

06.05.2025
Sl. No. 14
Ct No. 3
SG/tkm

WPA 10273 of 2025

**Akshit Agarwal & Ors.
Vs
The State of West Bengal & Ors.**

Mr. Joydip Kar, Sr. Adv.
Mr. Krisnendu Sarkar,
Mr. Daanish Haque,
Mr. Nitin Saluja,
Mr. Anubhav Bhasin,
Md. Zohaib Rauf,
Ms. Meghla Das,
Mr. Rahul Chachan.

...for the petitioners

Mr. Saptanshu Basu, Sr. Adv.
Mr. Debanjan Mandal,
Mr. Suvankar Nag,
Mr. Sourav Bhaga,
Mr. Jishnujit Roy.

...for KMC

Mr. Gourav Das,
Mr. Swapan Kr. Pal,

...for the State

1. Affidavit-of-service filed in Court today is taken on record.
2. The present writ petition has been filed by the Petitioners being aggrieved by the impugned notice dated 04.05.2025 issued by the Respondent Municipality under Section 401 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the KMC Act). By the said notice, the Petitioners have been directed to immediately stop all ongoing construction activities, including any alterations and

additions, and to cease all operations relating thereto. The notice further calls upon the Petitioners to demolish the unauthorised structures in question forthwith, failing which coercive steps for demolition shall be undertaken by the Respondent Corporation under Section 400(8) of the KMC Act.

3. The Petitioners are carrying on the business of running a roof top restaurant in various parts of the city. All necessary permissions, clearances, and statutory licenses required for operating the business have been duly obtained. The Petitioners have been regularly paying all applicable taxes, duties, and levies as required under the prevailing laws.

4. On 04.05.2025, a notice purportedly under Section 401 of the KMC Act was pasted and affixed on the premises of the restaurant. No reasonable opportunity of being heard was provided to the Petitioners, nor was any speaking order served prior to the impugned action. Being aggrieved by and dissatisfied with the arbitrary and illegal action of the Respondent authorities, the Petitioner is constrained to file the present Writ Petition before this Court, inter alia, challenging the notice dated 04.05.2025.

Argument on behalf of the Petitioners.

5. Learned Senior Counsel for the Petitioner Mr. Kar submits that the impugned notice issued by the

Respondent Corporation is wholly without jurisdiction and has been passed in gross violation of the principles of natural justice and without adherence to due process of law. It is contended that the direction to the Petitioner to cease operations from the said premises amounts to a violation of Article 21 of the Constitution of India, as it directly affects the Petitioner's right to livelihood.

6. Mr. Kar Learned senior Counsel further submits that the powers conferred under Section 401 of the Kolkata Municipal Corporation Act do not extend to the authority to direct stoppage of commercial activities being lawfully carried out by a licensee. The Petitioners are operating the restaurant with all necessary permissions and valid licenses issued by the competent authorities. Therefore, the attempt by the Respondent Corporation to close down the Petitioner's lawful business by invoking Section 401 of the KMC Act is ultra vires, arbitrary, and liable to be set aside.

Argument on behalf of the Respondents.

7. Per Contra, Learned Senior Counsel for the Respondent-Corporation Mr Basu submits that the Petitioners are operating rooftop restaurants by effecting unauthorised constructions, having completely covered the roof of the concerned building. He emphasizes that such constructions are in patent

violation of the Kolkata Municipal Corporation Building Rules, 2009, particularly Rule 117 and the provisions contained in Chapter XVII thereof. It is submitted that the exit routes, which are critical in the event of a fire hazard, have been grossly compromised. Mr. Basu Learned Senior Counsel further contends that if the Petitioners are permitted to continue their operations in this manner, it may result in grave consequences in the event of any untoward incident, as escape routes would be obstructed and inaccessible.

8. Furthermore, it is submitted that the nature of the violations is extremely serious, and the Petitioners cannot be permitted to continue their activities without first demolishing the unauthorised structures, as the same pose a significant threat to public safety. Consequently, a notice under Section 401 of the Kolkata Municipal Corporation Act was issued, to immediately cease the activities being carried out therein and if the same continues, the authority will take action under Section 400(8) of KMC Act. Learned Senior Counsel further submits that the Respondent Corporation is vested with ample authority under Section 401 of the Act to issue such notice where public safety is endangered.

Legal Analysis.

9. This Court heard the arguments advanced by both the parties and carefully examined the documents placed on record.

10. The genesis of the present dispute lies in the notice issued by the Respondent-Corporation under Section 401 of the Kolkata Municipal Corporation Act, 1980. By invoking the powers conferred under the said provision, the Respondent-Corporation directed the Petitioners to “stop all constructions including any additions and alterations, cease operations, and demolish unauthorised structures immediately,” failing which proceedings for demolition under Section 400(8) of the KMC Act, 1980 would be initiated by the Corporation.

11. A plain reading of the impugned notice reveals that the Respondents’ intent was not only to restrain further unauthorised constructions but also to bring to an immediate halt to all ongoing operations allegedly carried out by the Petitioner at the premises in question. Furthermore, the notice unequivocally states that failure to comply would compel the Respondent to proceed under the coercive provisions of Section 400(8) of the Act, thereby authorising forcible demolition of the structures in question.

