

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 1082 of 2013

Smt. Rita Mitra

Vs.

Kolkata Municipal Corporation & Ors.

For the Petitioner

: Mr. Kishore Dutta, Ld. Senior Adv.

: Ms. Sonal Saha, Adv.

: Mr. Aniket Chowdhury, Adv.

For the KMC

: Mr. Barin Banerjee, Adv.

: Mr. Debangshu Mondal, Adv.

: Ms. Manisha Nath, Adv.

For the respondent/State

: Ms. Sipra Majumdar, Adv.

: Ms. Debarati Sen (Bose), Adv.

For the respondent nos. 9 & 10

: Mr. Debangsu Dinda, Adv.

For the respondent nos. 11, 12A

12B & 12C

: Mr. Sandip Ghosh, Adv.

: Mr. Subrata Das, Adv.

: Mr. Debayan Ghosh, Adv.

Judgment on

: 25/07/2025

Rai Chattopadhyay, J. :-

(1) The writ petitioner is the purchaser/owner of the Flats No. 1A (purchased on July 26, 2004) and 1B (purchased on March 04, 2009) at the premises No. P-20A, Scheme X M, C.I.T. Road, Kolkata-700010.

(2) The writ petitioner is aggrieved with regard to regularization of the constructions made at the ground floor of the said building by the respondent/Special Officer (Building), KMC vide order dated September 9, 2010. In the present writ petition, the petitioner has challenged the said order of the Special Officer (Building), KMC dated September 9, 2010.

(3) Before going into the findings of the Special Officer (Building) in the impugned order and adjudicating its merits and demerits, it is necessary that background facts of the case may be stated in brief which is as follows:-

(4) The building as above, is a G+3 residential building comprised with several residential units/flats. The plan of the building was sanctioned on July 16, 1999. The writ petitioner along with her husband (now deceased), initially purchased flat 1A and thereafter from the respondent no. 12, the flat 1B. Since thereafter, she has been owning and residing in the said property.

(5) The petitioner has alleged that for the first time on March 26, 2010 she noticed that, covering the open space between the building and the boundary wall a tin shaded construction of 40 square feet was built. The construction was made attached to her veranda wall. According to the petitioner, the tin shaded construction was covering a portion of the open

car parking space of the said premises. The petitioner says that the tin shaded construction of 40 square feet was put up by the respondents No. 11 and 12 for setting up of a medicine shop by the respondent no. 12. Hence, finding such construction done by the said respondents in an irregular and illegal manner which may not be commensurate to the plan sanctioned for the said building by the respondent Authority, the petitioner has lodged complaints before various Authorities on various dates. The petitioner has also lodged General Diary before the police on March 30, 2010.

(6) Pursuant to the complaint lodged by the petitioner on March 29, 2010, the Executive Engineer, Kolkata Municipal Corporation, Building Department, Borough - III had issued a "Stop Work Notice" under Section 401 of the Kolkata Municipal Corporation Act, 1980 on March 30, 2010. However, allegedly the illegal construction work by the respondents No. 11-12 did not stop, leading to the petitioner to file a detailed complaint before the concerned Authority. Her grievances having not been mitigated in spite of the same, the writ petitioner made her complaint before the local Councillor on June 06, 2010.

(7) On August 16, 2010, the petitioner received a notice of hearing issued by the Special Officer (Building)/respondent no. 6. In compliance thereof, the petitioner appeared before the respondent no. 6 for hearing on August 31, 2010. According to the petitioner, since thereafter, neither any further notice was issued by the said respondent Authority nor any hearing was

conducted by him on the basis of the complaint of the petitioner. On the other hand, since the respondents as above, was not restrained by the respondent municipal Authorities, they not only had proceeded with the illegal construction in the said premises but also subjected the writ petitioner with abuse and threat of dire consequences. Hence, a FIR was filed by the petitioner in Beliaghata Police Station on January 20, 2011.

