Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

RVW 19 of 2026
with
CAN 1 of 2026
in
FMA 1867 of 2025

Kashi Prasad Jhajharia, HUF
Vs.
Sarawogi & Sandeep Builders
and Developers LLP and Ors.

For the review applicant	:	Mr. Krishnaraj Thakker, Snr. Adv., Mr. Suddhasatva Banerjee, Mr. Sagnik Majumder, Ms. Anyapurba Banerjee, Mr. Aurin Chakraborty, Mr. Devdas Saha, Advs.
For the respondents	:	Mr. Saptanshu Basu, Snr. Adv., Mr. Mahendra Prasad Gupta, Ms. Moumita Dhar, Advs.
Heard on	:	March 9, 2026.
Judgment on	:	March 9, 2026.

Sabyasachi Bhattacharyya, J.:

1. The appellant in an appeal, preferred against an order passed by the Trial Court in connection with a vacating application as well as an injunction application filed in a suit, has preferred the present application for review of the order dated December 23, 2025 passed in the said appeal.
2. Learned senior counsel appearing for the appellant submits that the premise of the suit filed by the appellant/review applicant, from which the appeal emanated, is relief in the nature of the right of preemption exercisable by a co-owner of a property. It is an admitted position that the appellant is $1/6^{th}$ owner of the suit property whereas the respondents-developers are at present the owners by purchase of the rest $5/6^{th}$ share.
3. However, it is submitted that when this Court disposed of the appeal, it went beyond the scope of the prayers made in the vacating application and/or written objection filed to the temporary injunction application in the Trial Court by the respondents, by issuing directions in the nature of mandamus.
4. By specifically placing paragraph nos. 16 to 19 of the order under review, learned senior counsel argues that this Court granted liberty to both parties to apply for joint sanction plan in

terms of the order dated February 2, 2022 under Section 412A of the Kolkata Municipal Corporation Act, 1980.

5. However, not stopping there, the Court had further observed that in the event there is no consensus between the parties in making such application, the respondents would be at liberty to file such application for making construction in terms of the KMC order, in which event the KMC shall duly process the same as expeditiously as possible.

6. Learned senior counsel submits that the said portion of the order under review is not only *de hors* the law as contemplated in the different clauses of Section 412A of the KMC Act, which is a self-contained code, but also beyond the prayers made in the vacating application itself by the respondents.

7. Learned senior counsel cites *Moran Mar Basselios Catholicos and Anr. vs. Most Rev. Mar Poulose Athanasius and Ors.* reported at *(1954) 2 SCC 42* in support of the proposition that in the event issues are decided beyond the averments in the pleadings and beyond the issues which are actually raised before the Court, the same tantamounts to an error apparent on the face of the record, coming within the purview of Order XLVII of the Code of Civil Procedure.

8. Learned senior counsel appearing for the respondents, while controverting the arguments of the review applicant, submits that no specific direction as such was passed in the order under review but merely liberties were granted to the parties, first to make a joint application and upon failure to do so, for the respondents to file an application for making constructions, that too in terms of the KMC order.

9. Thus, it is argued that neither any direction was issued nor any right was created by the said order.

10. Moreover, it is argued that there is no specific prohibition in Section 412A of the KMC Act to one of the parties making any application, on the failure of consensus between the parties to do so, for making constructions in terms of a KMC order passed under Clause (iii) of the said Section.

11. It is further contended that since on the failure of the owners to agree upon a joint application, it is open to the Kolkata Municipal Corporation itself to undertake the development work, either by itself or through any agency, there is no specific bar in the said Section for the Corporation to deem one of the owners to be such an agent for the purpose of carrying out the development of the concerned dilapidated

building. In the absence of any bar, it is argued that it cannot be said that the relevant portion of the order under review was *de hors* the statute.

