

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

APOT/273/2025
IA NO:GA/1/2025
SMT NEELANJANA ROY
-VS-
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
And
The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date: November 3, 2025.

Mr. R. Bhattacharyya, Sr. Adv.; Ms. A. Lala, Adv.; Mr. A. Ghosh, Adv.; Ms. A. Dey, Adv.;
Ms. N. Gupta, Adv., for appellant.
Mr. B. Mukherjee, Adv.; Ms. M. Nath, Adv., for KMC.
Mr. G. Chakraborty, Adv.; Mr. A. Paul, Adv., for R-7.

1. The Court: The subject appeal is directed against the order dated September 18, 2025, passed by a Single Bench of this Court.
2. The grievance of the writ petitioner/appellant before the Single Bench of this Court is that the private respondent has, under a reconstruction plan sanctioned by the KMC, effected construction and changed the nature and character of the

property. The appellant is the shareholder of the landlord of the property. It is submitted that the appellant was kept completely in the dark about the reconstruction plan.

3. Before that, on March 20, 2025, in an appeal preferred by the appellant against an order passed in WPO/909/2024, the Special Officer (Building) was directed to entertain the grievance and/or representation of the appellant and to dispose of the proceeding under section 400(1) of the KMC Act, 1980 without affording an opportunity to the appellant. The Special Officer(Building) has passed an order dated April 4, 2025 without hearing the appellant.
4. Alleging contempt of the order dated March 20, 2025, the appellant moved the co-ordinate Bench under Article 215 of the Constitution of India in CC/91/2025. The Division Bench, noting violation of its order, however, refused to exercise powers under Article 215 of the Constitution of India and disposed of the contempt application on July 11, 2025. Liberty was, however, given to the appellant to approach the appropriate forum with liberty to raise all issues including the issue of not being heard.
5. The writ petition in which the impugned order was passed on September 18, 2025 was filed on the ground that the Special Officer (Building) has violated the statutory provisions. The Single Bench declined interference notwithstanding the above and permitted the appellant to approach the Municipal Building Tribunal in a statutory appeal.
6. Mr. Rudraman Bhattacharyya, learned Senior Counsel appearing for the appellant, would argue by reference to the case of **Whirlpool -vs- Registrar of Trade Marks, reported in (1998) 8 SCC 1** and several subsequent decisions to

argue that violation of statutory provisions and the principles of natural justice are grounds for interference with an order passed by an authority under Article 226 of the Constitution of India, notwithstanding availability of effective alternative remedy in the nature of a statutory appeal.

7. This Court, however, notes that since a coordinate Bench has declined exercise of powers under Article 215 of the Constitution of India notwithstanding being aware of violation of statutory provisions and directions of Court by the Special Officer(Building), it would be inappropriate for this Court to entertain the same prayer under Article 226 of the Constitution of India of the appellant. It is now well settled that remedy under Article 226 of the Constitution of India is discretionary.
8. The appellant has sufficient leave from a coordinate Bench as also the Single Bench to approach the statutory forum, i.e. the Municipal Building Tribunal with regard to his grievances including an application under section 397 of the KMC Act for changing the issuance of the reconstruction plan.
9. It is made clear that the appellant shall also be entitled to challenge the order dated April 24, 2025, canvassing every point including filing application under section 397 of the Act of 1980 before the Municipal Building Tribunal. It is also made clear that the Tribunal shall proceed with the matter as expeditiously as possible, preferably within a period of four months from date and dispose of the appeal to be preferred by the appellant preferably within a period of ten days from date.

10. It is further made clear that issuance of building completion certificate shall not stand in the way of the Building Tribunal from considering any illegality committed by the private respondent and/or the officials of the KMC.
11. With the aforesaid observations, the appeal along with the connected application stands disposed of.
12. Since the respondents have not used any affidavit to the stay application, allegations, if any, contained in the said application shall be deemed not to have been admitted by them.

(RAJASEKHAR MANTHA, J.)

(RAI CHATTOPADHYAY, J.)