

11. 12.11.2025
Court No.03.
(Pritam)

WPA 24868 of 2025

Bajrangi Gupta.

-Vs.-

Kolkata Municipal Corporation & Ors.

Mr. Anindya Bose,
Ms. Priya Sisgar.

...for the petitioner.

Mr. Vimal Kumar Shahi,
Ms. Susmita Chatterjee.

....for the KMC/respondents.

1. Affidavit-of-service filed in Court today is taken on record.
2. Pursuant to the order dated 7th November, 2025, today, the records have been produced. It may be noted from such records that in course of inspection, the Assistant Engineer had noted the extent of unauthorised construction to include covering of open terrace by CI Shed and construction of RCC beams, columns and slab partially at the portion of 5th and 6th floors of 71 Ganesh Chandra Avenue, Kolkata. From the order dated 10th September, 2025 issued by the Mayor-in-Council, under Section 400(8) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the “said Act”) it is seen that the Mayor-in-Council has observed that the unauthorized construction is unsafe and may lead to

accident resulting in loss of human lives and property and may also create several other hazards like fire and environment, etc. and had accordingly taken a decision for demolition of such unauthorized construction by invoking powers under Section 400(8) of the said Act with police force.

3. Though the Mayor-in-Council has invoked the powers under Section 400(8) of the KMC Act by recording that the unauthorized construction is unsafe and may lead to accident resulting in loss of human lives and property and may create several other hazards like fire and environment, etc. and though on the basis thereof a part of the constructed portion has already been demolished, I, however, find that nothing has been disclosed in the aforesaid order which could have prompted the Mayor-in-Council to take such emergent action by overriding the scope of pre-decisional hearing. I am of the view that mere reproduction of the words that “the construction is unsafe and may lead to accident resulting in loss of human lives and property and may create several other hazards like fire and environment, etc.” cannot justify invoking of the powers under Section 400(8) of the said Act in absence of supporting documents or particulars. Though an inspection report has been relied on such inspection report does not demonstrate that the construction that had come up on the 5th and 6th floors was dangerous or was likely to lead to accident resulting

in loss of human lives and property or create hazards like fire and environment, etc. It, however, transpires that the Assistant Engineer has by letter dated 30th June, 2025 communicated to the Officer-in-Charge, Boubazar Police Station the inspection report, in the following manner;

“.....if the construction is allowed to stand, it may collapse at any date endangering human life and water supply, drainage, sewerage or the road or the road traffic and may cause fire hazard as per report mentioned above.”

4. Accordingly, the said communication was directed to be treated as FIR under Section 401A of the KMC Act, 1980 with a further direction to take necessary action. Unfortunately, the aforesaid recording which has been prepared in a cyclostyled manner by the Assistant Engineer (C) Building appears to have been mechanically prepared and does not inspire confidence of the court. The aforesaid notice also does not support the findings in the inspection report dated 30th June, 2025.
5. Having regard thereto, since the very basis for taking action under Section 400(8) of the said Act is in question, I am of the view that it shall be prudent at this stage to direct the municipal authorities to act in accordance with law and in terms of the Section 401 of the said Act and take a decision upon giving an opportunity of hearing to the petitioner.
6. Direction as aforesaid has been passed by taking into consideration the fact that the portion of the unauthorizedly constructed building has already been

demolished. It is, however, made clear that the petitioner shall not carry out any construction work in the said building or restore the demolished portion till a decision is taken by the municipality in the proceedings under Section 401 of the said Act. The writ petition is accordingly disposed of with the above observations and directions.

7. There shall be no order as to costs.

(Raja Basu Chowdhury, J.)