

02.12.2025
Ct. 3
Item No.
AD 53
Saswata

WPA 27587 of 2025
Niraj Agarwal & Anr.
Versus
The State of West Bengal & Ors.

Mr. Moyukh Mukherjee
Ms. Sagnika Banerjee
Mr. Bhaskar Mondal

...For the petitioners

Mr. Dipankar Dasgupta

...For the State

Mr. Alok Kr. Ghosh
Mr. Raju Bhattacharya

...For the respondent nos. 2 to 5

1. Citing extreme urgency, a leave was obtained from this Court on 1st December 2025 for short service..
2. This matter has accordingly been listed and taken out of turn upon notice to the learned advocate appearing for the municipal authorities.
3. Learned advocate appearing for the petitioner has drawn the notice of this Court to the demolition order issued under Sections 400 (1) and 416 of the Kolkata Municipal Act, 1980 (hereinafter referred to as the “said Act”) in respect of premises no. 6, Peary Mohan Pal Lane in demolition case no. 35-D/Br-IV/2024-25 dated 4th April 2025. According to the learned advocate for the petitioner the infringement noted in the order is only minimal and the petitioner has barely infringed a few meters of space. He would submit that the petitioner has already preferred an appeal and such appeal is pending. In the meantime the municipal authorities are, however, proceeding with the demolition.

4. Mr. Ghosh, learned senior advocate appearing for the KMC would inter alia, contend that the petitioner had obtained sanction for construction of a G+IV residential building. Though, the building permit dated 25th May 2019 was for residential purpose, unfortunately, the petitioner has converted the same for commercial use. This apart, from the order passed in the demolition case, it would transpire that the provision of the said Act and the rules framed thereunder have not been adhered to at all. According to him, no stay has been obtained by the petitioner in connection with the aforesaid appeal and as such, it is within the authority of the municipal corporation to enforce the order dated 8th April 2025.
5. Having heard the learned advocates appearing for the respective parties I find that the petitioner had obtained a sanctioned plan for construction of G+IV storied residential premises on 25th May 2019. It may be noticed that since, the petitioner had deviated while carrying out the construction work, a notice under Section 400(1) of the said Act was issued calling upon the petitioner to show cause as to why erection and the construction carried out by the petitioner in deviation of the sanctioned plan shall not be demolished. In furtherance thereto, the demolition order has been passed.
6. From the order impugned it would transpire that the said deviation is not only in respect of the front and rear but also in respect of the side open space. There

is also deviation in ground coverage and utilization of FAR. It may also be noted that the user group of the building has also been changed. To morefully appreciate the same, the relevant portion of the order is extracted hereinbelow:-

Before S. Boral, Special Officer (Building), KMC
Demolition Case No. 035 – D / IV / 24 – 25.

Date of Hearing – 19/02/2025

Demolition Procedure u/s 400(1) & 416 in respect of
Premises No. 6, Peary Mohan Pal Lane, Ward – 25, Borough – IV.
D/Case No. 035 – D / IV / 24 – 25.

P. R. – Niraj Agarwal & Others.

Detail of unauthorised construction: (i) Constructed box wall by brick work at sanctioned cantilever deviating B. S. plan; (ii) Covering parking space into shop and godown; (iii) All floors have been used as commercial (godown) purpose and no partition wall has been made.

This proceeding was brought against Niraj Agarwal & Others. The allegation against unauthorised construction at Premises No. 6, Peary Mohan Pal Lane, Ward – 25, Borough – IV for violating rules 62, 69, 70, 74, 123, 133 and 134 of Building Rule 2009.

Relevant Record / information available with the file – D/Sketch, Precis of Infringement statement from Borough office are taken into consideration.

Notice u/s 400 (1) issued on 14/11/2024.

As per report from concerning Borough – There is verbal complain.

As per report from concerning Borough – Infringement statement of Building Rule 2009.

Rules	Description	Required	Provided	Remarks
62	Front Open Space	1.2 m	0.7 m	Infringes
62	Rear Open Space	1.519 m	1.019 m	Infringes
62	Side -1 Open Space	1.2 m	0.7 m	Infringes
62	Side-2 Open Space	3.0 m	2.5 m	Infringes
69	F.A.R.	2.24	3.232	Infringes
70	Ground Coverage	57.934%	66.07	Infringes
74	Height of the Building	15.5 m	15.5 m	Infringes
123	Fire Fighting	-----	-----	Required
133	Structural Design	-----	-----	Unknown
134	Quality of materials & workmanship	-----	-----	Unknown

Area of unauthorised construction: 74.474 sqm.
Present Use: Commercial.

ORDER

As shown in D/Sketch the use group of the building is entirely changed. The building plan has been sanctioned with advantage of Rule 142 for rehabilitation of tenants for residential use only. Such change of use is not be allowed. P.R. is requested to use the building as per sanction plan. Department is requested to inspect the site and to take necessary action in this respect further.

D/Sketch will be part and parcel of order.

Any person aggrieved by this order u/s 400 (1) may be appeal against this order to Municipal Building Tribunal within stipulated time in accordance with the provision of KMC Act 1980.

CERTIFIED TO BE TRUE COPY
16/06/25
Assistant Engineer (Civil)
Building Department
Borough-IV & V
Kolkata Municipal Corporation

S. Boral

Special Officer (Building)

Special Officer (Building)

The Kolkata Municipal Corporation

Annexure- P/4

65

Annexure

To in paragraph

Forcing Petition affixed

by Niraj Agarwal

on this 17/02/25

Commissioner of Affidavit

Cooperate Side

7. Having regard to the above and noting that the petitioner has flouted the sanctioned building plan and had constructed the building without keeping the minimum open space and without adhering to the FAR or the ground coverage, I am of the view that the petitioner is not entitled to relief in the

present writ petition. Accordingly, no interference is called for.

8. The writ petition fails and is accordingly dismissed.
9. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)