(8) The petitioner has stated that though enquiries have been made by her on several occasions in the office of respondent No. 6 regarding the fate of her complaint, the matter never proceeded since after the date August 31, 2010. It is pertinent to mention that the petitioner has stated on affidavit that, on the date of hearing that is August 31, 2010 she was made to sign on some documents on insistence of the respondent no. 6, without checking the contents thereof. However, lastly when the petitioner visited the office of the respondent no. 6 to enquire on January 21, 2011, she came to know that the respondent no. 6/the Special Officer (Building), KMC has already passed an order on October 5, 2010. Also, that the Officer who has passed the order on October 5, 2010, has already retired from services. Immediately, thereafter the petitioner has written to the respondent no. 5/the Administrative Officer (Building), KMC vide letter dated January 21, 2011, for supply of copy of an order passed by the Special Officer (Building)/respondent no. 6 on October 5, 2010.

(9) The writ petitioner has thereafter filed a case before this Court being WPA No. 114 of 2011, challenging the regularisation of the alleged unauthorized construction in the said building as well as charging of regularisation fees for such unauthorized construction, if any.

(10) In the said writ petition, by dint of an order of the Court, the respondent no. 7/the Director General of FIR services conducted an inspection of the premises and filed his report dated March 23, 2011 in Court. This report has been largely relied on by the petitioner, about which the Court shall mention later.

(11) Allegedly also, during pendency of the writ petition as above, the respondents No. 11 and 12 has converted a portion of the common area in the ground floor of the building into a small room and opened a shop there. Since in spite of protest, the said respondents did not stop the work of construction, the petitioner filed a case under Section 144(2) of the Cr.P.C. in the Court of Executive Magistrate being M.P. Case No. 1627 of 2011. According to the order of the Magistrate dated July 15, 2011, the police has submitted an enquiry report dated August 12, 2011 in the said case, which according to the petitioner, only supports the petitioner's case that an unauthorized construction having been made by the respondents.

(12) The petitioner has also alleged that she was intentionally misguided with the information regarding a wrong date of order of the Special Officer (Building). She says that though order was passed on September 9, 2010 she was initially informed by the respondent, that such an order was passed by the Special Officer (Building) on October 5, 2010. The petitioner has stated that ultimately, the writ petition No. WPA 114 was withdrawn for certain unavoidable reasons and the Court granted liberty to the petitioner to file the same afresh.

(13) Thus, being aggrieved with and challenging the impugned order passed by the Special Officer (Building) dated November 9, 2010, the petitioner has filed the instant case with the prayers inter alia that the impugned order dated September 9, 2010 may be set aside, that the respondents may be restrained to take any further action or to continue with action, if any, as already been undertaken by it, pursuant to the said order dated September 9, 2010 passed by the Special Officer (Building), that the unauthorized and illegal portion of construction made in the open parking space and in the ground floor of the premises No. 20A, Scheme (X)M, C.I.T Road, Kolkata-700010 may be directed to be demolished, that an order be passed for recovery of cost from respondents No. 11 and 12.

(14) Respondent/Kolkata Municipal Corporation in their Affidavit-in-Opposition, has made out a case that pursuant to the complaint dated March 29, 2010 of the petitioner, an inspection was done in the premise as

above on August 29, 2010 and having found unauthorized construction, a notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served upon the respondent No. 12, directing him to stop further unauthorized construction work. That thereafter, the respondent/Kolkata Municipal Corporation has started a 'Demolition Case'. Both the petitioner and respondent No. 12 were served notices and granted opportunity of hearing. Thereafter, on September 9, 2010, the Special Officer (Building) has passed the order which is under challenge in the instant writ petition. The said respondent has made out a case that the Special Officer (Building) has passed an order of retention of the constructed portion in terms of the statutory provision and within the framework of the statute. The necessary preconditions having been satisfied before an order of retention was passed by the said office, it has been stated that there is hardly any scope to interfere with such an order alleging that to be not in conformity with the law in any way whatsoever. According to the respondent/Kolkata Municipal Corporation the order dated September 9, 2010 passed by the Special Officer (Building) is lawful and valid. Also, that the same has reached its finality. Therefore, according to the said respondent, there is scanty or no scope under the law for this Court to interfere with the same.

