

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdictionn

Appellate Side

Present :

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 3353 of 2025

Sri Bapi Chakraborty

-Versus-

**The Municipal Commissioner, Kolkata
Municipal Corporation & Ors.**

For the petitioner : Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Tanmoy Mukherjee
Mr. Chandrachur Chatterjee
Mr. Tanmoy Seth
Ms. Rubab Fatma

For Kolkata Municipal Corporation : Mr. Alok Kumar Ghosh
Mr. Gopal Chandra Das

For the Opposite party nos. 5 to 7 : Mr. Shourjyo Mukherjee
Mr. Vishrarup Acharyya :

Heard On: : 12.09.2025

Judgment On: : 12.09. 2025

Hiranmay Bhattacharyya, J.

1. This application under Article 227 of the Constitution of India is at the instance of person responsible and is directed against the order being no. 18 dated August 27, 2025 passed by the Municipal

Building Tribunal, Kolkata Municipal Corporation in Appeal No. 113 of 2024.

2. By the order impugned the application under Section 5 of the Limitation Act stood rejected with cost of Rs. 15,000/- to be deposited by the petitioner within the time limit indicated in the said order.

3. A proceeding under Section 400/400(1) and 416 of Kolkata Municipal Corporation Act, 1980 in respect of premises no. 92/1, Dr. Daudar Rahman Road within Ward no. 89 under Borough - X being Demolition Case No. 59-D/Br-X/21-22 was initiated against Dulal Chakraborty and others. The Special Officer (Building), Kolkata Municipal Corporation passed an order dated December 5, 2022 directing demolition of all walls shown in red colour at parking space within the time limit indicated in the said order. The change of use of first floor was allowed to be retained on payment of fees under Section 400(1) and 416 of the Kolkata Municipal Corporation Act within the time limit indicated in the said order and demand notice was directed to be issued to the respective person responsible for first floor changes. The opposite party nos. 5, 6 and 7 filed the writ petition before this Hon'ble Court being WPA 5225 of 2024 seeking implementation of the order dated December 5, 2022 passed by the Special Officer (Building). The said writ petition was disposed of by an order dated May 1, 2024 by directing the Executing Engineer (Civil), Borough -X, Kolkata Municipal Corporation to take steps for implementation of the order of the Special Officer Building provided the same is not stayed/set aside/modified by any court of competent jurisdiction. Challenging the

order dated May 1, 2024 passed in WPA 5225 of 2024, the petitioner filed a intra court appeal being MAT 1941 of 2024.

4. By an order dated November 11, 2024 the Hon'ble Division Bench permitted the petitioner to file an appeal on the basis of the copy of the order which was annexed to the writ petition. Pursuant to the said order the petitioner preferred the appeal being Appeal No. 113 of 2024 before the Municipal Building Tribunal, Kolkata Municipal Corporation. The said appeal was filed on November 11, 2024. The said appeal was accompanied by an application under Section 5 of the Limitation Act praying for condonation of delay. The Municipal Tribunal, Kolkata Municipal Corporation, by the order impugned, rejected the application under Section 5 of the Limitation Act with cost of Rs. 15,000/-. Being aggrieved by such order, the appellant before the Municipal Building Tribunal approached this Court by filing the instant application under Article 227 of the Constitution of India.

5. Mr. Majumdar, learned Senior advocate appearing for the petitioner submits that the Hon'ble Division Bench permitted the petitioner to file an appeal with the copy of the order passed by the Special Officer Building which was annexed to the writ petition. He further submits that since the said appeal was filed immediately after the order passed by the Hon'ble Division Bench and pursuant to the permission granted by the Hon'ble Division Bench, the Municipal Building Tribunal ought not to have rejected the prayer for condonation of delay. He further submits that the application for condonation of delay was filed by way of abundant caution as there was no delay in filing the appeal before the Municipal Building

Tribunal. Mr. Majumdar contended that an order affecting the rights of a person has to be communicated to such person in order to be complete and effective and the date of the order is the date when it is made known to the affected party. In support of such contention he placed reliance upon a decision of this Court in the case of Nripendra N. Majumdar Vs. N.M. Bardhan and others reported at AIR 1959 Cal. 219.

