or structures in question were considered to be not reasonable. But, in the instance case, the first proviso to sub-sec. (3) of S. 414 of the Act gives to the occupier a period of thirty days to leave the building or structure in question. So we do not find any merit in the contention of the appellants based on the ground that the principles of natural justice have been violated."

20. An alternative argument that was advanced on behalf of the appellants in the aforesaid case was on the basis of their right to carry on business under Article 19(1)(g) and their personal liberty under Article 21 of the Constitution of India as also on their right to property under Article 300A of the Constitution. The arguments were noted by the Division Bench and rejected at paragraphs 34, 35, and 36 of the aforesaid judgment, which read as follows:-

"34. In challenging the action of the Corporation in the enforcement of the demolition order, the appellants also take resort to fundamental rights guaranteed by the Constitution. It is submitted on behalf of the appellants that the action of the Corporation

interferes with their fundamental rights to carry on business under Article 19(1)(g) and their personal liberty under Article 21 of the Constitution of India. They also rely on right to property under Article 300A of the Constitution. It is contended that as some of the appellants have been carrying on their business in the building in question, the Corporation cannot interfere with their fundamental right to carry on business save in accordance with law. Further, it is submitted that the demolition of the building will deprive them of their personal liberty and, as such, the action of the Corporation in enforcing the demolition order is ultra vires Article 21 of the Constitution of India unless such demolition is carried out according to the procedure established by law.

35. The further contention of the appellants is that they are not trespassers, but they have lawfully acquired their tenancy right in the building, and that such right to property of the appellants cannot be interfered with save by authority of law as provided in Article 300A of the Constitution. In support of the above contentions, the appellants have placed reliance on the decision of the Supreme Court in *Kharak Singh v. State of U. P.* AIR 1963 SC 1295. In that case, the constitutional validity of Regn. 236 of U. P. Police Regulations came up for consideration before the Supreme Court. By virtue of the said regulation, the petitioner was subjected to surveillance by the police. The police constable entered his

house, knocked and shouted at his door, waked him up during the night and disturbed his sleep. On a number of occasions the police had compelled him to get up from his sleep and to accompany them to the police station to report his presence. The majority view of the Supreme Court was that Regulation 236 (b) which authorizes "domiciliary visits" was ultra vires Article 21 of the Constitution and was struck down. Reliance has also been placed on behalf of the appellants on the decision of the Supreme Court in *Smt. Maneka Gandhi v. Union of India*, AIR 1978 SC 597. In that case, the petitioner's passport was impounded. It was held by the Supreme Court that there was no good reason for impounding the passport of the petitioner and, furthermore, the petitioner had no opportunity of showing that the grounds for impounding it, either did not exist or had no bearing on public interest.

36. We are unable to accept the above contentions of the appellants. The fundamental rights cannot be availed of in justification of an unlawful act or in preventing a statutory authority from lawfully discharging its statutory duty. The occupation of the appellants in the unauthorized structure is unlawful in view of Rules 59 and 60 of the Building Rules read with Section 392 of the Act. In *Kharak Singh's* case or in *Maneka Gandhi's* case referred to above, it has not been laid down by the Supreme Court that a citizen can conveniently rely on his

fundamental right in defending his illegal act. A citizen whose occupation of a place is unlawful cannot claim fundamental right to carry on business in such place. Personal liberty as contemplated by Article 21 of the Constitution does not include any liberty to be in unlawful occupation. Even assuming that there is any such liberty, there cannot be any grievance of the appellants that they are being deprived of such liberty by the Corporation without following the procedure established by law. The procedure laid down in Section 414 including the first proviso to Sub-section (3), is quite reasonable, fair and just from the point of view of Article 21 of the Constitution and, consequently, satisfies the test of reasonableness, as laid down by the Supreme Court in *Francis Coralie v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746 and in *Nand Lal Bajaj v. State of Punjab*, AIR 1981 SC 2041 relied on by the appellants. It is, however, significant to be noticed that the appellants have not challenged the constitutional validity of Section 414 on any ground. So the question of reasonableness of the procedure provided in Section 414 of the Act does not arise. Be that as it may, the Corporation has, in our opinion, acted in accordance with the procedure prescribed by Section 414 of the Act and, accordingly, there can be no question of infringement of Article 21 of the Constitution. The same reason applies with equal force to the contention of the appellants based on their purported right to property under Article 300A of the Constitution. In our opinion,

there is no merit in the contention of the appellants that their fundamental rights or their right of property are being interfered with by the Corporation, and we overrule the same.”

