

24.03.2026

Court No. 12

Item No. 20

Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 479 of 2026

With

CAN 1 of 2026

CAN 2 of 2026

CAN 3 of 2026

In

W.P.A. 20833 of 2025

Kingshuk Mukherjee & Anr.

-Versus-

Kolkata Municipal Corporation & Ors.

Mr. Surya Prasad Chattopadhyay,

Mr. Rajesh Kshetry,

Mr. Ankit Chatterjee

.....for the applicants

Mr. Alok Kr. Ghosh,

Mrs. Ina Bhattacharyya

....for the K.M.C.

Mr. Vijay Agarwal

....for the State.

1. Affidavit of Service is taken on record.

2. None appears on behalf of the respondent

No. 6 to 8.

Re : **CAN 1 of 2026**

1) CAN 1 of 2026 is an application for condonation of delay in filing the application for leave to appeal along with MAT 479 of 2026.

2) Considering the averments in paragraphs 2 to 10, we are of the view that the delay in filing the Special Leave to Appeal has been explained.

3) Accordingly, CAN 1 of 2026 is disposed of.

4) Delay is condoned.

CAN 3 of 2026

5) The applicants seek leave to appeal from the judgment and order dated February 9, 2026 in W.P.A. 20833 of 2025. By the order impugned, the learned Court allowed the Corporation to proceed with the demolition upon completion of the proceeding under Section 400 (8) of the Kolkata Municipal Corporation Act.

6) Mr. Chattopadhyay, learned advocate for the applicants submits that the allegation in the writ petition was with regard to alleged construction on Dag No. 185, but the Corporation was trying to demolish the structure of the applicants on Dag No. 183.

7) Mr. Ghosh, learned advocate for the Corporation submits that an unauthorized construction has been going on the premise next to 82, Laskarhat, adjacent to Amrabati Sitala Mandir, Ward No. 107, Borough – XII. The name of the applicants did not appear in any of the records. No mutation had been done. Thus, the ownership of the land on which the construction was going on was not available to the Corporation. However, one Dinu Yadav, was found to be actively involved in the construction. The Corporation had acted under Section 400(8) of the Kolkata Municipal Corporation Act.

8) Mr. Chattopadhyay has not been able to establish the ownership over the plot mentioned in the order of His Lordship in respect which the demolition is going on. Secondly, when we asked the applicants to show us their sanctioned plan, on the basis of which the applicants were raising the construction allegedly on Dag No. 183

pursuant to a joint venture agreement, the applicants were not in a position to inform us whether sanction has been received from the Corporation for their construction.

9) Mr. Chattopadhyay relies on a joint venture agreement dated October 29, 2024 between the applicants and one Ganapati Construction, entered into for the purpose of raising construction. The schedule of the joint venture agreement reflects Dag No. 183. Thus, in an intra-Court appeal, we are unable to act as a fact finding authority to understand whether Dag No. 183 was the premise next to the Mandir in respect of which the demolition order was passed. In any event, the writ petitioner Indrajit Kumar Singh complained that he along with others were the owners of land measuring 20 satak lying in Mouza – Kasba, J.L. No. 11, R.S. No. 151, Touzi No. 1191, Dag No. 185 and Khatian No. 150, next to the Amrabati Sitala Mandir, Ward No. 107 and an illegal construction was going on at the said land, at the instance of one Dinu Yadav. The corporation took steps under section 400(8) of the Kolkata Municipal Corporation Act, 1980 in respect of a construction covering around 5000 sq ft. which was going on. The demolition process had also started.

10) Under such circumstances, the question of identification of the land and determination of title or possession of the land cannot be gone into. The Corporation has the power to demolish any structure, which is found to be unauthorized. The Corporation has taken emergent steps. The Corporation submits that unauthorized construction was going on at a

massive scale. In any event, if the applicants are aggrieved by the order of demolition there are other remedies under the law, which may be availed of. At present the applicants have not produced any document of title or a sanction to even demonstrate that they have the permission to construct.

11) Section 400(8) of the Kolkata Municipal Corporation Act, 1980 is quoted below:-

(8) Notwithstanding anything contained in this Chapter, if the Mayor-in-Council is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention of the provisions of this Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.

