

02.05.2025
Sl. No. 10
Ct No. 3
SG

WPA 9252 of 2025

**Upohar Luxury Apartment
Owners' Association & Anr.
Vs.**

The Kolkata Municipal Corporation & Ors.

Mr. Kallol Basu,
Mr. Dibakar Bhattacharjee,
Mr. Samik Sarkar,
Mr. Rakesh Kr. Pandey,
... for the petitioners

Mr. Alok Kumar Ghosh,
Mr. Atis Kumar Biswas.
... for the KMC

Mr. Gaurav Das,
Mr. Swapan Kr. Pal,
Mr. D. Barman.
... for respondent no. 5

Mr. Rohit Das,
Mr. Indradip Das,
Mr. Dinya Tekriwal,
Mr. Anugraha Sundar.
... for respondent no. 6

1. Supplementary affidavit is taken on record.
2. The petitioners have preferred the present writ petition seeking setting aside of the order dated 22.04.2025 passed by the learned Municipal Building Tribunal, whereby the application for interim stay filed by Petitioner No. 1, has been rejected.
3. It is the case of the petitioners that the petitioner No. 1 is an association of apartment owners, namely, 'Upohar Luxury', which is an apartment

complex consists of 10 towers. The petitioner no. 2 is the present president of the apartment owners' association.

4. Private Respondent No. 6 had lodged a complaint before the Kolkata Municipal Corporation (KMC) alleging illegal and unauthorized construction of an iron frame structure in the common areas of the complex. Private Respondent No. 6 contended that the iron structure constructed by the petitioner in multiple towers of the apartment was permanent in nature and had been unlawfully erected after the completion of the structure, contrary to the approved sanctioned plan.

5. Acting upon the said complaint, the KMC issued a notice under Section 400 of the KMC Act, 1980, to the Association, alleging unauthorized construction of the iron frame structure, which was in violation of the sanctioned plan dated 30.03.2007. In response to the said notice, the Special Officer (Building) passed a demolition order dated 06.01.2025 under Section 400(1) of the KMC Act. The order reads as under:-

“

ORDER

On the scheduled date of hearing the complainant attended. But the P.R. did not appear. As stated there are ten towers in the Upohar Complex. Complainant is one of the owners of the Tower 10 of Upohar Complex.

As stated the board of managers of Upohar Apartment Owners Association taken up some

works for addition and alteration on common area without consent of the apartment owners.

The P.R. carried a process of erection of kitchen and toilet near activity area in common area of the complex after obtaining Completion Certificate issued by KMC.

Complainant produced the copy of order passed by Competent Authority Housing Department, Government of West Bengal dated 16/12/2024. President of Upohar Luxury Apartment was directed to take action to revert the common area to its original state.

In my opinion after obtaining Completion Certificate in such multi storied apartment building, construction work on common area without sanction is unlawful.

Considering the gravity, I am inclined to pass order to remove the unauthorized structure beyond the completion plan as marked in D/Sketch by P.R. within a period of 30 days from the date of communication of this order failing which action will be taken by department.

D/Sketch will be part and parcel of order.

Any person aggrieved by this order u/s 400(1) may be appeal against this order to Municipal Building Tribunal within stipulated time in accordance with the provision of KMC Act 1980.

Sd/-

S. Boral

Special Officer (Building)”

6. The aforesaid demolition order was challenged before the Municipal Building Tribunal. The Tribunal by its order dated 22.04,2025, refused to grant any interim stay against the said order. Aggrieved thereby, the petitioners have preferred the present writ petition challenging the said order, in which the interim stay sought by the petitioners has been refused.

7. This Court has duly examined the impugned order dated 22.04.2025, wherein the Tribunal, after hearing both parties and considering that the Association had carried out unauthorized construction, refused to grant any interim protection. The said order records hereunder:-

“At this stage we are to consider prima facie case and balance of convenience. It appears that the complainant is one of the flat owners of the apartment namely Upohar Complex which consists of 10 towers. The Board of Management of Upohar Apartment Owner’s Association carried out addition alternation of the common area and erected the un-authorised iron frame structure consisting of total area of 82.5 Sq. mts. i.e. 27.5 Sq. mts. in each of the tower no. 3, 5 & 10. The complainant namely the respondent no. 3 is owner of a flat in tower no. 10. From the C.R. it appears that after hearing the parties Ld. S.O. (Bldg.) passed the impugned order.

Considering all aspects, we do not find prima facie case or balance of convenience in favour of the instant application for stay of the impugned order.

Hence, it is

Ordered

That the application for stay of the impugned order is rejected on contest.

No order as to cost.

C.R. of D-case be kept with the record.

Fix 21.05.2025 for hearing of the appeal on merit.

*Technical Member
MBT/KMC*

*Chairman
MBT/KMC”*

8. This Court finds no illegality or infirmity in the said order passed by the Tribunal. The reasoning

assigned therein is both cogent and well founded. The Tribunal has rightly declined the interim protection by duly considering the fact that the iron structure erected by the petitioner is a permanent structure, not temporary in nature, and that such construction is in contravention of the sanctioned plan. Consequently, the Tribunal concluded that there was no prima facie necessity to grant any interim stay on the demolition order passed by the Special Officer (Building) on 06.01.2025.

9. Upon perusal of the notice issued under Section 400 of the said act, as well as the demolition order passed on 06.01.2025, this Court is of the prima facie view that the construction undertaken by the Association is in contravention of the applicable building by-laws, and that the iron frame structure deviates from the sanctioned building plan, rendering it both illegal and unauthorized.

10. In light of the foregoing, this Court does not find any illegality or infirmity in the order passed by the learned Municipal Building Tribunal and concurs with the decision rendered therein.

11. Accordingly, the present writ petition is dismissed in terms of the said observations.

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

13. There shall be no order as to costs.

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

(Gaurang Kanth, J.)