(15) An Affidavit-in-Opposition has been filed by the respondent No. 11 on behalf of himself and the respondent No. 12. They say that by virtue of purchase vide a registered deed dated August 14, 1999 the realtor company they own has purchased the piece and parcel of land measuring about little

more than 2 kathas with structures existing thereon to become the sole and absolute owner of the said premises. The respondent No. 11 is one of the directors of the purchaser realtor company. On March 16, 2000, the company entered into an agreement for development of a four-storied building comprising several flats, car parking spaces and other areas for common use. Building was constructed as per plan sanctioned by the respondent/Kolkata Municipal Corporation Authorities and the respective residential units were sold out to the third-party purchasers.

(16) The respondent No. 11 has admitted about initiation of construction for setting up of a medicine shop in the year 2010 and having been served with a notice by the respondent Municipality for stoppage of work followed by initiation of a 'Demolition Case'. He has stated that the said 'Demolition Case' was finally determined by the respondent No. 6 vide the order dated September 9, 2010. He was directed vide the said order to demolish some portion of the construction and to retain the other, subject to his payment of fine and penalty to the tune of Rs. 1,94,433/-. That, he has duly complied with the said order in totality. The Municipal Authority has issued a fresh sanctioned plan, showing the additional construction sanctioned by the Authority over the place. That, the entire exercise has been only in accordance with the law.

(17) According to the private respondents, after regularisation of the portion of construction, the prayer of the petitioner as made in this writ

petition are only baseless and there shall be no cogent ground for interfering as to the impugned order in view of the fact that the respondent Authority has passed the same within the bounds of the statutory provision and complying with the conditions required under law. Thus, the said respondents have insisted that the present writ petition may be dismissed.

(18) Mr. Kishore Dutta, learned Senior Advocate appearing for the writ petitioner has submitted firstly that the impugned order dated September 9, 2010 is bad in law, perverse, arbitrary and not maintainable. It is submitted that the respondent Authority, while passing the said order, has failed to appreciate that the same cannot regularise something which is not permissible under the law. It is submitted that the portion of the property covered by the respondents No. 11 and 12 and encompassed for the purpose of changing the usage of the said portion of property is something unsustainable vis-à-vis the sanctioned plan of the building. He says that the ground floor as well as the adjoining open space in the ground floor of the building was sanctioned as the garage space and common space. That being so, the same can never be encompassed to change the nature and character thereof and usage of the said space for some other purpose, in accordance with law. Hence, the very act of the respondents No. 11 and 12 was illegal by itself in so far as they have covered the garage space/common space/open space in the ground floor of the building to change its usage, that is for a purpose which is not tenable in the eye of law. Therefore, the respondent Authority could not have exercised its power conferred under Section 400 (1)

of the Kolkata Municipal Corporation Act and the corresponding regulation, to regularise the same, which is something to be inherently illegal. An illegal construction cannot be regularised though the respondent Authority is empowered to regularise minor deviations in construction, not incorporated with the sanctioned building plan.

(19) The respondent/Kolkata Municipal Corporation has contended firstly regarding non-maintainability of the instant case for the reason that the statute has itself provided for an efficacious alternative remedy to challenge the impugned order if at all, before the statutory Tribunal. It has been stated that the petitioner has been granted sufficient and reasonable opportunity of hearing before the order is passed and the impugned order is also equipped with adequate and proper reasoning. Therefore, for the writ petitioner there would not have any legible ground to challenge the procedure as adopted by the Special Officer (Building) while passing the alleged impugned order dated September 9, 2010.

(20) It has been further contended by Mr. Barin Banerjee, learned Advocate appearing for Kolkata Municipal Corporation that the statute has empowered the said respondent to regularise minor deviations in construction. Hence, the said respondent Authority by exercising discretion passed an order as it has thought fit and proper. There is no infirmity or illegality as alleged, he says. It has further been contended that, due to regularisation of the construction made by respondents No. 11 and 12 in the

ground floor of the premises, the rights of the petitioner have not been affected adversely. Hence, since the petitioner's legal rights are still safe and intact as the owners of the flats in the first floor of the building, she has no *locus standi* to challenge the action of the respondent/Corporation, as done in the instant writ petition.