12) In the decision of ***Calcutta Municipal Corporation and Anr. vs Abid Hossain*** reported in ***(2001) 1 CHN 4***, it was held that the Mayor-in-Council had been empowered to take emergent measures under the relevant section if he was of the opinion that immediate action was called for in relation to a building being carried on in contravention of the provision of the Act. Action could be taken by the Mayor-in-Council for demolition of a building constructed or being constructed in contravention of the provisions of the Act in terms of Section 400(8) of the 1980 Act. The relevant portions are quoted below :-

“13. ****

In order to exercise the power the person exercising the power must subjectively determine that the exercise of power is of immediate necessity. Therefore, in the section itself enough guidelines have been given as to when extraordinary power has to be exercised under sub-section (8) of section 400 of the Act either in lieu of exercise of power under sub-sections (1) to (7) of section

400 of the Act or in addition thereto. The purpose and object of exercise of power in both the situations are one and the same, to prevent contravention of the provisions of the Act in relation to a building or a work being carried on. The extraordinary power has not been granted to the Municipal Commissioner. The same has been granted to the Mayor-in-Council which is the second highest body entrusted to carry out the duties of the Corporation. That itself is a safe-guard. And in any event if this safety valve does not save the person in question, as aforesaid, the person may be compensated adequately. Sub-section (8) of section 400 therefore, cannot be struck down on the ground that conferment of such power is arbitrary. In a given case, however, it may be shown that user of such power was not proper and power under sub-section (1) of section 400 ought to have been used. In such circumstances too the person affected may be adequately compensated.

14. As pointed above, conceptually it is not conceivable that a citizen in India has personal liberty to make an unauthorized construction. In that view of the matter, it cannot be said that sub-section (8) of section 400 of the Act is violative of Article 21 of the Constitution.

15. Sub-sections (k) and (l) of section 29 make it obligatory upon the Corporation to control building operations and to regulate the under-ground building operations. In that view of the matter, a building can only be constructed within the jurisdiction of the Calcutta Corporation upon obtaining sanction thereof from the Corporation. If no such sanction is granted, but building is constructed, such a construction would be unauthorized. We, therefore, see no reason to hold that sub-section (8) of section 400 of the Act is violative of section 29 of the Act.

16. section 33 of the Act provides that subject to the provisions of the Act and the rules and regulations made thereunder, the executive power of the Corporation shall be exercised by the Mayor-in-Council and all executive actions of the Mayor-in-council shall be expressed to be taken in the name of the Corporation. In the view of the matter, the Mayor-in-Council is the second highest body in the Corporation. The obligatory functions of the Corporation are to be discharged by the Mayor-in-Council. The Mayor-in-Council has been authorized to take the actions under sub-section (8) of section 400 of the Act. We, therefore, find no reason to hold that

sub-section (8) of section 400 of the Act is violative of section 33 of the Act.”

13) The learned Single Judge only recorded implementation of the order passed under section 400(8) of the Act, when the writ petitioner complained of inaction of the Corporation. His Lordship was satisfied from the report of the Corporation that the legal compliances had been fulfilled. Relevant portions of the order are quoted below :-

“2. Complaining unauthorized construction and the failure on the part of the municipal corporation to act on the basis of the petitioner’s complaints dated 6th June, 2025 and 14th July, 2025, the instant writ petition has been filed.

3. The municipal corporation is represented and has filed a report dated 30th January, 2026.

4. From the aforesaid report, it would transpire that on the basis of complaint made by the petitioner an inspection was carried on at the Premises No. beside 82, Laskarhat, adjacent to Amrabati Sitala Mandir, Ward No.107, Borough – XII and it was found that unauthorized construction is in progress at the site. The department had not only issued a notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 (herein after referred to as the “said Act”), but also intimation thereof was served on the police authorities. In furtherance to the above, the order under Section 400(8) of the said Act was issued and pursuant to the above, demolition order was executed on 28th, July, 2025, 29th July, 2025 and 30th July, 2025 at the locale.

5. Learned advocate for the municipal corporation would submit that the entire demolition proceeding is not complete.

6. Learned advocate for the petitioner would, however, complain that the construction is still going on.”

13) Under such circumstances, the application for leave is rejected and the appeal and the connected applications are accordingly disposed of.

14) There shall be no order as to costs.

15) Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)