

OD-7

WPO/487/2025
THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

EMMA MALHOTRA
Versus
THE STATE OF WEST BENGAL & ORS.

BEFORE :

The Hon'ble JUSTICE RAJA BASU CHOWDHURY
Date: 1st December, 2025

Appearance:
Mr. Biswajib Ghosh, Adv.
Mr. Sumitava Chakraborty, Adv.
Ms. Bratati Pramanick, Adv.
... for the petitioner

Mr. Debjit Mukherjee, Adv.
Ms. Priyanka Jana, Adv.
... for the State

Mr. Gopal Chandra Das, Adv.
Ms. Susmita Chatterjee, Adv.
... for the KMC

The Court : 1. The present writ petition has been filed complaining non-compliance of the demolition order dated 2nd February, 2008. It appears that complaining failure on the part of the Municipal authorities to ensure that the construction at Premises No.4, Sunyat Sen Street, Ward No.44, Borough V, Kolkata - 700012 is carried out as per the sanctioned building plan dated 27th November 2004, and for consideration of the petitioner's representations, a

writ petition was filed before this Court, which was registered as W.P. No.692 of 2006.

2. The writ petition was disposed of by directing the Executive Engineer (Building Department), Kolkata Municipal Corporation, Borough-V, Ward-37, to consider the grievances of the petitioner as contained in the representation and to dispose of the same by passing a reasoned order.

3. In terms of the order passed in such writ petition, a demolition case was initiated and after hearing the parties it was noted that a building plan was sanctioned in favour of the person responsible Mouze Ahmed, private respondent, for construction of a three storied residential building, vide Building permit dated 27th November, 2004 and though, a building was constructed, the same was in deviation of such sanctioned plan. Not only a RCC slab was cast on the third floor roof in deviation of the plan, but also on the fourth floor and there had been extension of the building on both sides.

4. According to the case made out by the person responsible before the hearing officer, the additional floors were constructed to accommodate the tenants. The Special Officer (Building), KMC, by the order impugned noted that by construction of the third floor and fourth floor there has been violation of the Building Rules in a major way. It was also noted that the person responsible had no authority to deprive the air and light of the neighbours by the aforesaid construction.

5. Following the above, the Special Officer (Building) was pleased to dispose of the same by passing the following order dated 2nd February, 2008 :

O R D E R E D

PART 'A': The P.R. shall demolish the Corridor and O.T. from 1st floor to Top Floor marked 'X' in the Demolition sketch and the entire Top Floor within 19 a period of 30 days from the date of communication of this order, in default the K.M.C. Authority shall demolish the same at the risk and cost of the P.R.

PART 'B': The P.R. shall retain the other impugned unauthorised construction in red colour in the D. Sketch of D/Case No.05-D/W/06-07 subject to payment of erection/re-erection charges as follows :-

(a) The P.R. shall pay at ground floor U/s.400 (1) U/s. as commercial.

(b) The P.R. shall pay unauthorised construction in red ink in the D. Sketch of D/Case No.05-D/7/06-07 subject to payment of erection/re-erection charges U/s.400 (1) as per Building Rule 40 (1) (c) of the K.M.C. Building Rules 1990.

2. The P.R. shall furnish an Affidavit, declaring on oath therein incorporating the present D. Case that he will not make any construction whatsoever in the impugned premises without prior sanction from the K.M.C.

3. The P.R. shall submit a certificate from K.M.C. empanelled Structural Engineer certifying therein the aspect of Structural Stability as well as workmanship and quality of materials so far used in the impugned construction of the premises.

4. The P.R. shall carry out the orders within 30 days from the date of communication of the order, failing which the order shall become inoperative and K.M.C. Authority shall demolish all the impugned constructions marked in red colour in D. Sketch of DyCase No.39x2005-D/V/06-07 at the risk and cost of the P.R.

5. The copy of the order shall be communicated to the PR as well as E.E., Bor-V for information and necessary action.

6. The directions given in the ordering portion of Part 'A' and Part 'B' are

independent to such other and none is dependent on compliance of the other.”

6. The petitioner would submit the aforesaid order has not been complied with.

7. Despite service the private respondent is also not represented in Court. On the last occasion when the matter was taken up for consideration on 6th November, 2025, the private respondent sought for an adjournment and on such prayer the matter was adjourned and has accordingly appeared in the monthly list of December, 2025.

8. Having heard the learned Advocates appearing for the respective parties present, I find that though a Building Tribunal appeal has been filed, which is registered as BTA No. 79 of 2008 from the order dated 2nd February, 2008, there is no stay at present in connection with such appeal. Prima facie from the conduct of the private respondent, it would transpire that the private respondent has merely kept the appeal pending for years together. The conditional order issued by the Special Officer Building dated 2nd February, 2008, which permitted the retention of the portion subject to compliance of certain conditions, has also not been complied with. At least, the Municipality has not been able to enlighten what has happened in this regard.

9. Be that as it may, I find that the directions contained in Part `A' and Part `B' in the order dated 2nd February, 2008 are independent.

10. Taking note of the pendency of the appeal for more than two decades, I am of the view that the Building Tribunal should expeditiously hear

out and dispose of the appeal, preferably on the next date fixed which the parties inform to be fixed on 10th December, 2025, without granting any unnecessary adjournment to any of the parties. In any event considering the peculiar facts endeavour should be made to dispose of the appeal on expeditious basis within three months from the date of the communication of this order.

11. Subject to the outcome of the appeal, the Municipal authorities are directed to ensure compliance of the directions passed by the Special Officer (Building), KMC.

12. With the above observations, the writ petition is disposed of.

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

(RAJA BASU CHOWDHURY, J.)