6. Mr. Ghosh, learned advocate appearing for the Kolkata Municipal Corporation submits that the petitioner in spite of being well aware of the initiation of the demolition proceedings did not contest the same. He submits that the petitioner was well aware of the order of demolition passed by the Special Officer (Building) but sat tight over the matter till the private respondents filed the writ petition. He submits that the Special Officer passed the order of demolition on December 5, 2022 and the appeal before the Municipal Building Tribunal was filed only on November 11, 2024 i.e. after a period of almost two years of the order passed by the Special Officer (Building). He submits that the petitioner filed an application praying for condonation of delay and the Municipal Building Tribunal after considering such application arrived at a factual finding that the statements made by the petitioner in paragraph 10 and the subsequent paragraphs of the application for condonation of delay are incorrect and misleading. He submits that the inordinate delay in filing the application was not explained by the petitioner and for such reason the Municipal Building Tribunal was right in rejecting the prayer for condonation of delay. Mr. Ghosh further contends that the Hon'ble Division Bench only permitted the petitioner to file an appeal with a copy of the order passed by the

Special Officer (Building) which was annexed to the writ petition but did not make any observation with regard to condonation of delay in the proposed appeal.

7. The learned advocate appearing for the opposite party nos. 5, 6 and 7 placed reliance upon the provisions of Section 400(3) of the Kolkata Municipal Corporation Act, 1980 in support of his contention that the period of limitation for preferring an appeal challenging the order passed by the Special Officer (Building) is thirty days and the period of limitation shall start to run from the date of the order and not from the date of the knowledge as sought to be contended by the petitioner. He further submits that the petitioner was all along aware of the demolition proceedings and the notice of the demolition proceeding was also served upon the petitioner. He submits that there is no requirement to communicate the order passed by the Special Officer (Building) and it is not open to a person aggrieved against the order passed by the Special Officer (Building) to await till the receipt of the certified copy of the order impugned or the service of the copy of the order passed by the Special Officer (Building). In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of V. Nagarajan Vs. SKS Ispat and Power Ltd. & Ors. reported at 2022 (2) SCC 244.

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

9. The Special Officer (Building) passed an order dated December 5, 2022 in Demolition Case No. 59-D/BR- X/21-22. It appears from the said order that the date of hearing was on November 4, 2022.

Upon a bare reading of the said order it is evident that the order was passed after a month of the date of hearing. It does not appear from the said order that the parties were required to be present on the date when the order was passed by the Special Officer (Building).

10. Record reveals that the petitioner filed an application under Section 6 of the Right to Information Act, 2005 praying for furnishing certain information. Under paragraph 3 (iii) the petitioner sought for information as to whether any conclusive or any final order have been passed and if so to provide the petitioner with the certified copy of the same. Such application was received by the office of the State Public Information Officer on 4th April, 2024. From the reply furnished by the State Public Information Officer to the petitioner vide letter dated April 29, 2024 it appears that it was specifically stated in reply to the query under question no. 3 (iii) that as per available of his record, the final order of the above mentioned premises is at present, awaiting approval of Mayor-in-Council. As per Municipal Commissioner's Circular no. 22 of 2022 - 2021 dated September 23, 2020, the final order of the Special Officer (Building), Kolkata Municipal Corporation can be made public after being duly approved by the Mayor-in-Council.

11. In course of his argument Mr. Majumdar, learned senior advocate for the petitioner laid special emphasis on the said reply and contended that unless and until the final order of the Special Officer (Building) is duly approved by the Mayor-in-Council the same cannot be said to be enforceable in the eye of law.