12. In the back drop of this notice, this Court would like to examine the provisions of Section 401 of KMC Act.

13. Section 401(1) of the Kolkata Municipal Corporation Act, 1980 empowers the Municipal Commissioner to issue a stop-work notice in cases involving unauthorised construction or illegal use of premises. The said provision reads as follows:

“Where the demolition of any heritage building or the erection of any building or the execution of any work has been commenced or is being carried on without or contrary to the sanction referred to in section 396 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or the rules or the regulations made there under, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, by order, require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.”

14. A plain reading of Section 401(1) makes it evident that the Municipal Commissioner is vested with the authority to issue a written order directing cessation of any construction activity or use of premises if the same is found to be in contravention of the provisions of the KMC Act, or any rules, regulations, or by-laws framed there under. The provision serves as a preventive and regulatory mechanism aimed at ensuring compliance with municipal norms, particularly in relation to: (i) unauthorised constructions; and (ii) the improper or

unlawful use of premises, including deviations from sanctioned plans or the designated land-use classification. The invocation of power under Section 401 is generally exercised in the interest of public safety, urban planning, and enforcement of lawful development control.

15. In the present case, the Respondent Corporation issued a notice purportedly under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, directing the stoppage and demolition of unauthorised construction as well as the cessation of ongoing commercial activity. It is the categorical stand of the Respondent Corporation that there have been serious violations of the provisions of the KMC Act and the Kolkata Municipal Corporation Building Rules, and that if the Petitioners are allowed to continue such activities without first demolishing the unauthorised structure, it would pose a grave threat to public safety.

16. Section 401 of the KMC Act clearly empowers the Municipal Commissioner to order stoppage of construction or use of premises where such activity is found to be in contravention of the Act or its rules, particularly where it poses a risk to public safety. This Court is of the considered view that the Respondent Corporation is vested with sufficient

statutory authority under the said provision to stall any activity which it reasonably apprehends may endanger public safety. Accordingly, this Court finds no illegality or infirmity in the issuance of the impugned notice dated 04.05.2025 under Section 400(1) of the KMC Act, thereby directing the stoppage of the activities being carried out by the Petitioner.

17. In view thereof, the moot question that has to be considered by this Court at this stage is whether any action under the emergent provision of Section 400(8) of the Act is warranted or not.

18. This Court is conscious of the fact that the invocation of Section 400(1) and Section 400(8) serves distinct legal purposes. Section 400(1) is generally employed in cases where construction has been undertaken in violation of the governing Act and its rules. Conversely, Section 400(8) shall be invoked solely in circumstances where immediate remedial action is necessary to avert imminent injury. The discretion to determine which provision of the Act shall apply lies solely with the competent authority, which is presumed to be an expert body. An alleged violator does not have the right to select the statutory provision under which proceedings shall be initiated. Importantly, recourse to Section 400(8) must be predicated on the existence of a well-founded and

conclusive opinion that the unauthorized structure poses an imminent threat to life or property. Absent such imminent danger, Section 400(8) should not be invoked at the preliminary stage, and the principles of natural justice must be observed.

19. The demolition of an unauthorized construction remains a permissible objective under both provisions; however, where no immediate risk is evident, such action must follow the grant of an opportunity of being heard. A decision to bypass the appeal process or deny a hearing must be justified through adequate preliminary groundwork and the demonstration of urgency.

20. It appears that the respondent authority, having failed to prevent the petitioner from continuing with the unauthorized construction and activity, proceeded to undertake demolition of the said structure.

21. As a statutory authority, the respondent is obligated to act reasonably, in strict conformity with the governing statute, and may not apply the law arbitrarily or to the prejudice of any individual. Even a party found to be in violation of the law is entitled to be dealt with in accordance with established legal procedures and not subjected to impulsive or arbitrary action.

22. Considering that further delay caused by calling for affidavits and prolonged proceedings would defeat the very object of invoking the emergent provisions, this Court deems it appropriate to remand the matter to the Kolkata Municipal Corporation (KMC) for re-verification of the relevant documents, facts, and figures. Upon such re-verification, KMC shall arrive at a fresh decision as to whether the invocation of Section 400(8) of the Kolkata Municipal Corporation Act is warranted. Only if KMC arrives at the conclusion based on both subjective and objective assessment that there exists a grave emergency and immediate demolition is imperative for safeguarding public safety, may the authority proceed with such demolition. In the absence of any imminent threat to life or property, the petitioner shall be afforded an opportunity of hearing prior to any coercive action in respect of the alleged unauthorized construction.

23. The aforesaid steps shall be undertaken and completed expeditiously, but in any event, not later than two week from the date of communication of this order.

24. In the interim, the impugned notice under Section 401 of the KMC Act shall remain in abeyance, till the respondent takes a final decision. The

petitioners are restrained from carrying out any activities whatsoever at the disputed site.

25. The Officer-in-Charge, Shakespear Sarani, Police Station and Bhawanipur Police Station, is directed to maintain strict vigilance over the property to ensure that no activities are undertaken and that no third-party rights are created during the pendency of proceedings before the KMC.

26. It is clarified that this Court does not seek to curtail the authority of the Mayor-in-Council to pass orders under Section 400(8) of the Act. The Court merely underscores that such emergent powers must be exercised only upon a proper and recorded satisfaction both subjective and objective regarding the existence of an immediate threat to safety. Such extraordinary powers are to be invoked strictly in emergent situations and not in the ordinary course of events.

27. With this direction the present writ petition is disposed of.

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

29. There shall be no order as to costs.

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

(Gaurang Kanth, J.)