

Item No.13  
31.03.2026  
Court. No. 12  
*GB*

MAT 574 of 2026  
With  
CAN 1 of 2026  
With  
CAN 2 of 2026  
With  
CAN 3 of 2026

Dharmendra Kumar Yadav & Anr.  
Vs.  
The Howrah Municipal Corporation & Ors.

*Mr. Anjan Bhattacharyya,*  
*Mr. Sunny Nandy,*  
*Ms. Oindrila Ghosal,*  
*Mr. Rajib Maity*

*...for the Appellants.*

*Mr. Sandipan Banerjee,*  
*Mr. Ankit Sureka*

*...for the H.M.C.*

*Mr. Pradeep Kumar*

*...for the Respondent No.7.*

1. The appellants claim to be occupiers of an unauthorized construction which has been directed to be demolished by a learned Single Judge in WPA 28830 of 2024.
2. CAN 3 of 2026 is an application for condonation of delay of 462 days in filing the application for leave to appeal and the appeal. The grounds for condonation of delay are lack of knowledge of the proceedings initiated by the Howrah Municipal Corporation as also of the litigations which were going on before the High Court with regard to the said unauthorized construction.

3. It is submitted by the learned advocate for the appellants that only when the corporation pasted a notice of demolition on the wall of the premises, the appellants came to know about the order of demolition. Under such circumstances, it is prayed that the delay be condoned.
4. Mr. Banerjee and Mr. Kumar, learned advocates who appear for the corporation and the complainant/neighbour submit that the occupiers were all along aware of the proceedings. Mr. Banerjee submits that the corporation had granted a hearing to the landlord, the promoter and the complaint, before the authority came to a finding with regard to the unauthorized construction.
5. The landlord had filed the writ petition in which the order impugned had been passed, by challenging a demolition notice. The specific case of the landlord was that the demolition had already taken place and as such, further demolition was not required. His Lordship upon considering such facts, appointed a learned advocate as a special officer to carry out an inspection and find out whether there was any unauthorized construction on the building even after partial demolition. The report of the special officer has been quoted by His Lordship, which is as follows:-

*“I, Debasish Chatterjee [L.B.S. No.84(1) of HMC], have visited the sit on 06.12.2024 at premises no.22, Bijay Kumar Mukherjee Road, P.S. Golabari, District-*

*Howrah-711 106, Ward no.15, under H.M.C. as requested by Spl. Officer Mr. Utpal Maitra. On spot I have found Mr. Maitra, Mr. Soumen Patra (Sub-Assistant Engineer, H.M.C. Borough-II, who also assisted me by providing Sanction Building Plan of the said premises) and others. In their present I have taken measurement of the said existing Three storied building. It is observed as follows:*

*Total Asmade Floor Area of the Building = 506.823 sqm.*

*Total Sanctioned Floor Area of the Building = 285.411 sqm.*

*Total Deviated Floor Area of the Building = 221.412 sqm.*

*It is also found that total Area Demolished by H.M.C. Authority = 0.88 sqm. (more or less) with a small portion of Parapet wall in the South-East part of the building. Remaining Deviation part of the building = 220.532 sqm.”*

6. Under such circumstances, His Lordship directed that the landlord should vacate the premises within a month so that the demolition can take place. Alleging violations of the order of His Lordship contempt application has been filed. We are not sitting in appeal over the order passed in the contempt application and as such, we are not inclined to interfere with the order passed in the contempt application, by which a date for demolition has been fixed. The deviation amounts to 220.532 Sqm, which is a major deviation.
7. The law provides that a person who is responsible for an unauthorized construction, is required to be heard. Reference is made to Section 177(1) of the Howrah Municipal Corporation Act, which is quoted below:-

**“177. Order of demolition or stoppage of buildings and works.**

1. Where the erection of any building or the execution of any work in pursuance thereof has been commenced, or is being carried on, or has been completed without or contrary to the sanction or in contravention of any of the provisions of this Act or the rules and the regulations made thereunder, the Commissioner may in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be stopped or demolished or such addition or alteration thereto be made as the Commissioner considers necessary, by the person at whose instance the erection or the work has been commenced, or is being carried on, or has been completed :Provided that no order under this provision shall be made unless such person has been given a reasonable opportunity of being heard in accordance with such procedure as may be prescribed.[Provided also that the Commissioner may by order, on such terms and conditions and on payment of such fees as may be prescribed by regulations, 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 thereunder, as the case may be:Provided also that the Commissioner may, by order, delegate his powers and functions under the first and the second proviso of this sub-section to the Special Officers, appointed by the Commissioner with the approval of the State Government on such terms and conditions as may be determined by the Corporation, and the expenses for payment of such officers shall be borne on from the Municipal Fund.]

8. Thus, the person at whose instance the construction had commenced and who had raised the construction were heard.
9. Under such circumstances, the contention of the appellants that appellants were not aware of the proceedings and as such could not make their submission before the learned court, is not correct. The appellants have all along been in possession. The building was measured by the corporation time and again, hearing was held by the corporation, the promoter and land owner were also heard, the special officer appointed by the High Court measured the building with the assistance of the officials of the corporation and the unauthorized construction was detected. Thus, the delay of 462 days in filing the special leave to appeal from the order of His Lordship, which is dated December 17, 2024 is not condoned as we are not satisfied with the explanation.
10. The occupiers have a remedy before the Civil Court to claim damages against the promoters or landlord or they may seek a refund of the amount invested along with interest, as held in ***Supertech Limited v. Emerald Court Owner Resident Welfare Association***, reported in ***(2021) 10 SCC 1***. The relevant paragraph is quoted below:-

“**172.6.** The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than

those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment.

**172.7.** The appellant shall pay to the RWA costs quantified at Rs 2 crores, to be paid in one month from the receipt of this judgment.

\* \* \*

\* \* \*

**175.** During the pendency of these proceedings, two interim orders were passed by this Court on 6-9-2016 [*Dhirender Sharma v. Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1925] and 22-9-2017 [*Dhirender Sharma v. Emerald Court Owners Resident Welfare Assn.*, 2017 SCC OnLine SC 2060] . By the order dated 6-9-2016 [*Dhirender Sharma v. Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1925] , this Court directed the appellant to pay a return of ten per cent to those flat purchasers who continue to stay in the project. By the order dated 22-9-2017 [*Dhirender Sharma v. Emerald Court Owners Resident Welfare Assn.*, 2017 SCC OnLine SC 2060] , an exit option was granted to those who sought refunds to take the amounts invested with interest at the rate of twelve per cent per annum.”

11. The order as it stands today, does not appear to be contrary to law as it is an admitted position that there are unauthorized constructions. The occupiers kept silent over a period of time and did not file a separate writ petition by challenging the demolition process. Thus the occupiers cannot straight away prefer an appeal after more than one and half years

from passing of the order impugned. The landlord had been directed to vacate within a month to enable demolition. The order does not reflect existence of any occupier. The litigation is going on from 2022 in respect of the property. In compliance with the direction of a Division Bench on June 21, 2023 passed in MAT 1002 of 2023 with MAT 999 of 2023, the Corporation had undertaken demolition work. Thus, the ignorance of the pending proceedings and the order passed by His Lordship is not an acceptable ground for condonation of the delay.

12. The facts do not warrant such condonation as there are no merits either in the Special Leave to appeal or in the application for condonation.
13. Accordingly, all applications and appeal are dismissed.
14. Parties are to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**

**(Ajay Kumar Gupta, J.)**