

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 618 of 2025

With

IA No.: CAN 1 of 2025

Dipes Banerjee

Vs.

Anil Sureka & Ors.

With

MAT 771 of 2025

With

IA No.: CAN 1 of 2025

Dipes Banerjee

Vs.

Anil Sureka & Ors.

With

APO 100 of 2024

With

CC 107 of 2024

With

IA No.: GA 1 of 2024

Sri Dipes Banerjee

Vs.

The Kolkata Municipal Corporation & Ors.

For the Appellant

: Mr. Saptangsu Basu, Ld. Sr. Advocate
Mr. Tanmoy Sett, Advocate
Mr. Pran Gopal Das, Advocate

For the Writ Petitioner/Respondent : Mr. Uday Narayan Betal, Advocate
In FMA 618 of 2025 and MAT 771 : Mr. Manas Das, Advocate
of 2025 and for the Respondent : Mr. Bhaskar Hutait, Advocate
Nos.7 & 8 in APO 100 of 2024 : Mr. Mriganka Patra, Advocate

For the KMC in FMA 618 of 2025 : Mr. Achintya Banerjee, Advocate
and MAT 771 of 2025 : Mr. Fazlul Haque, Advocate
Mrs. Ina Bhattacharyya, Advocate

For the KMC in APO 100 of 2024: Mr. Sandipan Banerjee, Advocate
Mr. Atis Kumar Biswas, Advocate

For the State in FMA 618 of 2025: Mr. Lalit Mohan Mahata, Ld. AGP
and MAT 771 of 2025 Mr. Prasanta Behari Mahata, Advocate

For the State in APO 100 of 2024: Mr. Debjit Mukherjee, Advocate
Ms. Susmita Chatterjee, Advocate

Hearing concluded & Judgment on: July 17, 2025

DEBANGSU BASAK, J.:-

1. Three appeals are taken up for analogous hearing as they relate to the same immovable property, namely, Premises No.6A, Jorabagan Street, Kolkata-700006. All the three appeals are specially assigned to this Bench.
2. Of the three appeals, one is in the Original Side. In the Original Side, APO 100 of 2024 is at the behest of the owner of the premises concerned and directed against an order dated May 7, 2024 passed in WPO 393 of 2024. By the impugned order dated May 7, 2024, learned Single Judge dismissed the writ petition of the appellant.
3. FMA 618 of 2025 is at the behest of the owner of the property and directed against orders dated March 10, 2025 and March 11, 2025 passed in WPA 5700 of 2025. MAT 771 of 2025 is again at the behest of the owner and directed against an order dated May 14, 2025 passed in WPA 5700 of 2025. By the three impugned orders involved in these two appeals learned Single Judge granted interim protection to the private respondent in respect of a subsisting order of demolition

passed under Section 400(8) of the Kolkata Municipal Corporation Act, 1980.

4. Learned Senior Advocate appearing for the appellant submits that, in 2015, there was a notice issued by the Kolkata Municipal Corporation (KMC) for taking steps against the private respondents, under the provisions of Section 401(A) of the Kolkata Municipal Corporation Act, 1980 in respect of illegal and unauthorized construction carried on by the private respondents at the premises concerned. He points out that, despite the KMC authorities taking steps under Section 401 of the Act of 1980, unauthorized construction continued at the premises concerned, at the behest of the private respondents. KMC authorities lodged a complaint with the police. Appellant also complained to the KMC authorities with regard to the unauthorized construction. Thereafter, KMC authorities initiated proceedings under Section 400(8) of the Act of 1980. In such proceedings, an order of demolition was passed holding that, the entire structure was unauthorized.
5. Learned Senior Advocate appearing for the appellant points out that, the order under Section 400(8) of the Act of 1980 is dated February 23, 2018. He refers to the averments made in the writ petition filed at the behest of the private respondents being WPA 5700 of 2025. He submits that, the averments in such writ petition will demonstrate that, the private respondents were aware of the order of demolition

dated February 23, 2018. They did not take any steps with regard thereto.

