25.11.2026
Ct. No. 444
Sl. No. 13
RANJAN

WPA 5458 of 2026

MD. ZAKIR HUSSAIN & ANR.
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

Mr. Taharima Khatun
.....for the petitioners
Mr. Srijan Nayak
Mr. Nilanjan Chatterjee
.....for the Kolkata Municipal Corporation
Mr. Dinendra Nath Chatterjee
Mr. P. Sengupta
Mr. B. Sengupta
Mr. S. Gani
.....for the respondent no. 9 and 10

Affidavit of Service, as filed, be kept with the record.

Briefly, the case of the writ petitioner is that an illegal and unauthorised construction has been carried out at the behest of private respondents nos. 9 and 10.

Being aggrieved, the writ petitioner duly filed a representation before the authority.

Considering the said representation, the authority duly found that certain illegal and unauthorised construction had been carried out at the behest of respondents nos. 9 and 10 (the persons responsible). Thereafter, proceedings were initiated under Section 400(8) of the Kolkata Municipal Act, 1980. Subsequently, the authority passed an order under Section 400(1) of the

Kolkata Municipal Act, 1980. The writ petitioner prays for implementation of the order by instituting the instant writ petition under Section 400(8) of the Kolkata Municipal Act, 1980.

Learned Advocate appearing on behalf of the petitioner submits that it is established that the persons responsible (respondents no. 9 and 10), at their behest, have carried out the illegal and unauthorised construction, and the appropriate proceedings have already been initiated by the authority, which have come to an end by its order under Section 400(8) of the Kolkata Municipal Act, 1980. The order so passed by the authority has to be implemented forthwith.

Learned Advocate appearing on behalf of the Kolkata Municipal Corporation placed on record the Report issued by the Ex. Engineer (C), B/Bldg./Br-IX, K.M.C., dated 24.03.2026, which states as follows:

> *"Department, Br-IX, KMC has perform a routine inspection by the departmental officials and found out that a building sanctioned plan of III storied is exists at the above mentioned premises vide B.P. No. 2019090011 dated 03/07/2019. Further one prayer hall along with toilet was sanctioned u/r Circular 9 of KMC Bldg. Rule 2009. The owner/ occupiers constructed the said partly IV storied building by constructed RCC slab at open terrace portion with encroaching mandatory open space. On demand the person responsible could not produce and valid documents regarding the deviation portion. The concerned department has taken steps by issuing a notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 and also served*

intimation to the local police authority, i.e. Watgunge P.S. Moreover, the concerned department has also prepared infringement statement of the deviated construction, demolition sketch plan and after preparation of a comparative report, the instant matter (under section 400 of the Kolkata Municipal Corporation Act, 1980) has been placed before the Kolkata Municipal Corporation Higher Authority for taking decision in the case of the said deviated construction in the question premises. Higher Authority passed an order U/S 400(1) of KMC Act 1980.

Further a complain received by this department and found that the P/R defying the stop work notice consumed the construction work. The fact also acknowledge the Higher Authority. Considering the fact Higher Authority passed an order U/S 400(8) of KMC Act 1980. Accordingly, department demolished that some unauthorized portion of the building on 12/11/2025, 13/11/2025, 14/11/2025 & 17/11/2025.

However, department received an appeal letter for regularization addressing to Higher Authority along with structural Stability certificate. After preparation a comprehensive report, the said file sent to concerned department. Higher Authority passed an order to process the file U/S 400(1) of KMC Act 1980. The matter is currently pending before Special Officer (Building) for hearing."

Learned Advocate, appearing on behalf of private respondents No. 9 and 10, submits that the order passed by the authority under Section 400(1) of the KMC Act, 1980, has been challenged before the concerned Building tribunal , registered as P.T. in Appeal No. 65 of 2026.

It is further informed by the Learned Advocate appearing on behalf of respondents nos. 9 and 10 that the matter is fixed for hearing on 17.12.2026.

Considering the rival contentions of the respective parties, this Court is of the opinion that there is nothing left to be adjudicated in the instant writ petition, as the statutory appeal has already been preferred by" the persons responsible" (respondents nos. 9 and 10).

Hence, the writ petition stands disposed of. However, it is clarified that the writ petitioner is at liberty to take appropriate steps before the Kolkata Municipal Building Tribunal by filing an application in connection with the statutory appeal pending before the concerned Building Tribunal.

The Report by Ex. Engineer (C), B/Bldg./Br-IX, K.M.C., dated 24.03.2026, be kept on record.

Parties to act on the basis of server copy.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with necessary formalities.

[ATARUP BANERJEE, J.]