(21) Mr. Sandip Ghosh, learned Advocate appearing for the respondents No. 11 and 12 is in unison of opinion with what have been submitted on behalf of the respondent/Kolkata Municipal Corporation. On behalf of the said respondents, the statutory power of the respondent Authority of regularisation of the portion of construction, beyond the same as sanctioned in the plan, has been sufficiently emphasized and also emphasized is that the Special Officer (Building)/respondent No. 6 has duly exercised such statutory power of him, in case of regularisation of the additional construction made by the respondents No. 11 and 12. It has been pointed out that to the extent respondent No. 6 did not find the construction to be proper, necessary directions have been made for demolition thereof. Such directions have been duly complied with along with the other direction of the respondent No. 6 in the said impugned order that for the rest of the portion of the construction, adequate compensation is to be put before the respondent Authority. Hence, prayer has been made for dismissal of the instant writ petition.

(22) On careful perusal of the impugned order dated September 9, 2010 passed by the respondent No. 6/Special Officer (Building), Kolkata Municipal Corporation, it appears that the said Authority has come to a finding on observation of the precis and the Drafts Sketch Plan that the Persons Responsible (P.R.) made unauthorized constructions that is, brick masonry walls at ground floor garage space (mandatory as well as the excess area) converted for change of use for (1) Residential Tenement, (2) Shop and (3) Store. It has also been found that a tin shaded roof has been erected on a portion at ground, covering the front open space. He has recorded his finding that all the constructions are done dividing from Building Sanction Plan No. 20 (B. III) dated July 16, 1999.

(23) The final decision of the respondent Authority has been as follows:-

“P.R. is allowed to retain the changes on payment of charges and fees and pay for the short fall of one car parking space.

P.R. will demolish the structure/fitting made in the tenements owned by Smt. Rita Mitra and report compliance within a month hence. Hence,

ORDERED

PART ‘A’ : That the P.R. shall Demolish the unauthorized constructions/structure marked ‘X’ in the D.Sketch of D/Case No. 31-D/III/10-11 within 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’ : Conversion of car parking space into a shop is not allowed marked ‘X’ in the D.Sketch.

PART ‘C’ : That the P.R. shall retain the other unauthorized construction marked in red ink in the D.Sketch of D/Case No. 31-D/III/10-11 subject to payment of erection/re-erection charges U/s. 400(1) read with Building Rule 40(1)(c) of the K.M.C. Building Rules, 1990.

(b) The P.R. shall also be permitted to make change of use U/s. 416 of C.M.C. Act 1980, subject to payment of necessary fees and charges.

(c) The P.R. shall pay for 1 no. of short fall of car parking space to be charged at the such rates as stated in Budget Estimate under Sub-Sec. (3) of Sec. 131 of K.M.c. Act, 1980.

2. The P.R. shall swear an affidavit declaring on oath therein incorporating the present D.Case that he will not make any construction what-so-ever in the impugned premises without prior sanction from the KMC.

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 D/Case No. 33-D/III/10-11 at the risk and cost of the P.R.”

(24) The reason of the decision of the respondent No. 6 has been mentioned in the said impugned order as below:

“1. Rule 54(6) : Front Open space – Required 2.00 M. – Provided Nil, & 1.20 M.

2. Rule 61 : F.A.R. – Required 2.25 – Provided 2.35

3. Rule 84 : Plinth Height – Required 0.60 M. Provided Nil.

4. Rule 85 (3) : Ht. of habitable Room – Required 2.75 m. – Provided 2.20 M.

5. Rule 68 : Car Parking – Required 1 No. – Provided Nil

6. Rule 109 & 110 : Unknown.

7. Sec. 416 of KMC Act 1980 : For change of use – The mandatory as well as the excess car parking space at Gr. Floor changed into Shop & Store & Residential tenements.

P.R. is present. As per the present measurement of tenements P.R. is to create one car parking space. This requirement has also been assessed by E.E.

P.R. has created one parking space for a Scooter.