6. Learned Senior Advocate appearing for the appellant submits that, subsequent to the order of demolition being passed, part demolition was affected. Since the entire structure was not demolished, appellant filed a writ petition being WPO 393 of 2024 which was disposed of by the impugned order dated May 7, 2024.
7. Learned Senior Advocate appearing for the appellant submits that, the Coordinate Bench, upon appraisal of the facts issued *suo moto* Rule of contempt against some of the officials of KMC. Such Coordinate Bench also requested the Director, Indian Institute of Engineering, Science and Technology, Shibpur (IEST) to submit a report with regard to the extent of demolition of the unauthorized construction. He points out that, such authorities conducted an inspection at the locale. He refers to the correspondence exchanged between such Institute and the KMC authorities. He also refers to the finding of such Institute.
8. Learned Senior Advocate appearing for the appellant submits that, both KMC authorities as well as the Institute are of the unanimous view that the entirety of the structure at the subject premises is unauthorized. He submits that, demolition in terms of the order under Section 400(8) of the Act of 1980 should be completed as expeditiously as possible. Interim orders passed in the writ petition filed by the

private respondents should be vacated in order to facilitate the work of demolition.

9. State, KMC and the private respondents are represented.
10. Learned Advocate appearing for the KMC submits that, in terms of the subsisting order of demolition passed under Section 400(8) of the Act of 1980, KMC authorities are conducting the work of demolition on a day-to-day basis. He submits, on instructions, that, the demolition work would be completed as expeditiously as possible.
11. Learned Advocate appearing for the private respondents submits that, the Coordinate Bench directed the Institute to look into the legality and validity of the structure. He submits that, the Institute did not hear the private respondents when it conducted the inspection. He submits that, an opportunity should be afforded to the private respondents to put forward their case before the Institute. He submits, on instructions, that his clients are ready and willing to pay the costs of further inspection to be carried out at the premises.
12. So far as the merit of the case is concerned, learned Advocate appearing for the private respondents submits that, the private respondents are lessees in respect of the premises concerned. He refers to an old plan of the building. He also refers to a decree passed in a suit for partition which involved the property concerned. He submits that, in such suit, it was acknowledged that, there was a two-storied structure existing. Therefore, he submits that, at best, two

- additional floors erected on the existing two-storied structure, is unauthorized. He submits, on instructions, that, the private respondents will demolish the two floors constructed over and above the two-storied structure existing at the premises.
13. Learned Advocate appearing for the private respondents submits that, contemporaneously, the owner complained that, the construction made over and above the existing two-storied structure was unauthorized. In this regard, he draws the attention of the Court to the various complaints lodged by the appellant with the KMC authorities. In such conspectus, he submits that, the entire structure should not be demolished.
 14. Learned Advocate appearing for the private respondents submits that, the private respondents were not aware of the order passed under Section 400(8) of the Act of 1980. Immediately, upon the private respondents becoming aware of such order, the private respondents filed the writ petition in which the interim orders were passed. He submits that, until and unless a final adjudication takes place with regard to the legality and validity of the entirety of the structure, the KMC authorities should be asked not to undertake the work of demolition of the entirety of the structure.
 15. Learned Advocates appearing for the State in the three appeals submit that the State will extend all assistance to KMC to implement any order of demolition.

16. The appellant approached the High Court complaining of illegal construction being carried out by the private respondents at the premises concerned by way of a writ petition being WP No.1013 of 2015. By an order dated September 8, 2015 such writ petition was disposed of by directing the KMC authorities to decide on the issue. Liberty was granted to KMC to invoke Section 400 of the Act of 1980. Such order was passed in presence of the private respondent.
17. In the writ petition filed at the behest of the appellant being WPO NO.393 of 2024, the appellant sought relief with regard to the illegal and unauthorized construction made by the private respondents at the premises concerned. Such writ petition was disposed of by the impugned order dated May 7, 2024. By such order, learned Single Judge dismissed the writ petition.
18. Next in point of time is the writ petition filed by the private respondents being WPA 5700 of 2025. In such writ petition, in aggregate, three orders passed by the learned Single Judge are in appeals at the behest of the appellant.
19. In the writ petition filed by the private respondents, learned Single Judge passed order dated March 10, 2025 directing KMC not to proceed with the demolition work for a period of seven days. It was held *albeit, prima facie* that, since demolition order passed under Section 400(8) of the Act of 1980 was on February 23, 2018, there was no immediate requirement for implementation of such order.

