

OD-5

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/39/2026

SUBODH KUMAR AGARWAL AND OTHERS
VS
STATE OF WEST BENGAL AND OTHERS

BEFORE:

The Hon'ble JUSTICE RAJA BASU CHOWDHURY

Date : 12th March, 2026

Appearance :
Mr. Nilkamal Ghosh, Adv.
...for the petitioner.

Mr. Debanjan Mukherjee, Adv.
...for CESC Ltd.

Mr. Nilotpal Chatterjee, Adv.
Ms. Tanushree Das Gupta, Adv.
...for KMC.

Ms. Suvasree Ghose, Adv.
...for State respondent.

Mr. Biswaroop Bhattacharya, Adv.
Mr. Sounak Bhattacharyya, Adv.
Mr. S. Mandal, Adv.
Ms. Anusuita Bhattacharyya, Adv.
...for respondent no. 10.

The Court:- `

1. The present writ petition has been filed for a direction upon the municipal authorities to demolish the illegal and unauthorized construction on the top of the 86 year old building constructed at the behest of the respondent no. 10 at no. 1, Ganesh Chandra Avenue, Ward No. 46, Borough - VI. Record would reveal that the writ petitioner had previously filed a writ petition complaining unauthorized construction and inaction on the part of the municipal authorities in arresting the illegal construction at the above premises.

2. By an order dated 1st April, 2024, a Coordinate Bench of this Court noting the submissions of the parties had directed engineers of the Corporation to conduct a spot inspection and to ascertain whether the construction in question is authorized or not.
3. Following the above and the municipal authorities having carried out an inspection and having detected illegal construction, a notice was issued under Section 401 of the Kolkata Municipal Corporation Act, 1980(hereinafter referred to as said Act) and a proceeding under Section 400 of the said Act had been initiated. Following the above by an order dated 15th April 2024 the Coordinate Bench of this Court noting that the municipal authorities having already detected illegal construction, directed the municipal authorities to proceed and deal with the same in accordance with law.
4. In furtherance to the aforesaid, the Special Officer (Building) having conducted the hearing, had disposed of the same by passing an order dated 9th June 2025. In the opinion of the Special Officer (Building) the demolition of the part of the building occupied since long, was to lead to hazard, including structural disorder and, accordingly he disposed of such proceedings by certain further directions without directing demolition of the constructed portion.
5. The petitioner had however, in the interregnum filed a contempt application which was registered as CC 95 of 2025. When the aforesaid order dated 9th June, 2025 was brought to the notice of the Coordinate Bench of this Court, the Coordinate Bench was of the view that it shall

be appropriate for the petitioners to test the validity of the same before appropriate forum, if so advised.

6. The petitioners have since challenged the validity and legality of the above order before this Court by filing the writ petition. According to the learned Advocate for the petitioners, since the order seeks to interfere with the fundamental rights of the petitioners, the present writ petition has been filed.
7. The Municipality, the State as also the private respondent no. 10 are representing in Court through the learned Advocates.
8. Having heard the learned Advocates appearing for the respective parties and considering the materials under thought, it transpires that a proceeding had been initiated by the municipal authorities, upon detecting unauthorized construction, the Special Officer (Building) ultimately did not passed any order of demolition.
9. The petitioners are aggrieved by such order. I find that the statutory remedy in the form of an appeal before the tribunal has been provided for in terms of Section 400(3) of the said Act, as a recourse to such an order. Though, the petitioners would complain that the tribunal is incompetent to consider the issues raised, I am of the view that since a tribunal has been constituted with a specific authority to decide on validity and invalidity of the order passed by the Special Officer (Building), it would be prudent at the stage for this Court, not to exercise jurisdiction in the matter.

10. Accordingly, the writ petition stands dismissed by granting leave to the petitioners to approach the Municipal Building Tribunal, if so advised. Considering the fact that the matter has been pending before this Court for some time, it is made clear that if any appeal is filed within a period of four weeks from date, the Municipal Building Tribunal shall hear out and dispose of the appeal on merits, in accordance with law.
11. With the aforesaid observations and directions, the writ petition stands disposed of.

(RAJA BASU CHOWDHURY, J.)