12. On a query of the Court Mr. Ghosh, learned advocate appearing for the Kolkata Municipal Corporation submits that in certain cases the approval of the Mayor-in-Council is necessary. He however did not dispute the correctness of the information furnished by the State Public Information Officer vide letter dated April 29, 2024. From the information furnished by the State Public Information Officer vide letter dated April 29, 2024 it is evident that the order passed by the Special Officer (Building) in the case on hand was required to be approved by the Mayor-in-Council. It is the specific case of the petitioner in the civil revisional application that the approval of the Mayor-in-Council, Kolkata Municipal Corporation to the order of the Special Officer (Building) was given only on November 16, 2024 and the certified copy of the said order was supplied to the petitioner on November 26, 2024. This Court drew the attention of Mr. Ghosh to the statements made in paragraphs 31 and 33 of the civil revisional application wherein the date on which the approval was given by the Mayor-in-Council and the certified copy was supplied to has been stated, Mr. Ghosh did not dispute the facts as stated in Paragraph 31 and 33.

13. Thus it is evident that the approval of the order passed by the Special Officer (Building) was given only on November 16, 2024 and the appeal was filed by the petitioner before the Municipal Building Tribunal prior to such approval being given as the same was filed on November 11, 2024. As per the Municipal Commissioner's circular dated 23.09.2020 the order of the S.O (B) can be made public after it is approved by Mayor-in-Council.

14. That apart the Hon'ble Division Bench after taking note of the submission of the petitioner that the petitioner did not receive the certified copy of the order of the Special Officer (Building), Kolkata Municipal Corporation dated December 5, 2022 permitted the petitioner to prefer an appeal against such order, without entering into the dispute as to whether the petitioner received the certified copy of the order dated 5th December, 2022 passed by the Special Officer (Building) or not, thought it appropriate to permit the petitioner to file an appeal on the basis of the copy of such order as annexed to the writ petition. The Hon'ble Division Bench further observed that in the event the appeal is preferred by the petitioner in terms of the order, the Building Tribunal was requested to treat such order as filed in accordance with law. At this stage it will be relevant to take note of the order passed by the Hon'ble Division Bench on November 11, 2024 for which the said is extracted hereinafter:

“1. Appeal is directed against an order dated May 1, 2024 passed in WPA 5225 of 2024.

2. Learned Advocate appearing for the appellant submits that, appellant did not receive certified copy of the order of the Special Officer (Building), Kolkata Municipal Corporation dated December 5, 2022 for the appellant to prefer an appeal against such order. He submits that, the appellant is desirous to prefer an appeal from such order.

3. State, Corporation and the private respondents are represented.

4. Without entering into the dispute as to whether, appellant received a certified copy of the order dated December 5, 2022 passed by the Special Officer (Building) or not, it would be appropriate to permit the appellant to file an appeal on the basis of the copy of such order as annexed to the writ petition.

5. In the event, appeal is preferred by the appellant in terms of this order, Building Tribunal is requested to treat such appeal as filed in accordance with law.

6. List the appeal on **November 12, 2024.**”

15. The appeal subsequently appeared before the Hon’ble Division Bench on December 3, 2024 when the Hon’ble Division Bench took note of the submission of the petitioner that the appeal has already been filed by the petitioner against the order passed by the Special Officer (Building). The Hon’ble Division Bench disposed of the appeal being MAT 1941 of 2024 by observing that the Building Tribunal will consider the application for grant of stay as also any other application including the application for addition of party, without being prejudiced by any of the observations made by the Hon’ble Division Bench to the proceedings including the grant of limited order of stay of the order of the Special Officer (Building) dated December 5, 2022.

16. After reading the orders dated November 11, 2024 and December 3, 2024 this Court is of the considered view that the intention of the Hon’ble Division Bench was that the Building Tribunal shall consider the appeal and the interlocutory applications on its merit and the same was not to be dismissed on the ground of limitation.

