

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 24486 of 2025

**Md. Amir
Versus
The State of West Bengal & Ors.**

For the petitioners	:	Mr. Anindya Bose Mr. Santanu Maji Ms. Priya Sisgar Ms. R. Das
For the State	:	Mr. Malay Krishna Dey Mr. Bhakti Prasad Das
For the KMC	:	Mr. Vimal Kr. Shahi Ms. Ujani Pal Samanta
For the respondent No. 10	:	Mr. Achintya Kumar Banerjee Mr. S. N. Ahmed
Heard on	:	17.02.2026.
Judgment on	:	17.02.2026

Raja Basu Chowdhury, J (Oral):

1. The present writ petition has been filed, inter alia, praying for a direction upon the municipal authorities to take appropriate steps and to forthwith demolish all constructed towers (each G+5) at premises No. 23 Topsia Road Kolkata 700039. It is the petitioner's case that the above construction has come up over a water body. Accordingly, when the writ petition came up for

consideration on 27th November, 2025, this Court had noted from the report filed by the municipality that stop work notice has already been issued under Section 401 of the KMC Act, 1980 (hereinafter referred to as the said Act) on 6th September, 2025. Notwithstanding such notice, the construction having continued an FIR under Section 401A of the said Act was lodged on 9th September, 2023 and that though the proceedings under Section 400(1) of the said Act had been initiated against the person responsible, however, since the outcome thereof having not been highlighted, had directed the respondent No. 5 to file a report in the form of an affidavit explaining what steps have been taken subsequent to initiation of proceedings under Section 400(1) of the said Act, 2023 on 19th September, 2023. By the aforesaid order, the State was also directed to file a report.

2. Pursuant to the aforesaid order, both the respondent No. 5 as also the State had filed separate reports. Let the same be taken on record. As per the report filed by the respondent No. 5, it would transpire that on 19th January, 2026, the Special Officer Building has already passed a demolition order. Let a copy of the aforesaid order and the consequent resolution of the Mayor-in-Council dated 11th February, 2026 as placed before this Court be taken on record.
3. Mr. Banerjee, learned advocate representing the respondent No. 10 would at this stage, submit that though a Public Interest

Litigation registered as WPA (P) 478 of 2023 was filed complaining illegal construction at premises No. 23 Topsia Road, Kolkata 700039, the same was dismissed on 18th September, 2023, inter alia, on the ground that no ground has been made out to entertain a writ petition as Public Interest Litigation, and since another writ petition being WPA 20700 of 2022 was also dismissed for non-prosecution concerning the self-same property, no order need to be passed in the present writ petition as the same is barred by res judicata.

4. Having heard the learned advocates appearing for the respective parties, I find that the Public Interest Litigation was dismissed by the Division Bench of this Court by an order dated 18th September, 2023, inter alia, by observing as follows:

“In the writ petition, a copy of the legal notice sent to the various authorities has been annexed. Apart from that there is no other document placed by the petitioner to show as to in what manner the alleged construction is illegal and who is putting up the said construction. In any event, from the averments made in the paragraph 4 of the writ petition, it is seen that there is as semblance of the private interest of the petitioner involved in the matter and , therefore, we find no grounds to entertain this writ petition as a Public Interest Litigation.”

5. For the above, it is clear that since the petitioner did not disclose any grounds for entertaining the writ petition as Public Interest Litigation, the same was dismissed. The dismissal of the aforesaid Public Interest Litigation cannot interfere with the rights of the private individual to seek remedy before this Court

far less to non suit the petitioner on the ground of res judicata. Further the parties in WPA (P) 478 of 2023 and WPA 20780 of 2022 and the present cause are not one and the same. It is elementary for the principles of res judicata to apply, the parties in the previous and the present suit must be the same. As such the contention of the advocate for the private respondent is entirely misconceived. This apart, I find that the matter has travelled further. The municipality has already proceeded in the matter and an order under Section 400(1) of the said Act has been passed by the Special Officer Building on 19th January, 2026, and on 11th February, 2026 the same has been approved by Mayor-in-Council. Accordingly, the objections raised by Mr. Banerjee cannot be sustained. However, since a recourse against the order is available to the person aggrieved, at this stage, I am not inclined to enforce the aforesaid order though the municipality upon expiry of the statutory period may proceed to enforce the same in accordance with law.

6. With the above observations and directions, the writ petition is disposed of.

(Raja Basu Chowdhury, J.)

**Sayandeep
A.R. (Court)**