

ORDER SHEET

WPO/600/2025

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MAGNUM ENTERPRISES AND ANR.
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH

Date : 14th August, 2025.

Appearance

Mr. Jaydip Kar, Sr. Adv.
Mr. Subrata Kumar Basu, Adv.
Mr. Biswajit Mukherjee, Adv.
Mr. U.S. Menon, Adv.
Mr. Abhiroop Chakraborty, Adv.
...for the petitioners

Mr. Alak Kumar Ghosh, Adv.
Ms. Piyali Sengupta, Adv.
..for KMC

Mr. Saptanshu Basu, Sr. Adv.
Mr. Avinash Kankani, Adv.
Mr. Sagnik Mukherjee, Adv.
Ms. Shree Chatterjee, Adv.
...for respondent no.5

The Court: The petitioner in the present writ petition challenges the order dated 06.08.2025 issued by the Executive Engineer (C), Building Department, Borough – VII, Kolkata Municipal Corporation (in short 'KMC'), whereby it was communicated that, upon expiry of seven days, KMC officials would proceed to implement the Municipal Commissioner's order dated 10.06.2025. By the said order dated 10.06.2025, the Municipal Commissioner directed the Executive Engineer (C), Building Department, Borough – VII to repair/demolish/secure any such portion of the Western

Block (Block – 2) of premises No.11, Abanindra Nath Thakur Sarani, Kolkata in respect of which notice under Section 411(1) of the Kolkata Municipal Corporation Act, 1980 had been issued, if so required for the safety of public and the inmates of the building, and to do so at the expenses of the owner.

This matter has a chequered history, involving multiple rounds of litigation initiated either at the instance of the landlord or tenant in respect of Western Block (Block – 2) of the premises mentioned above.

Respondent no. 5 is the landlord of the premises, and the petitioner is one of the tenants thereof. An Ejection Suit No.110/2005-E is pending before the Chief Judge, Presidency Small Causes Court, Calcutta.

The respondent Corporation initially issued a notice dated 28.04.2008 under Section 411(1) of the KMC Act, 1980. The Hon'ble Division Bench of this Court, by an order dated 28.04.2014, in an appeal filed by the landlord (APOT/179/2014) quashed the said notice on the ground that neither the specific dangerous portion of the building was identified, nor a sketch map was annexed with the said notice.

Thereafter, the respondent Corporation issued second notice dated 16.06.2014 under Section 411(1) of the KMC Act, which was also set aside by this Court by its order dated 13.01.2015 in WP No.1271/2014, a writ petition filed by the landlord. The appeal against the said order was also dismissed.

On 23.12.2017, the respondent Corporation issued third notice under Section 411(1) of the KMC Act, and subsequently displayed a board outside the building declaring the same to be a “Dangerous Building”. The petitioner challenged the said notice dated 23.12.2017 in WP No. 435 of 2018. By an

order dated 13.09.2018, this Court disposed of the writ petition by granting liberty to the petitioner to approach the respondent Corporation for the purpose of granting permission for repairing the rear building of the said premises, in accordance with law. The Kolkata Municipal Corporation authorities were further directed to consider the application of the petitioner no. 1, in accordance with law. It was also directed that in case the municipal authorities reject the application of the petitioner no. 1 then they were required to give reasons for such rejection.

Pursuant to the said order, a joint inspection was carried out on 30.11.2018. Thereafter, by an order dated 26.12.2018, the respondent Corporation rejected the petitioner's application for renovation and/ or repair of the said building. The petitioner challenged the order in WPO/80/2019. By order dated 04.01.2021, this Court disposed of the writ petition granting liberty to the petitioner to submit a fresh proposal for repair and directing the Corporation to decide and dispose of such application within three weeks of receipt of such proposal.

Subsequently, the respondent issued fourth notice dated 26.03.2021 under Section 411(1) of the KMC Act directing the owner/occupier to repair the repairable portion and demolish the dangerous portion of the building. Thereafter, the petitioner no. 1 also informed the corporation authorities that no repairing or renovation work has been commenced by the landlord in respect of the portion under their occupation. Nevertheless, the petitioner no. 1 carried out the work of restoration and repairing of the western side rear building of the said premises under occupation of the petitioner no. 1, under the supervision of an Empanelled Structural Engineer.

In the meanwhile, the respondent no.5 filed WPO No. 1175 of 2021 seeking demolition of the building. In the said writ petition, the landlord had, inter alia, stated that: -

“4(f) I say that there are few tenants/occupiers who are carrying on business in the said building in question and I, being the authorised representative of the Petitioner, undertake to rehabilitate all the tenants/occupiers, after the new construction over the said plot of land, subject to any order of eviction passed by the competent Court.”

By an order dated 30.01.2025, this Court was pleased to direct that: -

“The Municipal Commissioner while considering the matter/dispute as directed shall keep in mind the beneficial legislation being Clause 3 of Section 412 of the Kolkata Municipal Corporation Act, 1980 and taking that into consideration shall pass necessary directions to protect the rights of the tenants as per the said provision of Kolkata Municipal Corporation Act and to do so, is at liberty to take necessary undertaking on affidavit from the petitioner herein.”

