

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 28312 of 2025

Saba Reyaz & Ors.

Versus

The Kolkata Municipal Corporation & Ors.

For the petitioners	:	Mr. Srijit Chakraborty Mr. Vikas Baisya Ms. Ranjana Seal Mr. Anshunath Chakraborty
For the KMC	:	Mr. Alak Kumar Ghosh Ms. Manisha Nath
For the respondent no.9:	:	Mr. Arindam Banerjee, Sr. Advocate Mr. Moti Sagar Tiwari Ms. Soumili Paul Ms. Shweta Poddar
Heard on	:	23.12.2025.
Judgment on	:	23.12.2025

Raja Basu Chowdhury, J (Oral):

1. Affidavit of service filed on behalf of the petitioners is taken on record.
2. The present writ petition was filed citing extreme urgency upon obtaining leave for short service on 9th December, 2025. After the matter was listed on 17th December, 2025 since it was represented on behalf of the petitioners that the petitioner no.1 does not wish to continue with the writ petition, accordingly this Court by order of even

date directed the name of the writ petitioner no.1 be expunged from the array of the parties to the writ petition.

3. Today the matter has come up for consideration.

4. The petitioners claim to be occupants and/or residents of the premises no.151, Rabindra Sarani, Ward No.42, Police Station – Burrabazar, Borough-V, Kolkata – 700073. According to the petitioners, they have been residing in the said premises as beneficiaries of the Wakf for a long time for over 100 years. It is also the petitioners' case that on 31st October, 2012, the Joint Mutwallies of Hafiz Jamaluddin Wakf Estate had executed several agreements with the petitioners in order to demolish the existing structure and to raise a construction in accordance with the approval granted by the Chief Executive Officer of the Board of Wakf, West Bengal dated 18th June, 1996. It is also the petitioners' case that pursuant to such approval, the Joint Mutwallies had extended the sanctioned building plan dated 7th November, 1998 till 11th April, 2016. Subsequently, the building was constructed and the petitioners were given possession of the respective flats. It is also the petitioners' case that the petitioners are residing in the respective flats.

5. The petitioners claim that on 6th December, 2025, they had come to learn from the local police station that the municipal authorities are in the process of demolishing the petitioners' building in terms of the order dated 20th December, 2017 passed under Section 400(8) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the

‘said Act’). Following the above, the petitioners claim to have made enquiries and had been able to ascertain that initially a writ petition, being WPA 16276 of 2021, was filed before this Court which was disposed of by an order dated 4th April, 2022 by a Co-ordinate Bench of this Court. Later, on an appeal being filed which was registered as MAT 665 of 2022 the Hon’ble Division Bench of this Court had disposed of the appeal by an order dated 28th July, 2023. According to the petitioners, the municipal authorities subsequent to the order passed by the Hon’ble Division Bench had taken steps under Section 400(1) of the said Act and passed an order on 26th September, 2024 which had the approval of the Mayor in Council. The petitioners claim that the petitioners had never been served any notice of demolition.

6. Mr. Chakraborty, learned advocate appearing for the petitioners has, however, confined the writ petition to a challenge to the order under Section 400(8) of the said Act. It is the petitioners’ contention that though the petitioners may not have been entitled to a notice prior to such order being passed, however, the petitioners are entitled to challenge the said order and according to Mr. Chakraborty, the said order has not seen the light of the day. At least, no copy thereof has been served on the petitioners. Further there could have been no extraordinary circumstances to pass an order under Section 400(8) at this stage. In the factual backdrop as aforesaid, the writ petition has been filed.

7. Mr. Ghosh, learned advocate appears for the Kolkata Municipal Corporation while Mr. Banerjee, learned senior advocate appears for the respondent no.9 who was the complainant/appellant and at whose instance the order dated 28th July, 2023 in MAT 665 of 2022 was passed.

8. Having heard the learned advocates appearing for the respective parties, I find that though the writ petition has been filed at this stage citing extreme urgency, the matter has a chequered history. The respondent no.9 as the complainant had filed the writ petition, being WPA 16276 of 2021, which came to be disposed of by an order dated 4th April, 2022. Being aggrieved with the observation made by the learned Single Judge that the previous demolition proceeding had died its natural death in view of the inability of the Corporation to execute its own demolition order in accordance with law, and the direction for consideration of the application for regularization at the behest of the persons responsible who had carried out the unauthorized construction, the appeal was filed.

