

ORDER SHEET

WPO/1111/2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AADIL FAZLE KARIM AND ORS.
Vs
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE KAUSIK CHANDA
Date : 12th March, 2025

Appearance:

Mr. Raghunath Chakraborty, Adv.
Ms. Amrita De, Adv.
Ms. Mohona Das, Adv.
...for the petitioners

Mr. Alak Kr. Ghosh, Adv.
Mr. Swapan Kr. Debnath, Adv.
...for the KMC

Mr. Arijit Bakshi, Adv.
...Special Officer

The Court: The petitioners challenge an order issued by the Kolkata Municipal Corporation under Section 400(8) of the Kolkata Municipal Corporation Act, 1980.

Initially, a report was submitted before this Court suggesting that the petitioners had constructed an unauthorised area of 334.614 sq. m.

On January 15, 2025, this Court passed the following orders:

“The petitioners contend that the Kolkata Municipal Corporation intends to demolish an alleged unauthorised construction at premises No. 1, Abdul Ali Row, Kolkata-700 016, by invoking Section 400(8) of the Kolkata Municipal Corporation Act, without first issuing a notice under Section 554 of the said Act.

The petitioners do not dispute the presence of unauthorised construction at the premises. They argue, however, that there was an approved plan for the property, and the entire building is used solely for residential purposes for the personal use of the petitioners. The petitioners assert that the Corporation seeks to demolish a portion of the building that falls within the scope of the sanctioned plan.

This Court appointed a Special Officer to inspect the premises in question to determine the extent of the unauthorized construction. The Special Officer has submitted a report, which contains the following pertinent details:

“On inspection it was found that deviations have been carried out in all five floors, encroaching mandatory open space on all sides thereby infringing many building rules.

In the ground floor, two additional columns have been erected in the rear open space and R.C.C. slab has been cast over those two columns in all the floors. The R.C.C. slabs in all the floors have been projected on the sides and front beyond the sanctioned limit thereby encroaching upon the side and front open spaces.

On the west cantilever projections have been made in first to fourth floors. The sanctioned 1000 mm wide cantilever has been projected further by 1340 mm beyond the sanctioned limit in all floors in the most dangerous manner.

The owners have erected the building, without paying any heed to the prevailing Building Rules. Gross deviations have been made from the Building Permit, thereby violating the norms and code of practice of civil engineering.

The floor wise sanctioned and constructed area along with the total unauthorized floor area is put up below in a tabular form.

Floor	Sanctioned Floor area Sq.M.	Constructed Floor Area Sq.M.	Additional area constructed beyond Sanctioned

			Plan Sq.M.
Ground Floor	154.384	173.785	19.401
First Floor	180.834	242.254	61.42
Second Floor	180.834	252.264	71.81
Third Floor	180.834	252.264	71.81
Fourth Floor	180.834	252.264	71.81
Total	877.720	1172.831	296.251

From the above table it is evident that approx. 296.251(3187.06 Sq.Ft.) of floor area has been created in ground floor to fourth floor, beyond the sanctioned limit. The additions in the floors have been made in the most unethical manner, without maintaining any civil engineering norms. The percentage increase in floor area accounts for 33.75% beyond the sanctioned limit.”

There appears to be a discrepancy regarding the extent of unauthorised construction between the report submitted by the Special Officer and the one filed by the Corporation before this Court. The Corporation's report estimates the unauthorized construction to be 380.04 square meters.

In light of this, the Director General (Building) of the Kolkata Municipal Corporation is directed to appoint a competent officer to assess the extent of the unauthorized portion of the building, providing due notice to both the petitioners and the Special Officer.

In the presence of the Special Officer and the petitioners, the officer appointed by the Corporation shall measure the unauthorized construction on 22nd January 2025. A further report shall be filed by the Special Officer and the Corporation on the next hearing.

The Special Officer shall be remunerated an additional sum of Rs. 10,000/- by the petitioners.

The interim order granted earlier is extended for an additional period of two months or until further orders, whichever is earlier.

The matter is to be listed for hearing on 29th January 2025.”

In compliance with the aforementioned order, the Kolkata Municipal Corporation conducted another measurement of the relevant building, in the

presence of the Special Officer and the petitioners' representative. The joint measurement report dated March 10, 2025, is quoted below:

“Report

Pursuant to the Order of the Hon'ble High Court at Calcutta passed an order dated 15.01.2025 and directed to D.G (B) *"to appoint a competent officer to access the extent of the unauthorized construction..."* and accordingly D.G(B) appointed me as competent officer, posted as Executive Engineer(Civil)/Bldg./Br-VI. A Joint Inspection was held on 01/03/2025 at the captioned premises with prior intimation to both the Special Officer and the petitioners, to assess the extent of the unauthorized portion of the building. The measurements were taken in presence of the above mentioned parties. The area of the unauthorized portions of the individual floors is mentioned below in tabular form.

Floor	Unauthorized Area (In Sq.m)
Ground Floor	18.4
First Floor	76.022
Second Floor	78.249
Third Floor	80.091
E Fourth Floor	81.852
x TOTAL	334.614

Executive
Engineer(C)/Bldg./Br-VI”

The learned Advocate for the petitioners contends that, in the circumstances of this case, Section 400(8) of the Kolkata Municipal Corporation Act, 1980, could not have been invoked. The petitioners were not provided an opportunity for a hearing, and were not made aware of the extent of the unauthorised construction.

However, in the proceedings before this Court, as noted above, the petitioners were granted adequate opportunity to defend themselves and are now fully aware of the unauthorised construction that requires demolition.

Any proceedings under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, could not have ensured better compliance with the principles of natural justice.

Nevertheless, I grant the petitioners an opportunity to demolish the unauthorised portions of their property in terms of the joint inspection report dated March 10, 2025, within a period of two months from the date of this order, considering the ongoing month of Ramzan.

It is made clear that, if the petitioners fail to demolish the unauthorised construction within the stipulated two-month period, the Corporation shall take immediate steps to demolish the same.

With the observations made above, WPO/1111/2024 is disposed of.

(KAUSIK CHANDA, J.)

sg.