

21.05.2025
Sl. No. 04
Ct No. 3
SG

WPA 1368 of 2025

**M/s Venkatesh Construction
Company Private Limited
Vs
The Kolkata Municipal Corporation & Ors.**

Mr. Srijib Chakraborty,
Mr. Sumitava Chakraborty,
Ms. Rupsa Sreemani.
...for the petitioner

Mr. Alak Kr. Ghosh,
Mr. Swapan Kr. Debnath.
...for KMC
Mr. Debjit Mukherjee,
Mr. Susmita Chatterjee.
...for state

1. The petitioner has preferred the present writ petition seeking quashing of proceeding initiated by the Respondent Corporation under Section 400(8) of KMC Act in respect of illegal and unauthorized construction being carried out at premises no. 240-B, AJC Bose Road, Borough-VIII, P.S.- Bhowanipur, Kolkata.

2. It is the case of the Petitioner that the entire construction on the aforementioned premises was executed in accordance with Building Plan Sanction No. 164, dated 26.06.1973. The building, now over 50 years old, was undergoing repair and renovation when the Petitioner received a work stop notice dated 20.09.2024 under Section 401 of the Kolkata

Municipal Corporation Act, 1980. Subsequently, the Petitioner was served with another notice under Section 400(1) of the same Act, alleging unauthorized construction in another part of the building. A separate hearing is ongoing concerning this notice.

3. The Petitioner submitted a reply dated 12.12.2024, emphasizing that the building is over 50 years old and that no new construction was taking place, only repairs and renovations. However, on 15.01.2025, officers from the Respondent Corporation initiated demolition actions. Upon inquiry, it was revealed that the demolition was pursuant to an order dated 13.12.2024, issued under Section 400(8) of the Kolkata Municipal Corporation Act, 1980.

4. The Petitioner approached this Court in the present proceedings challenging the said demolition action initiated under Section 400(8) of the KMC Act. This Court vide order dated 16.01.2025, stayed further demolition actions and directed the Respondent Corporation to file an affidavit justifying the initiation of action under Section 400(8) of the KMC Act.

5. In compliance, the Respondent submitted a report indicating that the original building plan qua the said premise was sanctioned on 26.06.1973 under the Calcutta Municipal Act, 1951, permitted construction up to Ground + Mezzanine + V floors.

However, the Petitioner constructed up to Ground + Mezzanine + IV floors. The said building plan lapsed by efflux of time. With the enactment of the Kolkata Municipal Corporation Act, 1980, effective from 04.01.1984, new building rules were established. Under these rules, there is no provision for construction above Ground + Mezzanine + IV floors.

6. The Respondent alleges that the Petitioner was constructing an additional floor above the existing roof, despite being issued a work stop notice. The construction included a 3-foot brick wall on all sides of the existing roof, upon which a steel-framed structure was erected, followed by the installation of glass panels. The Respondent contends that this new construction posed a danger to the public at large.

7. Consequently, the Mayor-in-Council, after considering all aspects, deemed the structure unsafe and likely to cause accidents resulting in loss of life and property. Therefore, the Respondent invoked the emergency provision under Section 400(8) of the Kolkata Municipal Corporation Act, 1980, to demolish the structure constructed above the roof of the said building.

8. The petitioner asserts that the tin shed erected on the sixth-floor roof is neither illegal nor unauthorized. They argue that the demolition order

under Section 400(8) of the Kolkata Municipal Corporation (KMC) Act, 1980, is invalid, as initial proceedings commenced under Section 400(1), which mandates a hearing. The shift to the emergency provision under Section 400(8) denied the petitioner a fair hearing, violating principles of natural justice. The petitioner contends that the corporation's report lacks justification for invoking the emergency provision. Additionally, the notice under Section 401 was not personally addressed to the petitioner, raising concerns about proper service. Legal precedent dictates that Section 400(8) should only be employed in genuine emergencies posing immediate public danger, requiring both subjective and objective assessments. The petitioner prays for the annulment of the demolition order by directing the KMC to proceed under Section 400(1), ensuring a fair hearing.

9. Learned Counsel for the Kolkata Municipal Corporation reiterate the stand taken in their report and asserts that the petitioner have undertaken unauthorized construction of an additional floor above the existing roof, covering approximately 2,310 square feet, using brick walls, steel frames, and glass panels. Despite the stop-work notice dated 30.10.2024, construction continued unabated. Due to the potential risks posed by the unauthorized construction,

including structural instability and safety hazards, the KMC invoked the emergency provision under Section 400(8) of the KMC Act to proceed with demolition

10. Mr. Ghosh further submits that there has been a deviation from the sanctioned building plan and unauthorized construction has been carried out by the petitioner. The department has issued notice under Section 401 of the KMC Act concerning the illegal and unauthorized construction, which is in violation of the sanctioned building plan. Mr. Ghosh makes it very clear that the present construction which is in the form of a roof top shed along with steel frames and glass windows is completely illegal and unauthorized. He further states that such a structure poses a risk of collapse, thereby endangering the safety of the inhabitants of the building. For these reasons, the corporation has allegedly invoked the emergency provision under Section 400(8) of the KMC Act.

11. This Court acknowledges the Hon'ble Supreme Court's unequivocal stance against unauthorized and illegal constructions, as elucidated in ***Rajendra Kumar Barjatya & Anr. v. U.P. Avas Evam Vikas Parishad & Ors.***, reported as **2024 SCC OnLine SC 3767**. The apex court emphasized that such constructions, irrespective of the time elapsed or financial investments made, must be demolished to

uphold the rule of law and prevent a culture of impunity. In the present case, the petitioner has undertaken the construction of an entire additional floor atop the existing structure, effectively constituting a sixth floor. This unauthorized addition poses a significant threat to the structural integrity of the building and endangers the safety of its occupants. Despite the issuance of a stop-work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980, the petitioner continued the construction unabated. Given the imminent risk to public safety and the blatant defiance of municipal directives, the Corporation has appropriately exercised its emergency powers under Section 400(8) of the KMC Act to initiate immediate remedial action. This Court concurs with the Corporation's decision, recognizing the necessity for prompt and decisive measures to address unauthorized constructions that compromise public safety and contravene established legal frameworks.

12. Accordingly, this Court finds no infirmity in the impugned order under Section 400(8) of the KMC Act. The corporation is directed to proceed in accordance with law to remove the unauthorized construction which has been carried out in violation of the sanctioned building plan.

13. As far as the notice under Section 401 of the KMC Act is concerned vis-à-vis the unauthorized construction beyond the sanctioned plan, the petitioner states that he has already filed a writ petition being WPA 9884 of 2025. This Court refrains from commenting on that matter as the same is sub-judice.

14. In view of such observation, the present writ petition is disposed of.

15. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

16. There shall be no order as to costs.

17. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)