

OD-5

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/162/2026

SMT. SUDHA YADAV AND ANR.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE RAJA BASU CHOWDHURY

Date : 29th June, 2026.

Appearance:

Mr. Arif Ali, Adv.

Mr. Sarban Bhattacharjee, Adv.

...for the petitioner

Mr. Ranajit Chatterjee, Adv.

Ms. Manisha Nath, Adv.

....for the Kolkata Municipal Corporation

Mr. Indrajit Sen, Adv.

Mr. S. Medda, Adv.

Ms. Indranila Sen, Adv.

...for the respondent nos. 10 and 11.

Mr. Raghunath Chakraborty, Adv.

Mr. Supratik Shyamal, Adv.

...for the respondent no. 9.

Mr. Saptarshi Mandal, Adv.

...for the state.

1. Complaining illegal construction at the behest of the respondent nos. 9 and 10 at premises no. 6/1/1E, Anil Maitra Road, Ward No. 68, Borough- VIII, the instant writ petition has been filed.
2. When the matter was entertained, this Court was pleased to pass the following order on 20th April, 2026, which reads as follows:-

1. *The present writ petition has been filed, inter alia, complaining illegal construction at the behest of the private respondent nos.9 and 10.*
2. *The petitioners claim to be the owner in respect of a flat at premises no.6/ 1/ 1E, Swinhoe Street, Kolkata – 700 019 now renamed as Anil Maitra Road, Kolkata. The petitioners would complain that the private respondents had initially illegally constructed an additional floor beyond the second floor of the building standing on the aforesaid premises. The petitioners were kept in the dark as regards the same and were not aware that the construction was without the sanction of the municipal authorities. Later, the municipal authorities have regularised the aforesaid illegal construction. The private respondents did not stop there. A further additional construction on the roof of the third floor has been undertaken by the private respondents by placing reliance on the office Circular No.9 of 2013-14 dated 30th December, 2013 and the addendum dated 4th January, 2014. According to the Advocate for the petitioners, since the third floor itself is irregular, no additional construction could have been permitted.*
3. *The private respondent nos.9 and 10 are represented. According to the private respondents, the private respondents upon purchasing the roof of the second floor claim to have constructed on the said property and hold out with pride that the said portion has been regularised by the municipal authorities. It is also the private respondents' case that the private respondents have also disposed of the said portion in favour of the respondent no.11 and are no longer responsible for their act.*
4. *The municipality is represented. Mr. Chatterjee, learned Advocate representing the municipality would submit that the municipality has recently taken note of the illegalities committed and certain steps have been taken though he is not aware as to the exact steps taken by the municipal authorities.*
5. *Noting the case made out, I find the situation that is prevailing at present is alarming. One illegality after another is being committed. In the instant case, I find that the municipality has already regularised the third floor portion. The petitioners would submit that the aforesaid regularisation has been made without giving any notice to the petitioners who are the co-owners of the above premises.*
6. *Though the aforesaid is sufficient to vitiate the order, however, noting that the above order is an appealable order and the petitioners' case is yet to be tested out, though time to file such appeal has long expired, I am of the view, in the given facts if the petitioners are interested to challenge such order, the petitioners must approach the appellate authority. If such appeal is filed within a period of one month from the date, the appellate authority shall, having regard to the peculiar facts, accept such appeal and decide the same on merits. In so*

far as the additional illegal construction undertaken on the rooftop of the building in question, and the allegation of denial of access of the overhead tank are concerned, the respondent nos.4 and 6 are directed to file a report in the matter when the matter is taken up next.

7. *List this matter under the same heading in the monthly list of June, 2026.*
8. *It is, however, made clear that inspection in this regard must be carried out by the concerned authorities within a period of seven working days from the date of communication of this and if any illegal construction is noted, the authorities are directed to take immediate steps notwithstanding the pendency of the present writ petition.*

2. Challenging the said order dated 20th April, 2026 the petitioners had preferred an appeal. Such appeal came to be disposed of by the order dated 17th June, 2026, which reads as follows :-

This is an appeal from an interim order passed by a learned Single Judge dated April 20, 2026. We are not inclined to interfere with the order of His Lordship to the extent that the remedy of the appellant against the order of the Special Officer (Building) lies before the Municipal Building Tribunal. However, the appellant cannot be deprived from making a complaint with regard to the sanction which was allegedly given by the Corporation to the subsequent purchaser of a roof over the three storied building, on the ground of fraud and misrepresentation. Although, Mr. Ranajit Chatterjee learned advocate for the Corporation submits that fraud has to be pleaded and proved. We are of the view that the writ court is not the competent court to decide on such issue.

If the appellant approaches the concerned authority under the statute and can satisfy the authority about the illegality in the grant of the sanctioned plan, necessary orders will be passed. Prima facie, we find that the deviations were regularized by the Special Officer (Building) by an order dated 7th August, 2018. The deviations which were found, have been enumerated in the said order. Moreover, there does not appear to be any finding with regard to additional

floors above the third storey. The sanction, according to the authority was with regard to a three storied building which means G+2.

Thus, the contention of Mr. Chatterjee that the learned Special Officer (Building) had taken care of the two additional floors in the order of regularization, does not appear to be correct. Allegations with regard to the illegal grant of sanction will have to be agitated before the Commissioner, who is the authority to decide whether sanction, if any, for the other additional floors had been obtained by fraud or misrepresentation.

We are not expressing any opinion on the allegations made. The authority will decide the matter in its entirety, in accordance with law. The other issues which are pending before the Writ Court will be decided independently. Undoubtedly, if any complaint is made before the Commissioner with regard to the grant of sanction in respect of additional floor(s) on the premises in question, all parties will be heard, and necessary orders will be passed.

The appeal before the building tribunal may be filed within two weeks from date.

Accordingly, the appeal and the connected application are disposed of.

3. Today, Mr. Ali, learned Advocate for the petitioner would submit that since at this stage the construction on the 4th floor has stopped and the petitioner had decided to prefer an appeal, he does not wish to proceed with the instant writ petition any further.
4. Having regard thereto, the instant writ petition stands disposed of without any order as to costs.

(RAJA BASU CHOWDHURY, J.)