

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 5473 of 2025

**Tapan Roy (Paul)
Versus
State of West Bengal & Ors.**

For the petitioner : Mr. Satrajit Sinha Roy

For the State : Mr. Srijan Nayak
Ms. Rituparna Maitra

For the KMC : Mr. Alok Kr. Ghosh
Ms. Manisha Nath

Heard on : 17.02.2026.

Judgment on : 17.02.2026

Raja Basu Chowdhury, J (Oral):

1. The matter has a chequered history. The petitioner had previously approached this Court by filing a writ petition which was registered as WPA no. 5647 of 2023. Such writ petition was dismissed by order dated 22nd June, 2023. On an appeal being filed therefrom, the said appeal which was registered as MAT 1221 of 2023 was disposed of by order dated 8th August, 2023, *inter alia*, by observing as follows:-

“... Being aggrieved, the writ petitioner is before us by way of this appeal.

We are unable to agree with the learned Single Judge that just because seven years or so have passed since the alleged unauthorized construction was made, no action can be taken against the same. An illegal construction does not become legal merely by passage of time. If the Corporation finds there is unauthorized construction, as alleged by the writ petitioner/ appellant herein, the Corporation is directed to initiate proceedings under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, immediately and carry the same to its logical conclusion, in accordance with law, after granting adequate opportunity of hearing to all concerned parties including the appellant herein and the private respondents. The entire exercise should be completed within a period of four months from the date of communication of this order to the Special Officer (Building), Kolkata Municipal Corporation.

We have not gone into the merits of the disputes.

The Competent Authority, as indicated above, shall take an informed decision, in accordance with law. Needless to say, if the Authority finds merit in the grievance of the writ petitioner/appellant herein to the effect that there is unauthorized construction on the second floor of the building in question, either without a sanctioned plan or in deviation from the sanctioned plan, immediate steps should be taken by the Authority for removal of the unauthorized portion of the construction.

The order under appeal is accordingly set aside.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1221 of 2023 and the connected application being IA No: CAN/1/2023 at accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.”

2. The petitioner had since taken out a contempt application alleging violation of the judgment and order dated 8th August, 2023 when the Hon'ble Division Bench of this Court after hearing the parties and noting from the submission made by the contemnor in Court that the proceedings shall be initiated and completed under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 within a period of two months from that date, the contempt application stood disposed of by order dated 28th February, 2024. Pursuant to such order, the Special Officer (Building) in D/Case No. 061-D/Br-I/23-24 was pleased to pass the following order.

“ ORDER

The plan for erection of partly two and partly three storied building in the year 2001. As per inspection report a portion western side of 2nd floor is beyond the sanction plan. As per observation of department the portion has not been constructed in recent past.

Ground floor is purchased on 2016. It is stated by P.R. they have purchased the 2nd floor as it built. They have not constructed any part of floor.

Now the owner of the 2nd floor prays for regularizing the portion deviation from sanction plan. Both P.R. & complainant appeared at the time of hearing.

Considering the documents in file, statement of P.R. & Complainant, I am inclined to pass order to allow retention of the part beyond sanction on payment of fees u/s 400 (1) of the be paid within a period of 30 days from

the date of communication of this order. Access to common space must not be obstructed.

D/sketch will be part and parcel of this order.

Any person aggrieved by this order u/s 400(1) may be appeal against this order for Municipal Building Tribunal within stipulated time in accordance with the provision of KMC Act, 1980.”

3. The above order was, however, challenged by the petitioner by filing a further contempt application which was registered as CPAN 1829 of 2024. The said contempt application was disposed of by the Hon'ble Division Bench of this Court by its order dated 20th February, 2025, *inter alia*, by noting that in view of the order passed by the Special Officer (Building) dated 10th June, 2024, which was approved by the Mayor in Council of the Kolkata Municipal Corporation on 6th November, 2024, nothing survives in the contempt application.
4. By the aforesaid order, however, the Hon'ble Division Bench had also recorded that if the appellant is aggrieved by the order dated 10th June, 2024 passed by the Special Officer (Building), Kolkata Municipal Corporation, he shall be at liberty to challenge the same before the appropriate forum in accordance with law. Notwithstanding the aforesaid direction, the petitioner has once again approached this Court by filing the instant writ petition in order to challenge the above order, though a specific appellate remedy is available.

5. Mr. Ghosh, learned advocate appearing for the Kolkata Municipal Corporation submits that once the Hon'ble Division Bench of this Court had refused to entertain the above challenge, this Court ought not to entertain the same especially when an alternative remedy is available.
6. Having heard the learned advocates appearing for the respective parties and noting that an order passed by the Special Officer (Building), Kolkata Municipal Corporation can ordinarily be challenged before the Municipal Building Tribunal and since, in the instant case, the Hon'ble Division Bench of this Court had refused to entertain the challenge though in a contempt proceedings, I am of the view that there is no scope to once again entertain the above challenge by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.
7. In view thereof, the writ petition fails and the same is accordingly dismissed.
8. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

**Saswata
A.R. (Court)**