20. By the next impugned order dated March 11, 2025, learned Single Judge was of the view that, order issued under Section 400(8) of the Act of 1980 does not specify the extent of the alleged unauthorized construction. Learned Single Judge also held that, the private respondents lacked definite knowledge of the order of demolition dated February 23, 2018 passed under Section 400(8) of the Act of 1980. Consequently, the learned Single Judge directed the KMC authorities to produce the records.
21. The last of the orders impugned is dated May 14, 2025 passed in the writ petition of the private respondents by which, learned Single Judge was pleased to extend the subsisting interim order for a period of six weeks.
22. Allegation is of illegal and unauthorized construction at the premises concerned. Appellant before us claims himself to be the owner of such property while the private respondents claim to be the lessees in respect thereof. There is a suit for eviction pending before the City Civil Court at Calcutta.
23. Appellant complained to the KMC as to illegal and unauthorized construction at the premises concerned. On the basis of such complaints, which were made on April 20, 2015, April 24, 2015, May 27, 2015 and August 1, 2015, KMC authorities initiated proceedings under Section 401 of the Act of 1980. During the pendency of such proceedings under the Act of 1980, KMC authorities found that, illegal

- and unauthorized constructions were being made by the private respondents. Consequently, KMC authorities lodged a First Information Report with the local Police Station.
24. Finding that, the private respondents were continuing with the unauthorized construction unabated, the appellant approached the Writ Court by way of WP 1013 of 2015 which was disposed of by the order dated September 8, 2015 granting liberty to the KMC to initiate proceedings under Section 400(8) of the Act of 1980. Such proceedings were initiated by the KMC authorities. Such proceedings under the Act of 1980 resulted in an order dated February 23, 2018.
25. The order dated February 23, 2018 passed under Section 400(8) of the Act of 1980 speaks of the entirety of the structure existing at the premises concerned to be unauthorized. It directs demolition thereof. The Mayor in Council approved the view of the department as appearing from such order passed under Section 400(8) of the Act of 1980 dated February 23, 2018. According to the appellant before us, part demolition was implemented. According to the appellant, the demolition was of such nature, that the private respondents were able to repair the demolished portion and continued enjoying the usufructs of the illegal and unauthorized construction.
26. Consequently, being aggrieved, appellant filed a writ petition being WPO 393 of 2024 in which the impugned order dated May 7, 2024 was passed dismissing the writ petition.

27. Prior to dismissing the writ petition of the appellant being WPO 393 of 2024, learned Single Judge called upon the KMC authorities to submit a report. Such report was submitted before the learned Single Judge. On perusal of such report, learned Single Judge dismissed the writ petition.
28. Same report which was filed before the learned Single Judge was considered by the Coordinate Bench in the appeal of the appellant directed against the impugned order dated May 7, 2024 passed in WPO 393 of 2024.
29. By an order dated August 6, 2024, the Coordinate Bench noted the report of the KMC authorities submitted before the learned Single Judge. It noted that, such report stated that, the building in question is lying in a partly demolished condition. It also noted that, the report records that the second and the third floors of the building were demolished. Contention on behalf of the KMC authorities that, there was no unauthorized construction at the building was noted.
30. In such circumstances, Coordinate Bench by an order dated August 6, 2024 directed the Executing Engineer, Borough-IV, under whose jurisdiction the immovable property fell, to hold a joint inspection upon due notice to the parties as also their learned Advocates-on-record and submit a report as to whether, any unauthorized construction was demolished and the nature and character of the partly demolished building.

31. Pursuant to the order dated August 6, 2024 passed by the Coordinate Bench in the appeal, the KMC authorities held a joint inspection upon notice to the parties at the premises concerned. Report with regard thereto was submitted to the Coordinate Bench.
32. Report of KMC submitted in Court pursuant to the order dated August 6, 2024 was considered by the Coordinate Bench on August 28, 2024.
33. Coordinate Bench was of the view that, the report shows unauthorized construction on the second and third floors and that the same were demolished. Contention of KMC that, there may be unauthorized construction in the first floor was noted. On the prayer made on behalf of the KMC, further time was granted to submit a fresh report.
34. A fresh report was submitted in Court which is dated August 24, 2024 and the same was considered by the Coordinate Bench on September 25, 2024. The order dated September 25, 2024 quotes a portion of such report. Photographs annexed to the report were also considered and the Coordinate Bench held that, photographs show a contrary picture than the report.
35. By the order dated September 25, 2024, Coordinate Bench was pleased to render a finding that, the report dated August 24, 2024 contains incorrect particulars and rejected such report. Coordinate Bench expressed its anguish with regard to the functioning of the KMC authorities. Coordinate Bench was of the view that, the faith reposed on the KMC authorities were belied by them. The report was held to be