12. Insofar as the argument of the review applicant that the 'offending' part of the order was beyond the scope of the prayers made in the vacating application, learned senior counsel for the respondents points out that the very premise of the application under Order XXXIX Rule 4 of the Code of Civil Procedure (vacating application) was the suppression by the appellant/review applicant, at the time of obtaining the ex parte ad interim order of injunction from the Trial Court, of the material fact of an order being passed on February 2, 2022 by the Kolkata Municipal Corporation under Section 412A of the KMC Act.

13. It is further pointed out that the observations in question were made by this Court for the ends of justice, within the contemplation of the subject matter involved in the *lis* before the Court. Thus, it is argued that there is no scope of review under Order XLVII of the Code of Civil Procedure.

14. Upon hearing learned counsel for the parties, this Court is of the opinion that there are two parts of the 'offending' portion of

the order under review - the first, comprised of the observations made in paragraph nos. 16 and 17 of the said order and the second, those contained in paragraph nos. 18 and 19 thereof.

15. In the first two above-referred paragraphs, i.e. paragraph nos. 16 and 17, permission was given to the parties to jointly apply for sanction plan, which is well within the contemplation of Section 412A (iii) of the KMC Act. On the other hand, the second part comprised of the liberty given to the respondents, on the failure of any consensus between the owners, to unilaterally file an application for making construction in terms of the KMC order, which is evidently beyond the scope of Clauses (iii) and (iv), read with Clause (v), of the said provision.

16. Section 412A of the KMC Act is set out below:-

"412A. ***Power to declare building or any part thereof condemned and to order demolition of such building.****- Notwithstanding anything contrary contained in this Act, or in any other law for the time being in force or in any agreement, custom or usage or in any decree, judgement, decision or award of any court, tribunal or authority, where it appears to the Municipal Commissioner that demolition of a dangerous building under section 411 will cause hardship to the persons in occupation of*

such building and may not be conducive to public interest in the urban area suffering from acute shortage of accommodation, it will be open to the Municipal Commissioner to proceed in the manner, and take the steps, as set out, hereunder:-

(i) *Issue a notice to the owner and also occupier recorded as such in the records of the Corporation calling upon them to show cause, within such period as may be prescribed, why the building in question or any portion thereof shall not be declared to be condemned for the purpose of this section and after hearing the causes shown within the said period or such further period as may be granted, if it is found necessary in public interest to declare the building or any portion thereof condemned and should be demolished immediately for public safety, the declaration may be made to that effect requiring the building or the specified portion thereof to be demolished;*

(ii) *a copy of the declaration under clause (i) shall be served upon the owner and occupants who are recorded in the records of the Corporation as also pasted on the outdoor of the building requiring the owner and the occupants to vacate the premises within a month from the date of service and pasting of such declaration or within such extended period as may be granted;*

(iii) simultaneously with the making of the declaration under clause (ii), the Corporation will serve a notice upon the owner or owners, as the case may be, and paste it on the outdoor of

the building providing an option to the owner or owners, as the case may be, of the building to reconstruct the building according to the plan to be sanctioned by the Corporation with such expedition as possible and providing for maximum floor area necessary for accommodating the erstwhile occupier or occupiers, as the case may be, and additional floors as may be required for recovery of the expenses for construction after relaxation of the applicable building rules. In the event, the owner or owners as the case may be, so agreeing and applying, the Corporation shall allow a building plan submitted for the purpose to be sanctioned with additional floors and floor areas so as to provide for the recovery of the expenses to be incurred;

(iv) in the event of disagreement or disinclination on the part of owner or owners, as the case may be, to avail of the opportunity contemplated under clause (iii), the owner or owners, as the case may be, keeping the building in dilapidated condition which may likely cause the environment pollution, fire hazards, unsafe to public safety, health hazards, nuisance etc. shall be subject to such action as provided in the law for the time being in force;

(v) *subject to the provisions of this section, the Corporation may cause development work in respect of the dilapidated building* *in such transparent manner, and on such conditions, as may be prescribed by Scheme, by the Corporation."*

17. Under Clause (iii), it is contemplated that the Corporation may serve a notice on the owners providing an option to them to reconstruct the building according to the plan to be sanctioned by the Corporation with such expedition as possible, stipulating certain yardsticks therefor.