17. At this stage it would be beneficial to take note of the observations of the Co-ordinate Bench in the case of Nripendra N. Majumdar (supra). It was held therein that if an order is made which affects the rights of a person, then the order must be communicated to such person in order to be complete and effective. The date of the order is

the date when it is made known to the affected party. The Co-ordinate Bench held thus :-

“6. With respect, I agree with the view taken by Bose J. that the Bombay and Madras views are preferable. In my opinion the position may be summed up as follows:

- (1) An order may be taken to be made on the date it came into existence, if the nature of the order is such that it is not necessary to communicate it to anyone. It is easy to see that only very few orders will satisfy this test.
- (2) If an order is made which affects the rights of a person, then the order must be communicated to such person in order to be complete and effective. The date of the order is the date when it is made known to the affected party. To this however, there are certain exceptions, which are as follows:
 - (i) Where the order is made in the presence of the party, whose right has been affected.
 - (ii) Where notice has been given to the party affected by the order to be present at the announcement, but in spite of such notice, he fails to be present. Where the method of giving notice is prescribed, e.g., by publication in the Gazette, compliance with the same will be deemed sufficient, as also in a case where the law presumes knowledge.
 - (iii) Where owing to the obstruction of the party affected himself, the order cannot be communicated within a reasonable time.

- (iv) Where the authority making the order, in spite of reasonable efforts has been unable to serve the order within a reasonable time or at all.

In such a case, the date of making of the order is the date of the order.

- (7) Barring these exceptions, I think that the law is that an order which affects the interests of a person cannot be said to be effectively made until it has been brought to his notice.”

18. Thus the proposition of law laid down in Nripendra N. Majumdar (supra) is that an order which affects the interest of a person cannot be said to be effectively made unless it has been brought to his notice and that the date of the order is the date when is made known to the affected party.

19. By applying the aforesaid proposition of law, this Court holds that the expression “within thirty days from the date of the order” appearing in Section 400 (3) of K.M.C. Act, 1980 would mean within thirty days from the date when the said order is made known to the affected party in a case where no notice is served upon the affected party to remain present at the time of announcement/pronouncement of such order.

20. In the case on hand it is not in dispute that the petitioner was required to be present at the time of announcement or pronouncement of order by the Special Officer (Building). This Court, therefore, holds that in the case on hand, the period of limitation for preferring on appeal under Section 400 (3) of the 1980 Act would start to

run from the date when the order of Special Officer (Building) as approved by the Mayor-in-Council would be communicated to the affected party and not from the date of the order passed by the Special Officer (Building).

21. As observed hereinbefore the order of the Special Officer (Building) can be said to be enforceable in the eye of law once the same was duly approved by the Mayor-in-Council. Since the approval by the Mayor-in-Council was after the date of filing of the appeal by the petitioner before the Municipal Building Tribunal this Court is of the considered view that there was no necessity on the part of the petitioner to file any application praying for condonation of delay.

22. The Hon'ble Supreme Court in V. Nagarajan (supra) after taking note of the provisions of Section 12(2) of the Limitation Act which allows for an exclusion of the time requisite for obtaining a copy of the decree or order from which an appeal should be preferred held that it is not open to a person aggrieved by an order under the Insolvency and Bankruptcy Code to await the receipt of a free certified copy. In the said reported case the appellant before the Hon'ble Supreme Court did not dispute his presence before the NCLT when the order was pronounced in open court. The said decision being distinguishable on facts cannot come to the aid of the opposite parties herein in the case on hand. The facts of the said reported case would squarely fall within the exceptions carved out in Nripendra N. Majumdar (supra).

23. For all the reasons as aforesaid, this Court is inclined to interfere with the order impugned.

24. Accordingly the order being no.18 dated August 27, 2025 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation stands set aside. The appeal being no. 113 of 2024 along with all interlocutory applications which were pending as on that date stands restored to the original file and number before the Municipal Building Tribunal, Kolkata Municipal Corporation.

25. At this stage Mr. Mukherjee, learned advocate appearing for the petitioner submits that the stay application was pending at the time when the impugned order was passed.

26. In view thereof, the Municipal Building Tribunal, Kolkata Municipal Corporation is requested to fix a date for hearing of the stay application and to dispose of the same in accordance with law after giving an opportunity of hearing to the respective parties and by passing a reasoned order. Considering the fact that a demolition notice was issued on 26th August, 2025, this Court is inclined to pass an order of stay of operation of such notice till the disposal of the stay application by the Municipal Building Tribunal. The Municipal Building Tribunal is requested to dispose of the stay application as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

27. With the above observations and directions, C.O. 3353 of 2025 stands disposed of.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)