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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/6/2026
WITH WPO/491/2025
IA NO: GA/1/2026

BHAGWATDAS JAISWAL
VS.
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE :

THE HON'BLE JUSTICE RAJASEKHAR MANTHA
And
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI
Date : 16th February, 2026

Appearance :

Mr. Jaydip Kar, Sr. Adv.
Mr. Biswajit Mukherjee, Adv.
Mr. R. Karnani, Adv.
Ms. Sonali Ghosh Basu, Adv.
...for appellant

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Soumya Majumdar, Sr. Adv.
Mr. Kallol Saha, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Akash Ghosh, Adv.
Ms. Nabanita Chakraborty, Adv.
...for respondent nos.18&19

Mr. Biswarup Bhattacharjee, Adv.
Mr. D.K. Poddar, Adv.
...for respondent nos.16&17

*Mr. Sudarsan Roy, Adv.
...for respondent nos.7-15*

*Mr. Alak Kumar Ghosh, Adv.
Ms. Ananya Das, Adv.
...for KMC*

1. The appeal is directed against an order dated 22nd January, 2026 passed by a Single Bench of this Court. The said order was passed after this Court had directed in APO 85 of 2025 on 6th January, 2026 that the Single Bench must first decide upon both the issues of maintainability of the writ petition and also consider interim orders.
2. The case that are more fully described in the Court's order dated 6th January, 2026 (supra). The question that comes for consideration in this appeal is whether the respondent-Metro Retail (Branch) can lawfully run a garment shop at the premises that was initially leased out for running a cinema house. The KMC had also granted permission only for running a cinema house at the said premises. The lessor has granted lease of the property for running of a Cinema House.
3. When the matter travelled back to the Single Bench after this Court's order dated 6th January, 2026, interim orders were pressed for on the following grounds.
 - a) The Special Officer (Building), vide order dated 4th December, 2024 had declined change of user of the said premises from a cinema hall to run a garment shop.

- b) The said decision of the Special Officer (Building) was confirmed by the Mayor-in-Council in its order dated 13th December, 2024.
 - c) The order of the Mayor-in-Council came to be challenged by the respondent-Metro Retail before the Municipal Building (Tribunal).
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- 4. The said appeal is pending. In the meantime, the garment shop owner M/s. Metro has obtained online a certificate of enlistment for running a garment shop albeit with an undertaking that the user of the property is informed by appropriate sanctions from the KMC.
 - 5. As already indicated hereinabove, the KMC has rejected permission for change of user of building from a cinema house to that of a garment shop.
 - 6. A number of questions have been raised by Mr. Bikash Ranjan Bhattacharya, learned senior Counsel appearing for M/s. Metro. It is argued that while the permission for running a cinema hall may require more stringent and strict conditions, running of a garment shop, does not, given the difference in footfall. There are some employees in the garment shop and the same is frequented by customers but not at the volume of people attending a cinema house.
 - 7. He, therefore, submits that the order of the Special Officer (Building) is ex facie illegal and contrary to Section 416 of the Kolkata Municipal Corporation Act.

8. It is this issue that could form part of the main arguments in the final hearing of the writ petition before the Single Bench.
9. However, having regard to the principles of Order 39 Rules 1 and 2 where the Court, confronted with a prayer for interim order, is required to assess the prima facie case made out and balance of convenience, this Court is of the view that the Single Bench ought not to have permitted the petitioner to run the garment shop based on an online certificate of enlistment obtained by misrepresentation and suppression of material facts. The certificate of enlistment could not have been applied for in the teeth of the order of the Special Officer (Building) refusing permission to convert the user of the premises from a Cinema House to that of a garment shop.
10. While it is true that the livelihood of some persons may be affected, compliance of provisions of the statute, is paramount and mandatory pre-condition. Running a garment shop in the backdrop of an order of the Special Officer (Building), confirmed by the Mayor-in-Council, disallowing change of user of the building, is ex facie illegal and cannot be permitted.
11. Having regard to the above, this Court is of the view that the garment shop at the said premises cannot be allowed to run. It shall be shut down by the KMC forthwith. The respondent-M/s. Metro Retail shall not run the garment shop, and must shut it down.

12. The aforesaid are only interim orders. The same shall abide by the final result of the writ petition, where the parties are at liberty to canvass all arguments available to them in law, including maintainability of the writ petition.
13. The Single Bench is requested to take up the matter on the day already fixed after affidavits and hear and dispose of the writ petition without granting any unnecessary adjournments to any of the parties.
14. It is made clear that the aforesaid views expressed by this Court are prima facie and the Single Bench for reasons that it may feel, may take any view in the matter, permitted in law and in the facts of the case.
15. With the aforesaid observations, APO 6 of 2026 is disposed of. The connected application also stands disposed of.
16. There shall be no order as to costs.
17. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(RAJASEKHAR MANTHA, J.)

(MD. SHABBAR RASHIDI, J.)