P.R. has covered one car parking space in order to make it a shop. He has stated that for the rehabilitation of his brother he intends to set up a medicine shop"

(25) The question is since availability of the alternative remedy is not an absolute bar to entertain a writ petition, whether having regard to the dispute between the parties in the present writ petition, this Court would be justified in entertaining this writ petition or not. As discussed earlier, the petitioners have alleged about violation of their right of audience before the Authority and violation of the principles of natural justice not only in this way but also for the reason that the Authority/Hearing Officer has passed an order which is a nonspeaking one, devoid of any reason therefor. Also, there are other legal questions involved like whether the Authority was obliged to supply copy of an order of the Hearing Officer to the petitioners, immediately after completion of hearing or that if apportionment of the property is at all a taxable event as per law to attract an exercise by the Authority like upward revision of annual valuation of the property in question. Therefore, in such a circumstance, when there are various questions of law stand for adjudication by the Court, it would not be prudent to discard the writ petition at the very threshold for the reason that the statute has also provided for the remedy of appeal before the Municipal Assessment Tribunal.

(26) Since the facts of constructions having been made at the ground floor of the building encompassing the open space, adjacent to boundary and also the garage space, is an admitted fact in the present case, therefore, the

issue to be determined by the Court here really is with respect to the alleged illegality of the regularisation granted to such additional construction made at the ground floor of the building, which was also admittedly not a part of the original sanctioned plan. The Kolkata Municipal Corporation Act, 1980 primarily aims at planned development and regulation of construction within Kolkata, emphasizing prior sanction for erection of buildings. The Act strictly prohibits unauthorized constructions and does not explicitly confer authority on the Municipal Commissioner to regularise or grant post-facto approval for unauthorized structures, even upon payment of fees. The Courts also have interpreted that the provisions of the Act of 1980 do not recognise or permit regularisation of unauthorized constructions by Municipal Authorities, even upon payment of fees or charges. This Court in the judgment in ***Ghanashyam Das Vs. Kolkata Municipal Corporation*** reported in **2014 SCC OnLine Cal 15980** has explicitly stated that regularisation or post-facto sanction of any substantial unauthorized construction is alien to the statutory provisions under the 1980 Act and any order attempting such is illegal and void. Similar view has been again taken in 2023 by this Court in the case of ***Nirmal Kumar Das also known as Nirmal Das Vs. Kolkata Municipal Corporation*** reported in **2023 SCC OnLine Cal 2425**. Therefore, it has been a consistent view of the Court for years together that unauthorized construction is only legible to be demolished under the provisions of the Act and the statute never provides for any way out, empowering the Municipal Commissioner or delegated Authorities to regularise the same even if in lieu of any fees etc.

(27) In this regard, provisions under Section 400 of the Kolkata Municipal Corporation Act, 1980 may be looked into, which has provided for “order of demolition and stoppage of buildings and works in certain cases and appeal”. Section 400 (1) of the said Act empowers the Municipal Commissioner to issue demolition orders if a building is erected or work is carried out without proper sanction. The first proviso to Section 400 (1) of the said Act mandates giving a reasonable opportunity of showing cause to “such person” responsible for unauthorized construction before issuing a demolition order. The explanation clarifies that “such person” refers to the owner, occupier or person causing the erection. Section 400 (8) of the said Act allows the Municipal Commissioner to take steps for demolition if the unauthorized work continues after notice, but does not explicitly mention or authorize regularisation or post-facto approval. [Judgment in **Ghanashyam Das (Supra)** may be referred to in this regard].

(28) However, the Court desires to mention the third proviso under Section 400 (1), which has been added by Section 14 of the Kolkata Municipal Corporation (Amendment) Act, 2014 (West Bengal Act XIX of 2014) (with effect from 15.01.2015). Let that be quoted as hereinbelow:-

“Provided also that the Municipal Commissioner may by order, on such terms and conditions and on payment of such fees as may be prescribed by regulation, regularize the minor unauthorized erection, or execution of any minor work without sanction under this Act, or minor deviation from the sanctioned plan or execution of any minor erection or work in contravention of any sanctioned plan under this Act or the rules or the regulations made hereunder, as the case may be.

Explanation.- For the purpose of this section, "minor deviation" shall be such as may be determined by regulations."

