Form No.J(2)

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

Present :

**The Hon'ble Justice Raja Basu Chowdhury**

**WPA 26006 of 2026**

**Md. Ghalib**
**Versus**
**The Kolkata Municipal Corporation & Ors.**

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| For the petitioner | : | Mr. Javed K. Sanwarwala<br>Mr. Shariq A Sanwarwala<br>Ms. Sadaf Aafrin |
| For the State | : | Mr. Ajit Kumar Mishra, AGP<br>Mr. Ajit Kumar Chowbey<br>Mr. Aman Mishra<br>Mr. Vinayak Chowbey |
| For the KMC | : | Mr. Biswajit Mukherjee<br>Mr. Debanjan Mukherjee<br>Ms. Gulnaz Quraishi |
| For the respondent no.13: | | Mr. Avirup Chatterjee<br>Mr. Rishov Das |
| For the Intervenor | : | Mr. Sumitava Chakraborty<br>Ms. Bratati Pramanick |
| Heard on | : | 01.10.2026 & 07.10.2026 |
| Judgment on | : | **07.10.2026** |

**Raja Basu Chowdhury, J (Oral):**

1. The instant writ petition has been filed complaining illegal construction at premises no. 55, Mofidul Islam Lane, Kolkata – 700041, Ward no. 54, Borough-VI (hereinafter referred to as the

"said premises"). According to the case made out by the petitioner the illegal construction has been carried out by the respondent nos. 11 to 13.

2. Mr. Chatterjee, learned advocate appears on behalf of the respondent no.13 and undertakes to file Vakalatnama on behalf of the respondent no.13, in course of the day. According to him, the respondent no.13 was the mutawalli at the relevant point of time when a sanctioned building plan was obtained in respect of the said premises. In response to a query from this Court, Mr. Chatterjee, would submit that he has no instruction as regards the extent of sanction granted in respect of the said premises. He would submit that presently he is no longer the mutawalli and in his place Abdul Kashem Mullick has been appointed as mutawalli. He, however, does not disclose any document to substantiate that he is no longer the present mutawalli of Haji Eradatulla Mullick Waqf Estate or in his place Abdul Kashem Mullick has been appointed.
3. Records would reveal that the municipality had sanctioned construction of G+2 storied building at the aforesaid premises.
4. Mr. Chatterjee, learned advocate appearing for the respondent no.13, would submit as far as he is aware, an application for regularization of the unauthorized construction has already been made and the same is pending before the municipal authorities. When the matter was taken up for consideration on 1st October, 2026, noting such submission and the disclosure made by the

municipality that an illegal construction has taken place at the locale, notwithstanding notice being issued under Section 401 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the "said Act") on 13th August, 2025 which was followed up by a complaint lodged under Section 401A of the said Act, defying such stop work notice three additional floors have been constructed, appropriate direction was issued on the municipality to produce all the records in relation to the proceedings initiated under Section 400 of the said Act. This Court also directed the Officer-in-Charge of the jurisdictional police station to be personally present with a status report as regards the investigation in relation to the FIR lodged under Section 401A of the said Act.

5. Today, Arnab Roy Chowdhury, the Officer-in-Charge of the jurisdiction police station is personally present in Court. He has filed a report and would submit that he had issued notices addressed to the municipal authorities for completion of the investigation.

6. Mr. Mishra, learned Additional Government Pleader has, however, been candid enough in submitting that the prime accused named in the FIR has not interrogated by the police authorities as yet.

7. From the disclosure made by the municipal authorities it would transpire that the proceedings under Section 400(1) of the said Act are still pending before the Special Officer (Building).

8. The situation appears to be alarming. At this stage, Mr. Chakraborty, learned advocate appears and intervene in the matter claiming to represent Abdul Kashem Mullick. According to him, Abdul Kashem Mullick has been appointed as mutawalli of Haji Eradatulla Mullick Waqf Estate in place and stead of the respondent no.13. In response to a query of this Court Mr. Chakraborty could not disclose any document to substantiate the appointment of present mutawalli of Haji Eradatulla Mullick Waqf Estate. He, however, relies on an order passed by a Coordinate Bench of this Court in WPA 23824 of 2025 on 3rd October, 2025 during the vacation. He would submit that a Coordination Bench of this Court by the above order directed the representation made by the writ petitioner therein, Abdul Kashem Mullick, being annexure P-3 to the writ petition to be considered within a period of five weeks from the date of communication of the order upon giving the petitioner or his learned advocate an opportunity of being heard.

9. As would appear from the perusal of the said order, the petitioner had challenged the notice issued under Section 401 of the said Act whereby the municipality had directed stoppage of construction work. It was claimed by the petitioner as is recorded in the order that the work was going on as per the sanctioned building plan, the same was, however, disputed by the corporation. It is in that premise that the Coordinate Bench had passed the order for consideration. It is now clear from the materials available on record

that the petitioner in WPA 23824 of 2025 who was represented by Mr. Chakraborty learned advocate in the said proceeding and is also being represented in Court today, had obtained the order by suppressing and holding back information that three additional floors beyond the sanctioned building plan was constructed and such major unauthorized construction cannot be regularized in law.

10. Be that as it may, since the representation is still pending with the municipal authorities, I am of the view such representation must be disposed of in accordance with the direction passed by the Coordinate Bench of this Court. Such consideration, however, should not stand in the way of the municipal authorities to conclude the proceedings initiated under Section 401 of the said Act. It is startling to note that the matter is pending before the Special Officer (Building) for about six months. There has been very little progress in the matter.

11. In the peculiar facts and noting such magnitude of the illegal construction that is construction of three additional floors, I am of the view that the Municipal Commissioner should forthwith either decide the matter on his/her own or should re-delegate the file to any other competent Special Officer for the same to be decided on an expeditious basis, preferably within a period of eight weeks from the date of communication of this order.

12. The Officer-in-Charge of the jurisdictional police station shall ensure that no further construction takes place at the locale till such time a decision shall be taken by the Special Officer (Building).

13. The Officer-in-Charge of the jurisdictional police station shall also ensure that the three additional floors which have been illegally constructed remain unoccupied till such time the decision is rendered by the Special Officer (Building).

14. A copy of this order shall be pasted at the conspicuous place of the said premises so as to make the people aware of the pending proceedings.

15. Since no other issue survives, the writ petition is disposed of.

16. The personal appearance of Arnab Roy Chowdhury, the Officer-in-Charge of the jurisdictional police station stands dispensed with.

17. The original records as produced before this Court are hereby returned to the learned advocates representing the municipal authorities and the State.

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

**(Raja Basu Chowdhury, J.)**

**sb**
**A.R. (Court)**