

18.06.2025
Court No.13
Item No. 16
sp

MAT 800 of 2025
With
CAN 1 of 2025
M/s. Venkatesh Construction Company Pvt. Ltd.
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Biswaroop Bhattacharya.
Mr. Srijib Chakraborty,
Mr. Sumitava Chakraborty,
Ms. Rupsa Sreemani.

..for the appellants.

Mr. Alok Kr. Ghosh,
Mr. Swapan Kr. Debnath.

..for the KMC.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee.

..for the State.

1. Challenge to the order dated 21st May, 2025 dismissing WPA 1368 of 2025 is made in the instant appeal.

2. The brief facts relevant to the case are that the writ petitioner company obtained a sanction plan from the KMC in the year 1973 for construction of a ground plus mezzanine plus 5 floors. The sanction was obtained prior to coming into force of the KMC Act, 1980 and its rules framed thereunder.

3. The petitioner/appellant constructed only ground plus mezzanine plus 4 floors and not the 5th floor.

4. The sanction plan of 1973 lapsed by efflux of time.

5. Lo and behold sometime in the year 2024 in July-August or thereabout the appellant started constructing a 5th floor on the building, inter alia, in the following manner.

6. A 3 ft. brick wall was erected on the wall of the terrace of the 4th floor. There were steel structures placed thereupon covered with glass and glass windows. The entire construction was surrounded and covered up with a Tin structure. The KMC launched itself under Section 401 of the Act and issued a stop work notice on 20th September, 2024. Since the appellant refused to stop work, a further notice was issued subsequently. Notwithstanding such notice the appellant merrily and illegally went ahead with construct and fully constructed an area above 2300 sq. ft.

7. The appellant chose to reply for the first time as a merciful response to the notice under Section 401 of the KMC Act, 1980 3 months later on 12th December, 2024. Construction of the 5th Floor was going on unabated although the reply of the appellant was only to the repair work going on in the building. The nature and extent of repair work was not notified to the KMC.

8. It is submitted that further other illegal construction had been effected in the building, in the ground floor, a portion has been covered up for using it as a coffee shop. Proceeding under Section 401 has been

launched independently in respect of such construction. The same is subject matter of a different writ petition which need not be gone into.

9. Mr. Biswaroop Bhattacharya and Mr. Srijib Chakraborty, learned counsel appearing for the appellant would argue that there was no urgency or immediacy for invoking the provision under Section 400(8) during the subsistence of a notice under Section 401 of the KMC Act, 1980.

10. This Court notes that the immediacy and urgency, must not be presumed within the four corners of Sub-Section (8) of Section 400 when there is flagrant violation and disregard of a stop work notice under Section 401 of the KMC Act, 1980.

11. The Single Bench has referred to a decision of the Supreme Court in the case of **Rajendra Kumar Barjatya and another Vs. U.P. Avas Evam Vikas Parishad and others** reported in **2024 SCC Online SC 3767**. In the said decision as also the case of **Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association** reported in **2021 Online SC 648** the Supreme Court has expressed anguish at unauthorized construction, effecting urban infrastructure and causing undue hardship to other citizens and residents in the city.

12. The construction being effected over the 4th floor and what can easily characterize as 5th floor measuring above 2300 sq.ft., the appellant is guilty of gross and blatant violation of the building rules of the KMC. The construction over and above the 4th floor, is clearly without a sanction plan and permission of the KMC. The KMC shall proceed to demolish the said unauthorized construction immediately.

13. This Court has confined itself to the unauthorized construction over and above the 4th floor. The other proceedings in respect of unauthorized construction on any other part of the building may be dealt with in accordance with law.

14. With the aforesaid observations, MAT 800 of 2025 shall stand dismissed.

15. Consequently, all interim applications shall also stand dismissed.

16. Interim orders, if any, shall stand vacated.

17. There shall be no order as to costs.

18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)