

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/230/2025
WITH CC/42/2025 WITH
WPO/1575/2023
DHABAL JAIN AND ANR
-VS-
ROWINA NANDINI MEHROTRA AND ORS.

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
And
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date: August 25, 2025.

Mr. A.K. Ghosh, Adv.; Mr. N. Chatterjee, Adv., for appellants.
Mr. U. Bose, Sr. Adv.; Mr. A. Rai, Adv.; Mr. R.K. Rai, Adv.;
Ms. D. Deora, Adv.; Ms. S. Kejriwal, Adv; Mr. A. Mishra, Adv., for respondents 1-3.

1. The Court: The instant appeal is directed against the judgment and order dated July 21, 2025, passed by a Single Bench of this Court in CC/42/2025, being an application alleging contempt of the order of the Single Bench dated September 14, 2023, passed in WPO/1575/2023.
2. The writ petition was filed alleging unauthorised construction and unauthorised use of certain portions of a building having a sanction plan of ground plus five by the respondents. The writ petitioners are occupants thereat.
3. When the writ petition was moved challenging the inaction of the KMC to address the illegalities and unauthorised construction, it transpired from a report of the

KMC that there was unauthorised construction in the building duly regularised twice earlier in 2010 and 2011.

4. There is also mention of some further unauthorised construction and change of sanctioned use of the property on some floors. The Single Bench directed the concerned officer of the KMC to inspect the premises and take steps in accordance with law with regard to the unauthorised construction and unsanctioned use of portions of the building after giving due opportunity to all the parties to be heard. The writ petition was disposed of by the said order dated September 14, 2023.
5. Pursuant thereto, the Special Officer (Building) of the KMC conducted an inspection of the premises and found the unsanctioned use of the second and third floors and other unsanctioned use and unauthorised construction and user of a room in the car parking area as well.
6. Certain measures were proposed by the Special Officer (Building) in respect, inter alia, for demolition of the fibre structure on the ground floor and change in use of the first, second and third floor against payment of fees. The shop room on the ground floor was also permitted to be retained against payment of fees.
7. The matter was placed before the Mayor-in-Council who had remanded the case back to the Special Officer (Building) for consideration afresh. The Special Officer(Building) once again reiterated his earlier findings. This time, when the matter came to be placed before the Mayor-in-Council, the suggestions of the Special Officer(Building) were accepted.

8. In the meantime, since the respondents/writ petitioners were heard by the KMC and was not supplied with the copy of the first order passed by the Special Officer (Building) filed a contempt application being CC/42/2025.
9. In the contempt proceeding, the first order of the Special Officer (Building) was supplied to the writ petitioners/respondents. In course of hearing of the contempt proceeding, the second order of the Special Officer(Building), as approved by the Mayor-in-Council was also placed.
10. This ought to have normally put an end to the entire writ proceeding and compliance of the final order passed therein. If the writ petitioners/respondents were aggrieved by the decision of the Mayor-in-Council or the Special Officer (Building). There are statutory remedies available to the parties against the said orders before Municipal Building Tribunal.
11. Mr. Ghosh, learned counsel for the appellant, would argue that the directions contained in the impugned order to the extent that the Court has, in the contempt proceeding, questioned the order of the KMC, passed subsequent to the disposal of the writ petition and in compliance with the final order passed therein, are erroneous. The orders passed subsequent to the disposal of the writ petition, constituted an independent cause of action for the aggrieved parties to challenge in separate proceedings.
12. Support for the argument of Mr. Ghosh, learned counsel for the appellant, is evident from the argument of Mr. Utpal Bose, learned senior counsel, for the writ petitioners/respondents. He has placed the decision of **Rajendra Kumar Barjatia & Ors. -vs- U.P. Avas Evam Vikas Parishad & Ors., reported in 2024 SCC OnLine 3767**, particularly paragraph 20 thereof. The Hon'ble Supreme

Court deprecated the practice of unauthorised constructions being regularised contrary to law.

13. In the instant case, the power of regularisation and grant thereof against payment of fees appears to be under the subordinate legislation which the KMC follows. The propriety of such legislation and the power of regularisation of unauthorised use of a premises is required to be dealt with by the writ petitioners/respondents in an independent proceeding.
14. As to whether the observations of the Supreme Court, with regard to regularisation of unauthorised construction would also apply to the regularisation of unsanctioned use of a premises, is a matter to be gone into and addressed in an independent proceeding.
15. The decision of **Danish Ahmed -vs- Sahabuddin, reported in 2025 SCC OnLine 2599**, cited by Mr. Bose is inapplicable to the facts of the case. The Hon'ble Supreme Court was dealing with complete unauthorised construction of two additional floors of a building. Such is not the case at hand.
16. This Court has always taken a grim view of unauthorised constructions, since they jeopardise urban and municipal infrastructure. This however does not give a carte blanche to the writ petitioner to discard the procedure established by law to challenge the action of the municipality and the respondents. Both of them are taken by surprise with regard to the issues to be addressed in a proceeding before a Court of law.
17. For the reasons stated hereinabove, this Court, is respectful disagreement with the views of the Single Bench that any subsequent action of the KMC after

disposal of the writ petition and in compliance with the final order passed thereunder can at all form part of the subject matter of the contempt proceeding.

18. For the reasons stated hereinabove, the impugned order, to the extent indicated hereinabove, shall stand set aside. The appeal accordingly stands allowed. CC/42/2025 shall stand adjourned sine die.

19. After the order is dictated, Mr. Bose, learned senior counsel appearing for the writ petitioners/respondents prays for stay of operation of this order, which is considered and declined.

(RAJASEKHAR MANTHA, J.)

(AJAY KUMAR GUPTA, J.)

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