

03.11.2025
SI No.3& 4
Ct. No.15
S.A.

WPA 13355 of 2025

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CAN 2 of 2025

Dr. Atiya Saba Ahmed

-vs-

Kolkata Municipal Corporation & Ors.

With

WPA 21252 of 2024

Kushan Nandy

-vs-

Kolkata Municipal Corporation & Ors.

Mr. Tarique Qasimuddin

Mr. Anuj Singh

Mr. Biswajib Ghosh

Mr. Syed E. Huda

Ms. Nabeela Akbar

Ms. Sanchita Chowdhury

... for the petitioner

Mr. Arindam Banerjee, Sr. adv.

Mr. Ayan Banerjee

Mr. Kuldip Mallik

Ms. Atasi Sarkar

Ms. Meghna Dhur

...for respondent nos.6 & 7

Mr. Alak Kumar Ghosh

Mr. Gopal Chandra Das

... for KMC in WPA 13355 of 2025

Mr. Biswajit Mukherjee

Ms. Sima Chakraborty

...for KMC in WPA 21252 of 2024

Mr. Raja Saha

...the Special Officer

On October 28, 2025, this Court appointed Mr. Raja Saha, an advocate of this Court, as a Special Officer. The factual matrix in which the Special Officer was appointed has been recorded in the order dated October 28, 2025, and the same is reproduced below

for a proper appreciation of the facts involved in this case:

“Admittedly, a sanction plan was obtained by the petitioner for the construction of a G+6 building at premises no. 5, Dr. A.M.O. Ghani Road, Police Station – Karaya, Kolkata – 700017.

Thereafter, respondent no. 7 as well as respondent no. 6 filed Title Suit No. 1141 of 2024 before the learned Civil Judge (Senior Division), 2nd Court at Alipore, inter alia, challenging the sale deed on the strength of which the sanction plan was obtained.

It was contended before the Trial Court that respondent nos. 6 and 7 are co-sharers in respect of the said property and that the sanction plan was obtained behind their back.

The petitioner also filed Title Suit No. 1163 of 2024 before the same Court. Both the suits are being tried together by the learned Judge.

On April 10, 2025, the learned Judge passed an order of injunction in both the suits directing the parties to maintain status quo with regard to the nature, character, and possession of the property in question till the disposal of the suits.

Respondent nos. 6 and 7 also approached the Kolkata Municipal Corporation seeking cancellation of the sanction plan on the ground of suppression of material facts.

The Commissioner of the Kolkata Municipal Corporation, by an order dated March 28, 2025, directed the parties to maintain status quo with regard to the construction, in view of the pendency of the civil suits and the criminal cases filed by the respective parties.

The petitioner challenges the said order dated March 28, 2025, by filing this writ petition.

It is evident that the Commissioner’s order was passed even before the order of injunction was issued by the Civil Court.

A perusal of the injunction order does not indicate that the learned Judge considered the existing stage of the construction. It also appears that the petitioner has filed an application before the Civil Court seeking modification of the injunction order.

At this juncture, this Court is not inclined to pass any order in view of the pendency of the matter before the Civil Court.

However, this Court appoints Mr. Raja Saha, learned Advocate, as a Special Officer, who shall visit the premises on October 30, 2025, at 12 Noon.

The Special Officer need not issue separate notices to the parties. He shall file a report before this Court regarding the stage of construction and other relevant aspects noticed by him. The report shall be filed before this Court on November 3, 2025.

The remuneration of the Special Officer is fixed at Rs. 50,000/-, which shall be borne equally by the petitioner and respondent nos. 6 and 7.

The parties shall be at liberty to remain present at the premises at the time of inspection.

The petitioner shall provide a copy of the writ petition to Mr. Raja Saha during the course of this day.

List this matter on November 3, 2025, under the same heading.”

This Court was primarily concerned with the fact that the Trial Court, while granting the injunction, did not arrive at a specific finding as to the status of the ongoing construction on the date of granting such injunction, which appears to be in contravention of the ratio laid down in **Kishore Kumar Khaitan v. Praveen Kumar Singh [(2006) 3 SCC 312)]**.

Today, the learned Special Officer has filed his report, which indicates that the structural construction of the building is almost complete.

As observed earlier, this Court does not find sufficient reason to interfere at this stage, bearing in mind the pendency of the civil suit before the learned Civil Judge (Senior Division), 2nd Court at Alipore.

It is pertinent to note that the challenge made by the petitioner to the order dated March 28, 2025, has become inconsequential in view of the injunction order passed by the Civil Court. The order of the Civil Court shall, without doubt, prevail over the order passed by the Commissioner, including the stop-work order, since the Civil Court is presently seized of the dispute concerning the right, title, and interest of the parties.

Mr. Arindam Banerjee, learned Senior Advocate, has, however, drawn the attention of this Court to Section 401(2) of the Kolkata Municipal Corporation Act, 1980, to contend that the stop-work order passed by the Commissioner under Section 401, in exercise of powers conferred by the said Act, cannot be interfered with by the Civil Court.

I am not inclined to accept such contention. The stop-work order in question was issued pursuant to the Commissioner's order dated March 28, 2025,

which itself was passed in view of the pendency of disputes between the parties before the Civil Court. If the Civil Court adjudicates the disputes between the parties, such determination will necessarily have a direct bearing on the stop-work order. Therefore, in the facts of the present case, the stop-work order shall also be subject to the orders passed by the Civil Court.

Let the report filed by the learned Special Officer be kept with the records. A copy of the said report shall be circulated among the parties during the course of the day.

In view of the aforesaid, I find no justification to keep this writ petition pending.

Accordingly, this writ petition is disposed of, granting liberty to the parties to produce a copy of the report filed by the Special Officer regarding the status of the building as observed during his inspection. The learned Civil Judge shall consider the petitioner's application for modification of the injunction order in light of the said report. This Court has been informed that the next date of hearing for the modification application has been fixed on November 19, 2025. It is expected that the Trial Court shall decide the said application within a period of two months from that date, without granting unnecessary adjournments.

Accordingly, **WPA 13355 of 2025** along with **CAN 2 of 2025** stands disposed of. The Special Officer is discharged.

Re: WPA 21252 of 2024

By filing this writ petition, the petitioner, who is respondent no. 6 in WPA 13355 of 2025, has challenged the sanctioned plan. In view of the order passed in WPA 13355 of 2025, there is no justification to keep this writ petition pending.

Accordingly, **WPA 21252 of 2024** is also disposed of. It is needless to mention that the proceeding for cancellation of the sanctioned plan initiated by the Commissioner shall also be subject to the orders passed by the Civil Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)