

OD-01

WPO/86/2026
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Rajesh Kumar Gupta
Versus
Kolkata Municipal Corporation & Ors.

Before:

The Hon'ble Justice RAJA BASU CHOWDHURY

Date: 11th March 2026

Appearance:

Mr. Rittick Choudhury, Advocate

Mr. Roshan Pathak, Advocate

Mr. Adrish Chatterjee, Advocate
for the petitioner

Mr. Nilotpal Chatterjee, Advocate

Ms. Susmita Chatterjee, Advocate
for the KMC

Mr. Rajarshi Dutta, Advocate

Ms. Mayuri Ghosh, Advocate

Ms. Poulami Bhowmick, Advocate

Mr. Soumyajit Bhattacharya, Advocate
for respondent no.4

The Court: 1. The supplementary affidavit filed by the petitioner in Court today is taken on record.

2. The present writ petitioner has been filed, inter alia, seeking to challenge the order dated 25th October 2025. Learned advocate representing the writ petitioner has drawn attention of this Court to the third proviso of section 400(1) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as "the said Act") and would submit that the jurisdiction and/or authority of the Municipal Commissioner or his delegate to regularise an unauthorised construction is limited to minor

unauthorised erection or execution of minor work without any sanction. The same cannot under any circumstances extend to regularise a mezzanine floor of 176.416 sq.mt. corresponding to 582.173 sq.ft.

3. Mr. Dutta, learned advocate representing the private respondent no.4 would submit that the legality and/or validity of the aforesaid order impugned, ordinarily, can be challenged before a tribunal having jurisdiction. Since, in the instant case, a tribunal has already been set up in terms of section 400(3) of the said Act to decide orders passed by the Municipal Commissioner or his delegate under section 400(1) of the said Act, this Court ought not to entertain the writ petition.

4. Mr. Chatterjee, learned advocate appears for the municipality.

5. Having heard the learned advocates for the parties and considering the materials on record, I find that admittedly, it is not the case of the petitioner that the aforesaid order passed by the Special Officer (Building) was without hearing the petitioner though the petitioner would claim that he was not appropriately heard. Be that as it may, I find that a Tribunal has been set up and is functional which has the authority and jurisdiction to consider a challenge to the aforesaid order and the points raised herein can all be more conveniently raised before the Tribunal. Although the learned advocate for the petitioner by relying on the judgment delivered in the case of *Gopeshwar Iron & Steel Works Pvt. Ltd. & Others v. Kolkata Municipal Corporation And Others* 2024 SCC OnLine Cal 2172 would submit that the writ petition is maintainable, I am of the view that though the powers of the writ Court to exercise jurisdiction under Article 226 is wide enough to entertain any challenge to the order passed by a quasi-judicial authority, however the

same is subject to certain self imposed restrictions. The judgment relied on by the petitioner has been delivered in separate set of facts. It is well settled that a slight variation in facts may provide a completely different outcome. The aforesaid judgment does not assist the petitioner.

6. Having regard thereof, the writ petition is not entertained and stands dismissed on such ground leaving it open to the petitioner to apply before the municipal authorities, if so advised.

7. It is made clear that if an appeal is filed before the Municipal Building Tribunal within a period of four weeks from date, the tribunal shall hear out the same on merits and in accordance with law on expeditious basis.

(RAJA BASU CHOWDHURY, J.)

R. Bose