18. In the event the owners agree and so apply, the Corporation is empowered under the said provision to allow a building plan submitted for the purpose to be sanctioned with additional floors and floor areas so as to provide for the recovery of the expenses to be incurred.

19. Conspicuously, however, in Clause (iv), it is specifically stipulated that in the event of disagreement or disinclination on the part of the owner or owners, as the case may be, to avail of the opportunity contemplated under Clause (iii), the owner or owners, as the case may be, shall be subject to such action as provided in law for the time being in force.

20. The said clause is immediately followed by Clause (v), which provides that subject to the provisions of the Section, the Corporation may cause development work in respect of the

dilapidated building in such transparent manner and on such conditions as may be prescribed by Scheme by the Corporation.

21. Thus, although there is no “prohibition” to any party making a unilateral application, the specific course of action in the event of disagreement between the owners to make a joint application and the modality thereof have been unambiguously provided in Clauses (iv) and (v) of Section 412A. Within the fur corners of the said modalities, there is no provision whatsoever for one of the owners or some of the owners to unilaterally make an application as contemplated in Clause (iii) in the event of disagreement. On the contrary, in the event of such disagreement or disinclination on the part of the owners, the statute specifically provides that it is the Corporation which shall cause the development work in respect of the dilapidated building in terms of the statute.

22. Thus, the so-called “liberty” carved out by this Court in paragraph no. 18 of the order under review, for the respondents to unilaterally apply for undertaking the development work in case of disagreement, is patently *de hors* the law.

23. The apprehension of the review applicant is also justified to the effect that in view of the Court specifically observing, as done in paragraph no. 19 of the order under review, that if a unilateral application is made, the KMC shall duly *process* the same as expeditiously as possible, there is every possibility that the KMC shall act on such application as per the direction of the Court, although such a unilateral application is not otherwise contemplated in law.

24. Thus, it is clear that the liberty granted to the respondents in paragraph no. 18 of the order under review and the consequential direction on the KMC to duly process such application in consonance with such liberty in paragraph no. 19 of the order under review, conjunctively constitute an "error apparent on the face of the record", bringing the same within the purview of interference under Order XLVII of the Code of Civil Procedure.

25. However, with regard to paragraph nos. 16 and 17 of the said order, this Court is of the opinion that the same does not facilitate any infraction of the statute as the observations made therein come within the broader ambit of Clause (iii) of Section 412A of the KMC Act. Even otherwise, although it is contended

by the review applicant that the said observations were beyond the prayers made in the vacating application, since the underlying refrain of the vacating application and the specific subject matter involved in the appeal was the suppression of an order dated February 2, 2022 passed by the Kolkata Municipal Corporation under the said provision, it cannot be said altogether that the issue was not raised before this Court or that the Court was not in seisin of the necessary incidents of the said provision. Thus, the observations made in paragraph nos. 16 and 17 of the order under review require no alteration.

26. In view of the above discussions, the observations made in paragraph nos. 18 and 19 of the order under review cannot withstand the scrutiny under Order XLVII of the Code of Civil Procedure.

27. Accordingly, RVW 19 of 2026 is allowed in part, thereby deleting paragraph nos. 18 and 19 of the judgment and order dated December 23, 2025 passed in FMA 1867 of 2025 (with IA No: CAN no. 1 of 2026).

28. Any action, if taken in terms of the observations made in the said paragraphs, which have been deleted above, stand hereby reversed.

29. There will be no order as to costs.

30. Urgent certified copies of the order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

I agree. (**Sabyasachi Bhattacharyya, J**.)

(**Supratim Bhattacharya, J**.)

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09.03.2026
(SSS)