- incorrect and leads to misleading conclusions and interferes with the smooth administration of justice. Consequently a Rule of contempt was issued against the officials of KMC noted in such order.
36. By the order dated September 25, 2024, the Coordinate Bench directed the Director of Indian Institute of Engineering Science and Technology, Shibpur to nominate a competent civil engineer to inspect the site and submit a detailed report with regard to the extent of demolition of unauthorized construction. It also provided that, in order to enable the Institute to submit a correct report, KMC will hand over all relevant papers including the demolition work, sketch map, etc. and render necessary assistance during inspection.
37. Private respondent are parties to the appeal being APO 100 of 2024 in which the order dated September 25, 2024 and the previous orders therein were passed.
38. Appellant filed an affidavit of service in Court with regard to such appeal which shows that the private respondents were duly served with the appeal. Despite service, the private respondents chose not to be represented before the Coordinate Bench on the dates of the orders as noted above.
39. Errors appearing in the face of the order dated September 25, 2024 were corrected on October 3, 2024.

40. Indian Institute of Engineering Science and Technology, Shibpur submitted a report to the Court, in compliance with the orders dated September 25, 2024. The relevant portion of such report is as follows:-

“2.1 Pursuant to the order of the Honourable High Court of Calcutta (Division Bench), passed in APO/100/2024 (Dated 03.10.2024 read with dated 25.09.2024), this Institute have conducted a joint inspection in presence of appellant sides and KMC representative on 21.11.2024.

2.2 There is no significant indication of demolition works observed from the outside of the said building (i.e. from Front elevation) as shown in Plate-1.

2.3 Some newly constructed R.C. columns, beams & slabs inside ground floor were noticed which is shown in Plate-2. Some newly constructed columns with temporary roof shed were also observed in the extended ground floor for storage of glass panels (shown in plates -3&4).

2.4 Some portion of demolished floor slab on top of ground floor (i.e. at 1st Floor Level) covered with roof sheeting from both inside & outside were noticed and shown in Plate-5&6.

2.5. Partial demolition of slab panels at their central portions is found on the top of first floor, second floor & third floor. The slab panels are demolished in such a way that it can't be used for habitable purposes (shown in plates -7 to 17). Some broken slab panels are still hanging from roof level.

2.6 Few slab panels are not yet demolished at 2nd & 3rd floor levels which were shown in plates -8 & 11.

2.7 Slab supporting beams and columns at all floors are also not yet demolished (clearly observed in plates -7 to 14).”

41. The report is dated January 16, 2025.
42. One of the contentions of the private respondents herein is that the report dated January 16, 2025 of Indian Institute of Engineering Science and Technology, Shibpur was submitted without hearing the private respondents. Inspection was conducted in absence of the private respondents. Therefore, a direction should be issued on the Indian Institute of Engineering Science and Technology, Shibpur to

- conduct a further enquiry at the locale upon costs to be paid by the private respondents.
43. We are not in a position to accept such contention of the private respondents. Firstly, such contention is a dilatory tactic in order to continue with the use and occupancy of an immovable property which is found to be unauthorized. Moreover, private respondents received due and sufficient notice of the appeal in which the order was passed. Despite such notice, they chose not to appear in such appeal.
44. Furthermore, the private respondents claimed to be occupation of the property concerned. Inspection was held at the property concerned. It is inconceivable that the private respondents were not aware of the inspection at the property concerned. Inspection was done at the request of the Court.
45. We perused the report of Indian Institute of Engineering Science and Technology, Shibpur. Report apart from the finding as noted above contains various photographs. We perused such photographs also and called upon the private respondents as also the KMC authorities to assist as with regard to our queries on such report.
46. In response to the photographs annexed to the report, learned advocate appearing for the private respondents states the concrete columns were erected from the ground floor right upto the top floor of the old structure. In response to a query of the Court as to how many columns were erected in the premise concerned, learned advocate

appearing for the private respondents submits that he is unable to state the actual numbers as the concerned person is not in Court. KMC authorities in response to the same queries submitted that at least six columns were erected.

