

D/L- 24
03/07/2025
Ct. No.-6
Aritra

C.O. 2050 of 2025

**Ram Babu Shah
Vs.
The Commissioner, The Kolkata
Municipal Corporation & Ors.**

Mr. D.N. Chatterjee
Mr. P. Sengupta
Mr. B. Sengupta

...for the petitioner

Mr. Kartick Kr. Bhattacharya
Ms. Soumashree Dutta
Ms. Papiya Naskar

....for the opposite party No.4

Mr. Debjit Mukherjee
Ms. Priyanka Jana

....for the KMC

This application under Article 227 of the Constitution of India is at the instance of the owner of a portion of Premises No.49/5/H/138, Karl Marx Sarani, Ward No.-79, Br.-IX, Kolkata-700023 and is directed against an order dated 05.05.2025 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation in Appeal No.84 of 2024.

By the order impugned, the prayer for stay of the order of demolition passed by the Special Officer Building stood rejected with cost of Rs.10,000/-.

The Special Officer Building passed an order dated August 12, 2024 in D/Case No.97-D/IX/22-23 directing the person responsible, namely, Ram Babu Shah and Ors. to demolish the unauthorized construction of the building

within the time limit indicated therein. The order of the Special Officer Building records that such order was passed in the presence of the person responsible and the complainant.

The Kolkata Municipal Corporation officials visited the premises in question on February 23, 2022 and found a G+III storied RCC building. Thereafter, notice under section 400(1) of KMC Act was issued and a proceeding was initiated being D/Case No.97-D/IX/22-23.

The order of the Special Officer Building records that as per the available office records and computer database of Kolkata Municipal Corporation no valid documents in support of the erection of building were found. In course of hearing before the Special Officer Building, the person responsible also could not produce any valid documents in support of the construction of the said building.

Challenging the order of the Special Officer Building, the petitioner approached the Municipal Building Tribunal, Kolkata Municipal Corporation. The petitioner prayed for stay of operation of the order of demolition passed by the Special Officer Building, which stood rejected by the impugned order.

Mr. Chatterjee, learned advocate appearing for the petitioner submits that the appeal is pending before the Municipal Building Tribunal and if during the pendency of the appeal, the order of demolition is implemented, the said appeal would become infructuous.

Mr. Mukherjee, learned advocate appearing for the Kolkata Municipal Corporation submits that the building was constructed without any sanctioned building plan and the Municipal Building Tribunal after taking note of such fact rejected the praying for stay.

Heard the learned advocates for the respective parties and perused the materials placed.

An order of demolition of the impugned construction was passed by the Special Officer Building. The petitioner has availed of the statutory appellate remedy and has prayed for an order of stay. Stay is not a matter of right and the person seeking an interim relief has to satisfy the Tribunal that a *prima facie* case has been made out. The learned tribunal recorded that the petitioner herein failed to produce any sanction plan and the reply to the information sought for under the provisions of the Right to Information Act also shows that there is no sanction plan.

This Court by an order dated June 17, 2025 allowed the prayer for time to produce the sanction plan by the petitioner.

Today when this matter is taken up for hearing, a supplementary affidavit on behalf of the petitioner has been filed annexing a plan showing the existing structure at the said premises. The plan which has been annexed in the supplementary affidavit is not a sanction plan.

The learned tribunal rejected the contention of the petitioner that the building is 20 years old by placing

reliance upon the inspection report which indicated that the construction was made recently. The learned tribunal took note of the infringement statement and the D-sketch and returned a finding that there are multiple violations and the extent of unauthorised construction is substantial.

The learned tribunal after considering the materials available in the record arrived at a finding that there is no *prima facie* case and balance of convenience in favour of the appellant/petitioner herein. The learned tribunal applied the correct legal tests for deciding an application for stay.

The petitioner also could not produce the sanction plan before this Court in spite of an opportunity being provided thereto.

For such reason, this Court is not inclined to interfere with the impugned order.

Accordingly, CO 2050 of 2025 stands dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)