Pursuant thereto, the Commissioner, Kolkata Municipal Corporation passed the order dated 10.06.2025. By the order dated 10.06.2025, the Commissioner directed as follows: -

“In the above circumstances, hence it is ordered that the Executive Engineer, Building Department, Br. VII is directed to repair/demolish/secure any such portion of the said block in respect of which notice U/s.411(1) of KMC Act, 1980 was issued for the safety of the public or the inmates of the building if required on the expenses of the owner. Furthermore, on the basis of prayer of tenants followed by the order of Hon’ble High

Court dated 13.09.2018 in WP 435 of 2018 tenants are at liberty to inform KMC, Executive Engineer, Br.VII for repair of required respective tenanted portion subject to NOC from landlord/owner.

With the above order matter stands disposed of.”

Thereafter, the Executive Engineer issued the impugned order dated 06.08.2025 which reads as follows: -

“This is to inform you that information on the basis of the order of Municipal Commissioner dated 10.06.2025 duly communicated to you by letter on 10.07.2025.

Subsequently, letter submitted from the owners end for proceedings of demolition of the structure by KMC for which they have given consent to make payment for such demolition along with supervision charges of KMC.

Accordingly, it is forwarded to your end to act in accordance with law within 7 days as KMC’s team will proceed for compliance of the Municipal Commissioner’s order after expiry of 7 days.”

Learned Counsel for the petitioner submits that the Municipal Commissioner’s direction was to repair/demolish/secure the building. However, the officials of the respondent Corporation have misconstrued the aforesaid directions and have passed an order which, in effect, amounts to a complete demolition of the portion occupied by the petitioner, without any element of repair or consideration of the petitioner’s prayer, as contemplated under the order of this Court in W.P. No. 435 of 2018 as well as the order of the Municipal Commissioner dated 10.06.2025. Learned Counsel for the petitioner submits that the impugned order is contrary to the directions

passed by the Commissioner in his order dated 10.06.2025 and also to the earlier order passed by this Court. He further submits that he had made a representation dated 29.07.2025 in compliance with the direction passed by the Municipal Commissioner vide its order dated 10.06.2025, but the same has not been considered by the Executive Engineer at the time of passing of the impugned order dated 06.08.2025.

Learned Counsel for the private respondent No. 5 submits that the Executive Engineer has duly passed the order dated 06.08.2025 in strict compliance with the directions issued by the Municipal Commissioner in his order dated 10.06.2025. It is further contended that the petitioner did not submit any representation before the competent authority, and that the petitioner's alleged application dated 29.07.2025 bears no acknowledgment or signature of receipt from the Office of the Kolkata Municipal Corporation.

Mr. Saptansu Basu, learned Senior Counsel appearing for the respondent No. 5, further submits that the directions issued by this Hon'ble Court in W.P. No. 435 of 2018, vide its order dated 13.09.2018, have not been complied with by the petitioner, despite liberty having been expressly granted to the petitioner to apply for renovation. He contends that the petitioner neither filed any application seeking renovation or repair of the premises, nor availed of or pursued the remedy so granted to him and has thereby relinquished and abandoned his rights in terms of the aforesaid order of this Court.

The aforesaid contention is vehemently disputed by the learned Counsel for the petitioner. He submits that the order dated 10.06.2025 passed by the Municipal Commissioner expressly confers upon the

petitioner the right to submit a representation for repair and renovation. This right, he points out, is also expressly acknowledged in the said order, wherein the Municipal Commissioner recorded that, in terms of the directions issued by this Court in W.P. No. 435 of 2018, the petitioner is entitled to approach the Executive Engineer with an appropriate representation seeking repair and/or renovation of the portion of the premises under his occupation.

Mr. Ghosh, learned Counsel for the respondent Corporation, submits that the order dated 10.06.2025 passed by the Commissioner was in compliance with the order of this Court dated 30.01.2025 in WPO No. 1175 of 2021. He submits that the order passed by the Commissioner is fully in conformity with the direction of this Court. However, he admits that the Commissioner has nowhere granted the opportunity to the tenants to make any further representation.

The aforesaid submission is wholly contrary to the order dated 10.06.2025 passed by the Municipal Commissioner, wherein it is specifically recorded that the Executive Engineer, Building Department, Borough-VII, on the basis of the tenant's prayer and in terms of the directions of this Hon'ble Court in W.P. No. 435 of 2018, shall grant liberty to the tenant to submit a representation before the Executive Engineer for carrying out repairs to his tenanted portion, subject to obtaining a No Objection Certificate from the landlord/owner.

This Court has recorded the submissions advanced by the Counsel for the parties and has perused the materials placed on record.

This Court is in agreement with the submission made by the learned Counsel for the petitioner wherein he has stated that in compliance of the order dated 10.06.2025, the petitioner had made a representation before the Executive Engineer, Building Department, Borough – VII dated 29.07.2025. However, the same has not been considered at the time of passing of the impugned order dated 06.08.2025. Since the Executive Engineer has failed to comply with the directions issued by the Municipal Commissioner and has disregarded the directions of the Municipal Commissioner's order dated 10.06.2025, the order passed by the Executive Engineer dated 06.08.2025 is hereby set aside.

The Executive Engineer is directed to pass a fresh order, within a period of four weeks, strictly in compliance with the directions given by the Municipal Commissioner vide its order dated 10.06.2025 and in accordance with the earlier directions passed by this Court.

With the above direction, the writ petition is disposed of.

(GAURANG KANTH, J.)