Therefore, the statute has granted discretionary power to the Municipal Commissioner who may, if thinks fit and proper, by order, on such terms and conditions and on payment of prescribed fees, regularise the minor unauthorized erection, or execution of any minor work without sanction under the said Act, or minor deviation from the sanction plan or execution of any minor erection or work, in contravention of any sanctioned plan.

(29) The Court finds it suitable to mention the judgment in ***Premalata Mago Vs. State of West Bengal*** reported in ***2024 SCC OnLine Cal 4393*** in which the Court has held that exercise of discretion by the Municipal Authority is statutory and legal so far as the same is applied in minor cases where irregularities are minor and do not affect public safety or planned development. In that case, exercise of such discretion does not amount to regularisation has prohibited under the Act. Therefore, the law is well-settled that, exercise of regularisation of power is limited to cases where the construction is minor and any attempt to regularise major unauthorized constructions is illegal and void. The Courts have consistently held that the statute does not confer authority on the Municipal Commissioner or the delegates to regularise unauthorized constructions that are beyond the scope of minor deviations [with reference to ***Ghanashyam Das (Supra)*** and ***Dhriti Kanta Lahiri Chowdhury Vs. Kolkata Municipal Corporation***

reported in **2014 SCC OnLine Cal 20060, Haran Ghosh Vs. Kolkata Municipal Corporation** reported in **2014 SCC OnLine Cal 7050]**

(30) Therefore, the power to regularise is thus contingent upon the determination that the deviation or unauthorized work qualifies as “minor” under the criteria set out in the regulations. In the case **Bikash Kumar Roy Vs. Kolkata Municipal Corporation** reported in **2022 SCC OnLine Cal 1589** the Court has held that regularisation is permissible only if the unauthorized erection or work is classified as “minor” by the Municipal Commissioner considering factors such as objections from local inhabitants, infrastructure, safety, environmental aspects and compliance with statutory clearances.

(31) “Minor Deviation” is defined in Regulation 3(b) of the Kolkata Municipal Corporation (Regularisation of Building) Regulations, 2015. This Court in **Laxmi Residency Private Limited Vs. Rajesh Jain** reported in **2022 SCC OnLine Cal 2256** has held that in terms of the statute “Minor Deviation” means the deviation that will be determined by the Municipal Commissioner or delegated officer, considering the terms and conditions in Clause IV of the said Regulations of 2015. Such deviations are typically small or insignificant departures from sanctioned plan or the Regulations which do not substantially affect the structural integrity, safety or overall compliance of the building. In **Laxmi Residency Private Limited (Supra)** it has further been held that, the third proviso to Section 400 (1) of the Act of

1980 and the 2015 Regulations clarify that only minor unauthorized work or deviations are eligible for regularisation and such deviations are limited to minor work or erection that do not violate the original sanctioned plan or the Building Rules. There, the Court has further held that the Authority's determination of what constitutes a minor deviation is to be made by the Municipal Commissioner or delegated Officer and such determination is binding unless shown to be arbitrary. Major deviations, substantial unauthorized constructions or violation of sanctioned plans are not covered under the "Minor Deviation" category and cannot be regularised under the provisions meant for "Minor Deviation". It has been mentioned earlier that the Special Officer (Building) in the impugned order has not mentioned as to what he has regularised would fall within the category of "Minor Deviation" as provided in the statute. Unless so, the said delegated Officer would not be eligible to regularise the portion of the additional construction made in the building, as per the provisions of law.

(32) First of all, the Court is constrained to notice in the impugned order dated September 9, 2010 of the Special Officer (Building) that there is no finding of the Special Officer (Building) in the said order relating to whether the portion of new and unauthorized construction beyond the sanctioned plan in his opinion was a "minor" construction or not. As discussed above, it is the predominant requirement under the law that, before regularising portion of a building of which the plan has been sanctioned previously without incorporating the said portion and the said portion has only been constructed beyond the sanctioned plan, the authority has to come to a

conclusion that the said portion can only be contemplated as the minor unauthorized erection or execution of any minor work without sanction or any minor deviation from the sanctioned plan. Unless the same, any other kind of regularisation even if, the authorities have obtained fees for the same would be directly hit by the prohibitory provisions of the statute which prohibits sanction of any unauthorized construction.