21. I am in respectful agreement with the view of the Coordinate Bench as recorded above. It is only the person responsible for the construction of an unauthorised structure, be he the owner, tenant, licensee, developer or whoever, who is required to be granted an opportunity of showing cause as to why the unauthorised structure in question should not be demolished, in a proceeding under Section 400(1) of the KMC Act, 1980. That is how the phrase “such person” in the first proviso to Section 400(1) ought to be interpreted, in my considered view.

22. The second issue that we have to consider is the meaning or amplitude of the phrase “any person aggrieved”, in Section 400(3) of the KMC Act, 1980.

23. This issue was also considered by the Coordinate Bench in the case of ***Ram Awatar Agarwal, (supra)***. It was contended on behalf of the appellants, in that case, that if copies of the demolition orders had been served on them, they could have preferred appeals under Section 414(A) of the CMC act, 1951, which I have extracted above. The Division Bench negated such contention holding that the expression “any person dissatisfied” may include an occupier, but where such occupier is not a person responsible for the unauthorised construction in question, he

cannot challenge the demolition order on the ground that the construction is authorised and lawful as having been made in accordance with the provisions of the Act and the Building Rules. In such an appeal preferred by an occupier, other than a person responsible, the only relief that can be sought for by him is some more time to enable him to vacate the unauthorised structure.

24. It may be noted that a learned Single Judge of this Court in the case of ***Sanjay Mehta &Ors. v. Kolkata Municipal Corporation &Ors., reported at (2006) SCC OnLine Cal 447: (2007) 1 CLT 526***, following the decision in Ram Awatar Agarwal's case, held that the phrase "any person aggrieved" appearing in Section 400(3) of the KMC Act, 1980 means the owner or occupier of the unauthorised structure or any other person, who is responsible for the illegal construction and not others.

25. I am in full agreement with the view expressed in ***Ram Awatar Agarwal Case*** and ***Sanjay Mehta's Case***. Sub section 3 of Section 400 of the KMC Act cannot be interpreted in isolation. That provision must be construed in the light of the other sub sections and keeping in mind the object of the KMC Act, as discussed hereinbefore. I have already expressed my view which is in consonance with the view taken by my Learned Brother, that Section 400(1) of the KMC Act does not envisage granting an opportunity of showing cause to a person who is not responsible for the concerned unauthorised construction. If in the first round of the demolition proceedings, a person not responsible for the

construction in question does not have a right to participate, it would be incongruous and illogical to hold that any such person not responsible for the unauthorised construction can maintain a statutory appeal against a demolition order passed under Section 400(1) of the KMC Act. We see no justification in giving such an interpretation to the phrase “any person aggrieved” as will result in broadening of the spectrum of persons entitled to assail a demolition order by way of statutory appeal. In my considered view, “any person aggrieved” must be also a person responsible for the unauthorised construction before he can maintain a statutory appeal under Section 400(3) of the KMC Act against a demolition order issued under Section 400(1) of that Act.

26. It is an elementary canon of statutory interpretation that a section in an Act cannot be constructed in isolation without keeping the other provisions of the Act in mind. The provisions of a statute should be construed harmoniously, so as to be in furtherance of and to achieve the object of the statute. Applying such principle of interpretation, I have no doubt in my mind that the phrase “any person aggrieved” must be understood in a restricted sense as indicated by us in this judgment and as was held in the cases of **Ram Awatar Agarwal and Ors.** and **Sanjay Mehta and Ors.**

27. Reverting to the facts of the present case, the appellant is admittedly not a person responsible for the unauthorised construction in question. Hence, neither he could claim any right to show cause against demolition

of the impugned structure, nor he had or has any right to prefer statutory appeal before the Municipal Building Tribunal assailing the concerned demolition order.

28. I find no infirmity in the order under appeal. The appeal and the connected application stand dismissed. There will be no order as to costs.

29. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(PARTHA SARATHI SEN, J.)

(ARIJIT BANERJEE, J.)