9. The Hon'ble Division Bench by the order dated 28th July, 2023 passed in MAT 665 of 2022 was, inter alia, pleased to dispose of the said appeal by observing as follows:-

“21. *Therefore from the above it appears that, the respondent nos. 5 and 6 have already admitted that there are deviations from the sanctioned building plan in respect of extension of RCC roof at the ground, first, second, third and fourth floors with open terrace at 4th floor. They have also*

admitted the change of user of car parking space to shop room at the ground floor. They have also admitted that there is a change of user of the first floor and second floor from residential to commercial purpose. They have also admitted that there was a deviation of 316.73 sq.m. in the said building and for which a regularization prayer was made. In this regard, it may be recalled that KMC Authorities also mentioned in the letter dated 22.01.2019 (issued by respondent No. 3) that the respondent nos. 5 and 6 again constructed the illegal work of erection at those portions where the illegal constructions were demolished.

22. *In view of such admitted factual aspects, the question is whether such prayer for regularization of the respondent nos. 5 and 6 can be accepted by the municipal authorities particularly when a demolition proceeding was undertaken and unauthorized construction was demolished and thereafter again unauthorized construction was made on the selfsame portions by the persons responsible.*

23. *In view of the case laws mentioned above viz **Supertech Ltd.(supra), Dipak Mukherjee's case (supra), Ram Awatar Agarwal and Ors (supra)**, I am of the view that when a portion of a building raised unauthorizedly was demolished by the municipal authorities, the person responsible has no right under law to reconstruct the said building once again and thereafter to apply for regularization of the same. If we allow such attempts, then unscrupulous persons will not allow any demolition proceeding to come to an end. The unauthorized constructions at the instance of the respondent nos. 5 and 6 have been clearly established and in this regard the conviction of respondent no. 5 by the Learned Municipal Magistrate is a strong material from which we can understand the desperate attitude of the said*

respondent nos. 5 and 6 for the purpose of evading the law of the land. It is unfortunate that knowing fully well that demolition process against the unauthorized construction made at the behest of respondent nos. 5 and 6 at the said premises was carried out and there is no scope for regularization of such unauthorized reconstructed building beyond the sanction plan, the KMC has kept the prayer for regularization made by the respondent no. 5 and 6 pending from the year 2016. The subsequent directions given by the Learned Single Judge from (e) to (f) in the relevant judgment, in my opinion, cannot be sustained and if we allow the said directions to stand, there would be no end of demolition proceedings of any unauthorized construction since unscrupulous persons will reconstruct the unauthorized construction even after its demolition, and thereafter, will pray for regularization.

24. *Therefore, we are constrained to set aside the impugned judgment and order. The respondent nos. 1 to 4 are directed to consider the complaints of the writ petitioner/appellant in accordance with law. The respondent nos. 5 and 6 are directed not to make any further construction at premises no. 151, Rabindra Sarani, Kolkata, except in accordance with a sanctioned building plan and the KMC authorities are directed to take appropriate steps against the unauthorized construction which was once detected, demolished and subsequently reconstructed at the behest of respondent nos. 5 and 6 beyond the sanction plan in accordance with law within eight weeks from this day. The connected applications if any, are disposed of.”*

10. The matter did not stop there. Since, according to the private respondent no.9, the Municipality did not seek implementation of the above direction, a contempt application was filed before the Hon'ble Division Bench and a Rule in connection therewith was also issued.

11. Mr. Banerjee, learned senior advocate representing the respondent no.9 has drawn attention of this Court to the order dated 2nd May, 2025 to demonstrate that the Division Bench is, in fact, has been overseeing the demolition proceedings and the Division Bench is in seisin of the matter.

12. I find that the Hon'ble Division Bench by the aforesaid order had been pleased to observe as follows:-

“This proceeding took some time. Ultimately, on February 7, 2025, the Mayor-in-Council has approved the aforesaid course of action. Now, the KMC Authorities will have to implement the order under Section 400(8) of the KMC Act.

We adjourn this matter and direct it to be listed again immediately after the Summer Vacation whenever this Bench is again available.

On that date, the alleged contemnor no.1 shall file a status report in the form of affidavit. We hope and trust that such report will indicate that the order in question has been complied with in its true letter and spirit.”

13. The aforesaid fact has, however, been conveniently suppressed by the petitioners. The petitioners have, in fact, attempted, by moving the writ petition to override and/or interfere with the directions passed by

the Hon'ble Division Bench of this Court by invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India, which, in my view, is not permissible. The conduct of the petitioners does appear to be bona fide.

14. In view thereof, the writ petition stands dismissed with costs of Rs.5 lakhs to be paid by petitioners to the Calcutta High Court Legal Services Committee.

15. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

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A.R. (Court)