(33) From the impugned order dated September 9, 2010, it clearly appears and also the same is not disputed in the case that the respondents no. 11 and 12 initially had made two constructions in the ground floor of the building. Firstly, they had constructed a tin shaded enclosure within the gap of the boundary wall and the wall of the petitioner's flat, enclosing the open space butted around the building, within the boundary wall. The second construction which was not there in the plan of the building sanctioned by the Authority is a pakka brick-built room enclosing a portion of the ground floor garage. According to the said respondents, the room has been constructed at a place which is not a garage space in accordance with the regulations relating to the garage space. Nevertheless, they could not deny the fact that even if not the garage space, the room was built over the common space as was shown in the original sanctioned plan. It is their case that such construction is only unrelated to convenience or inconvenience of the inhabitants of the building which however cannot be said to be based on very cogent reasons. The room constructed as such, situates adjacent to the place from where the stair case starts and facing the main road. For the said

reason, the inhabitants of the building who wish to use the common space at the ground floor to directly reach to the main road, has to travel through the side way and indirectly reach to the main road. In consideration of the fact as above, the Court is constrained to hold that the construction of the room at the ground floor by the respondents no. 11 and 12 has substantially jeopardised the right of the other inhabitants of the building to enjoy their respective rights over the vacant common space in the first floor of the building to reach to the main gate. Obviously, the same is posing serious questions as to the safe and proper use of property by the owners thereof and also the usage of the property in a planned way.

(34) Furthermore, the Court is further constrained to see that by constructing the room at the ground floor of the building and the tin shaded area (though admittedly, the tin shaded area has been demolished by the respondents in terms of the order dated September 9, 2010) would change the very nature and character of the usage of the ground floor of the building as was initially depicted that to be used for, at the time of sanctioning of the plan of the building by the competent authority. Needless is to mention that, the change of usage of the portion of building is subject to sanction by the competent authority and through a duly constituted legal process as has been envisaged under the law. Needless also is to mention that, there is no such similar prayer by the respondents before the authorities before any construction being made in the said property. Therefore, evidently no statutory formality has been followed or complied

with by the respondents to construct over the building in a manner which was not initially included in the sanctioned plan thereof.

(35) Also that, the Special Officer (Building) in his order dated September 9, 2010 has not mentioned whether for the proceeding on that date, he has at all invited the petitioner who has earlier raised objection as to the constructions made by the respondents no. 11 and 12. The presence of the “Person Responsible” is mentioned therein without any mention about any notice being sent to the petitioner to attend the proceeding on that date or any finding of the Special Officer (Building) that objection of the petitioner has at all been taken into consideration by him. Under such circumstances, the contrary submission of the petitioner that on the particular date, she has not been informed or invited to attend the hearing by the Special Officer (Building), assumes much importance in so far as the said respondent Authority would be obliged to hear the parties to the dispute before coming into any decision. To that extent, the impugned order is a non-speaking one. Therefore, the gross arbitrariness or illegality therein cannot be overlooked.

(36) For the reasons as discussed above and in view of the settled legal position, the Court is constrained to find that the impugned order dated September 9, 2010 by the Special Officer (Building) is arbitrary and not commensurate with the law or the settled legal propositions. Therefore, the same is liable to be set aside being illegal. Hence, this writ petition no. WPO 1082 of 2013 is disposed of with the following directions:

- i) Impugned order of the Special Officer (Building) dated September 9, 2010 is set aside.
- ii) The constructions made by the respondents no. 11 and 12 at the ground floor of the building, to the extent that has not been yet demolished, is liable to be demolished being a construction not eligible for regularisation in accordance with law.
- iii) The respondent/Kolkata Municipal Corporation is directed to take steps for immediate demolition of the unauthorized construction made by the respondents no. 11 and 12 at the ground floor of the premises No. 20A, Scheme (X)M, C.I.T Road, Kolkata-700010
- iv) The entire exercise should be concluded within a period of eight weeks from the date of communication of copy of this order.

(37) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)