47. The fact that the private respondents are unable to comment on the number of columns erected in the premise concerned by them merely reinforces the view that they are seeking a further inspection of the premises in order to purchase time. Their conduct is utterly dishonest. They indulged in illegal and unauthorized construction despite proceeding under Section 401 of the Act of 1980 as well as Section 400 (8) thereof. The photographs that form part of the report of the Indian Institute of Engineering Science and Technology, Shibpur establish that not only numerous vertical columns were erected from the ground floor to the top of the building, but horizontal columns were also constructed at all floor levels. These erections/constructions from the ground floor upwards changed the entire nature and character of the old structure. The constructions were of such nature so as to make the existing old structure unviable.
48. Admittedly, the private respondents did not obtain any prior permission from the KMC authorities to make the addition and alteration, if the construction can be termed to be so, or for making the construction as existing at present.

49. We are in complete agreement with the view of the Coordinate Bench while it considered the earlier reports of the KMC and the last report of the Indian Institute of Engineering Science and Technology.
50. Private respondents were with the knowledge of the order of demolition passed under Section 400 (8) on February 23, 2018. Its averments in its writ petition will establish it to be so. Liberty to initiate proceeding under Section 400 (8) of the Act of 1980 was granted to KMC by the order dated September 8, 2015 passed in W.P. 1013 of 2015. Such order was passed in presence of the private respondents.
51. Even if we overlook such averments, it is inconceivable that after an order passed under Section 400 (8) of the Act of 1980 and a partial demolition carried out in terms of such order at the premises concerned when the private respondents were at the premises concerned that they are not aware of the order of demolition passed under Section 400 (8) of the Act of 1980. The private respondents cannot be allowed to contend that they were not aware of such order. This ignorance that they feign is dishonest and thoroughly unreliable.
52. Since there subsists an order of demolition passed under Section 400 (8) of the Act of 1980 the same is required to be implemented. Learned Single Judge erred in dismissing the writ petition of the appellant by the order impugned in APO No. 100 of 2024.

53. Impugned order dated May 7, 2024 passed in W.P. 393 of 2024 is set aside. KMC will implement the order of demolition dated February 23, 2018 expeditiously, at the cost of the private respondents.
54. The factual scenario as narrated above establishes that not only no *prima facie* case exists in favour of the private respondents in obtaining the interim orders passed in the writ petition nor is the balance of convenience and inconvenience existing in favour of the private respondents in obtaining such interim orders. Moreover, existence of the unauthorized and illegal constructions is a threat to public property and life. It is required to be demolished as expeditiously as possible. Therefore, the prejudice for non-grant of an interim order in favour of the private respondents also does not exist. Rather grant of interim order would be prejudicial not only to the appellant but also to the public at large.
55. Tests for grant of interim orders in a writ petition not being satisfied, we are of the view that learned Single Judge erred in granting interim orders in favour of the private respondents in the writ petition being W.P.A. 5700 of 2025 and extending it subsequently. All three orders passed in W.P.A. 5700 of 2025 stand vacated.
56. Moreover, there is an issue of delay in moving the Writ Court by the private respondents by way of W.P.A. 5700 of 2025. Order of the demolition passed under Section 400 (8) of the Act of 1980 is dated February 23, 2018 while the writ petition is of 2025. The averments

made in the writ petition do not disclose any tangible material to accept that the delay in making and filing such writ petition stood explained. Although the Limitation Act, 1963 does not apply to a writ petition, nonetheless delay is a material consideration while granting the discretionary relief under Article 226 of the Constitution of India.

57. Court is informed that the contemnors against whom contempt Rule was issued by the Coordinate Bench on September 25, 2024 filed an affidavit.
58. List A.P.O. 100 of 2024 in which the contempt Rule was issued on July 22, 2025. In addition to the contempt Rule, KMC on that date will inform the Court as to the recovery of the cost of demolition from the private respondents.
59. **FMA 618 of 2025** and **MAT 771 of 2025** along with the connected applications of both the appeals stand **disposed of**.

(Debangsu Basak, J.)

60. I agree.

(AD/SD)

(Md. Shabbar Rashidi, J.)