

Court No. 6
(265719)

CO 2787 of 2025

07.08.2025
(AD 3)
(S. Banerjee)

Saria Khatoon
Vs.
The Commissioner, The Kolkata Municipal Corporation &
Ors.

Mr. Dinendra Nath Chatterjee
Mr. P. Sengupta
Mr. B. Sengupta

...for the petitioner

Mr. Debjit Mukherjee
Ms. Priyanka Jana

...for the KMC

Mr. Ramij Munsii

...for the opposite party no. 3

On the prayer of the learned advocate-on-record of the petitioner, leave is granted to the petitioner to file the affidavit-of-service in course of this day.

This application under Article 227 of the Constitution of India is at the instance of a person claiming to be a co-owner of premises no. 11/2/H/2, Moulana Mohammad Ali Road, Ward No. 77, Borough IX of the Kolkata Municipal Corporation and is directed against the judgment and order dated July 4, 2025 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation in Appeal No. 143 of 2022. By the order impugned, the appeal was dismissed on contest with a cost of Rs. 1 lac.

Mr. Chatterjee, learned advocate appearing for the petitioner submits that no notice of the demolition proceeding was served upon the petitioner though the petitioner is one of the co-owners of the building in question. He further submits that there has been a violation of the principles of natural justice as an order having serious civil consequences has been passed without hearing the affected party.

Mr. Mukherjee, learned advocate for the corporation submits that an un-authorized G+IV storey building was constructed thereby encroaching upon the mandatory open space and without any sanction plan being issued by the KMC. He submits that the opposite party no. 3 herein made a complaint before the Kolkata Municipal Corporation alleging unauthorized construction at premises no. 11/2/H/2, Moulana Mohammad Ali Road, Ward No. 77, Borough IX and alleging inaction on the part of the municipal corporation, a writ petition being WP 30880(w) of 2017 was filed. He further submits that pursuant to an order passed by this Hon'ble Court, a demolition case was initiated and the person responsible was notified and thereafter the Special Officer (Building), Kolkata Municipal Corporation passed an order of demolition on December 24, 2021. He submits that the petitioner challenged the said demolition order before the Municipal Building

Tribunal by filing an appeal which ultimately stood dismissed by the impugned order. He submits that since the entire building is an unauthorized one having no sanction plan, the same should be demolished forthwith.

Learned advocate appearing for the opposite party no. 3 submits that the entire building is an unauthorized one and the Municipal Building Tribunal rightly dismissed the appeal.

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

Record reveals that pursuant to an order dated July 18, 2018 passed in WP 30880(w) of 2017, a demolition case No. 18-D/IX/19-20 was initiated in respect of premises no. 11/2/H/2, Moulana Mohammad Ali Road, Ward No. 77, Borough IX against the person responsible namely, Md. Mohiuddin and Tanvir Alam. It further appears from the record that the demolition proceeding was initiated on the basis of the complaint made by the opposite party no. 3. It appears from the record that a stop-work notice dated December 21, 2017 was issued by the corporation and subsequently an intimation was given to the local police station and an FIR has also been lodged. It further appears that a joint inspection of the premises in question was also

conducted and the said inspection report records that a G+IV storey unauthorized construction was made at the premises in question. It has been further stated in the said joint inspection report that the person responsible was asked to produce the document in support of the construction but they failed to produce the same and for which the stop-work notice was served upon the person responsible. The Special Officer (Building) passed an order dated December 24, 2021 by specifically recording the infringement of the building rules of the corporation. The total area of unauthorized construction was shown to be 805.625 square meters. The Special Officer (Building) recorded a specific finding of fact that the person responsible constructed the 5-storey building without any sanction plan violating all the norms of the Kolkata Municipal Corporation Building Rules, 2009. It has also been recorded in the said order that in spite of several notices the person responsible refused to attend the hearing. However, no appeal has been filed by the persons named in the proceeding before the Special Officer (Building) as persons responsible. The petitioner herein claiming to be one of the co-owners approached the Municipal Building Tribunal, KMC challenging the order of the Special Officer (Building).

Mr. Chatterjee, learned advocate appearing for the petitioner submits that the petitioner is one of the

co-owner of the premises, but it appears from the submission made by the learned advocate representing the petitioner before the Municipal Building Tribunal that the petitioner is a lessee in respect of the impugned premises under Central Bank of India. The Municipal Building Tribunal after considering the infringement statement as recorded in the order of the Special Officer (Building) was satisfied with the fact that the said order was passed considering the materials on record and after giving due opportunity of hearing to the person responsible. The Municipal Building Tribunal took note of the decisions of the Hon'ble Supreme Court in the case of *RAjendra Kumar Barjatya and Anr. -Vs.- U. P. Avas Evam Vikas Parishad & Ors.*, reported at 2024 INSC 990 held that the impugned unauthorised construction has been rightly ordered to be demolished by the Special Officer (Building).

When this matter was taken up on August 5, 2025, Mr. Chatterjee, learned advocate appearing for the petitioner submitted that the construction is not an unauthorized one as the same was made in accordance with the sanction plan.

In the light of the said submissions, this court allowed an opportunity to the petitioner to produce the sanction plan on the next date of hearing and the

petitioner was directed to serve a copy of this application upon the corporation as well as the private opposite parties/complainants.

Today, when this matter is taken up, Mr. Chatterjee, learned advocate, in his usual fairness, submits that the petitioner could not supply the copy of the sanction plan to him.

Thus, it appears that the petitioner does not have any material in her possession to show that the construction was made in accordance with the sanction plan and/or the permission of the KMC.

For all the reasons, as aforesaid, this court is not inclined to interfere with the order dated July 4, 2025 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation. However, Mr. Chatterjee submits that the cost imposed upon the petitioner be deleted.

Such submission is vehemently opposed by Mr. Mukherjee, learned advocate for the corporation. he submits that the corporation could not take any effective steps for demolition of the unauthorized construction due to pendency of the appeal before the tribunal for long four years.

However, considering the fact that the unauthorized construction has been directed to be

demolished, this court is of the considered view that the cost imposed upon the petitioner be deleted.

Accordingly, only the portion of the order dated July 4, 2025 passed by the Special Officer (Building), KMC imposing a cost of Rs. 1 lac upon the petitioner, stands deleted.

CO 2787 of 2025 stands disposed of with the hope and trust that the Kolkata Municipal Corporation will take effective steps to comply with the direction contained in the order passed by the Municipal Building Tribunal, Kolkata Municipal Corporation.

(Hiranmay Bhattacharyya, J.)