

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

MAT 1425 of 2025
IA No: CAN 1 of 2025

Fighters Lodging Syndicate Private Limited and another
Vs.
State of West Bengal and others

For the appellants : Mr. Tapas Kumar Sinha,
Mr. Joyjit Roy Choudhury

For the State : Mr. Sirsanya Bandhopadhyay, Sr. Standing Counsel,
Ms. Sonal Sinha, Ld. AGP,
Ms. Shabnam Farooqui,
Mr. Sandipan Das

For the respondent
nos. 5 & 6 (KMDA) : Mr. Ashoke Kumar Banerjee, Sr. Adv.,
Mr. Satyajit Talukdar,
Mr. Arindam Chatterjee

Heard on : 18.09.2025

Judgment on : 18.09.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against an order by which the learned Single Judge, while allowing the writ petition filed by the appellants, challenging a notice under Section 10(5) of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the 1976 Act"), allegedly overstepped his jurisdiction and directed the respondent authorities to initiate a fresh proceeding according to the

direction of the appellate authority, passed in the year 1988, from the stage of Section 10 of the 1976 Act.

2. Learned counsel appearing for the appellants submits that the appellants, in the writ petition, had merely challenged the notice under Section 10(5) and no further. It is further submitted that nor had the respondent authorities sought for any relief to re-initiate proceedings under Section 10 of the 1976 Act. Hence, the direction with which the appellants are aggrieved was passed *de hors* the pleadings of both parties and the reliefs sought in the writ petition and, as such, ought to be set aside.
3. To provide some context to the argument, learned counsel for the appellants places reliance on the rejoinder filed by the respondent nos. 1 to 4 in the writ application, that is, the State authorities, where an order dated November 16, 1988 has been annexed, whereby an appeal preferred by the predecessor-in-interest of the present appellants was allowed by the Appellate Authority, directing the Competent Authority to prepare final statement on the basis of the measurements as given therein and issue a fresh notification under Section 10(1) of the 1976 Act and to take subsequent steps accordingly. The said rejoinder is annexed to a supplementary affidavit used by the appellants.
4. It is submitted by the appellants that the respondent authorities underwent a long slumber and never took any steps pursuant to the Appellate Authority's direction. By way of the impugned direction of

the learned Single Judge, a new right has been created in favour of the respondent authorities to re-initiate the proceedings after more than 36 years having elapsed in the meantime.

5. Learned senior counsel appearing for the KMDA points out that the respondent nos. 5 and 6 have been wrongly impleaded as Kolkata Improvement Trust, whereas it should be the Kolkata Metropolitan Development Authority (KMDA).
6. Learned senior counsel further submits that new documents cannot be relied on at the appellate stage, which has been sought to be done by way of the supplementary affidavit filed by the appellants.
7. Learned counsel appearing for the State submits that, within the four corners of the writ petition, the appellants never pleaded that the State authorities are debarred, by any law or due to inordinate delay, from initiating a proceeding under Section 10 of the 1976 Act. It is submitted that, in any event, there is no statutory limitation period for doing so.
8. It is further contended that pursuant to the Appellate Authority's order of 1988, a Section 9 notice was issued on May 22, 1989. It is submitted that a notification under Section 10(1) was also issued on September 14, 1989. It is thus contended that the impugned order of the learned Single Judge does not suffer from any illegality but rather balances equities.

9. In support of such proposition, learned counsel for the State places reliance on the relevant portion of the impugned order, whereby it was recorded by the learned Single Judge that the respondent authorities themselves had submitted that the impugned notice dated June 04, 2015 was issued under Section 10(5) of the 1976 Act upon the writ petitioners/appellants on a misconception of law. The respondent authorities further submitted that they actually have to proceed under sub-section (1) of Section 10 and thereafter sub-section (3) of Section 10 of the 1976 Act and only thereafter they can follow or can issue a notice under Section 10(5). As such, the respondent authorities sought to withdraw the said notice. It is thus submitted that there was sufficient reason for the learned Single Judge to pass the impugned direction.
10. Learned counsel appearing for the appellants controverts the allegation of learned senior counsel for the KMDA. It is submitted that the rejoinder of the State which has been annexed to the supplementary affidavit was already a part of the records before the learned Single Judge and, as such, no new document has been sought to be produced for the first time in appeal.
11. With regard to the submission of learned counsel for the State that a fresh notification under Section 10(1) was issued on September 14, 1989, learned counsel for the appellants submits that in the absence of any notification in the official gazette, such notice cannot be deemed to be a notification under the said section.

12. Learned counsel for the appellants further reiterates his previous arguments.
13. Upon considering the submissions of the parties, we find that the learned Single Judge did not make out a third case as such by passing the impugned direction, since the very premise of the impugned order was the concession of the State authorities to the effect that there was a misconception of law in issuing the impugned notice under Section 10(5) of the 1976 Act.
14. In fact, the respondent authorities had proceeded so far as to submit before the learned Single Judge that they have to proceed afresh under sub-section (1) and then under sub-section (3) of Section 10 of the 1976 Act and only thereafter they can issue a notice under Section 10 (5).
15. The learned Single Judge took note of the said concession and allowed the writ petition, as a corollary to which a direction was issued to the respondent authorities to initiate proceeding according to the direction of the Appellate Authority since the stage of Section 10 of the 1976 Act.
16. There are two aspects of the matter, which are required to be considered. The first aspect is whether there was any limitation stipulated by statute for initiating such a proceeding. However, it is not the case of any of the parties that there exists any such statutory limitation in initiating a proceeding under Section 10(1).

17. As rightly contended by the State, even the order of the appellate authority dated November 16, 1988 did not contain a time-bound direction for a fresh notification under Section 10(1) to be issued.
18. Rather, the tenor of the Appellate Authority's order was that only upon preparing a final statement afresh in terms of the measurements as recorded in the said order, the respondents would be entitled to issue a fresh Section 10(1) notification.
19. Taking into consideration the purport of such order of the Appellate Authority, it was open to the respondent authorities to initiate a fresh proceeding under Section 10(1). The learned Single Judge has merely added the force of a direction to such liberty which was already available to the respondent authorities.
20. As such, we do not find any miscarriage of justice or abuse of the process of court and/or any patent illegality in the impugned order sufficient to prompt us to interfere in an intra-court appeal where the scope of interference is extremely limited.
21. In any event, insofar as the other aspects of the impugned order are concerned, no grievance is raised by the appellants, since the rest of the order goes in their favour.
22. Thus, there is no scope of interference in the appeal.
23. However, we grant liberty to the learned Advocate-on-record for the appellants to carry out the necessary rectification in the cause title of the memorandum of appeal and the connected application, by

substituting the name of the Kolkata Metropolitan Development Authority instead of Kolkata Improvement Trust as respondent nos. 5 and 6 in the appeal. Such corrections shall be carried out during the course of the day.

24. In view of the above, MAT 1425 of 2025 is dismissed on contest without any order as to costs.
25. CAN 1 of 2025 is consequentially disposed of as well.
26. There will be no order as to costs.
27. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)