

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:

HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO 813 of 2025

MAYA DASTIDAR

-VS-

THE STATE OF WEST BENGAL & ORS.

WPO 843 of 2025

MAYA DASTIDAR

-VS-

THE STATE OF WEST BENGAL & ORS.

With

WPA 15289 of 2025

KANTI JANA

-VS-

THE KMC & ORS.

For the petitioner	: Mr. Samim Ahmed, Adv. Mr. Arka Ranjan Bhattacharya, Adv. Ms. Gulsanwara Pervin, Adv.
For the KMC	: Mr. Alak Kr.Ghosh, Adv. Mr. Gopal Chandra Das, Adv. Mr. Swapan Kumar Debnath, Adv.

For the respondent No.10. : Mr. Raghunath Chakraborty, Adv.
Mr. Joyjit Roy Choudhury, Adv.

For the State : Mr. Debjit Mukherjee, Adv.
Ms. Priyanka Jana, Adv.

Heard on : **15.01.2026.**

Judgment on : **15th January, 2026.**

RAJA BASU CHOWDHURY, J.:

1. The affidavit-of-service in WPO 843 of 2025 filed in Court today be taken on record.
2. Two writ petitions in the Original Side being WPO 813 of 2025 and WPO 843 of 2025 (hereinafter referred to as the first and second writ petitions) along with the writ petition in Appellate Side being WPA 15289 of 2025 (hereinafter referred to as the third writ petition) are taken up for consideration together.
3. By consent of the parties, the above writ petitions are taken up for final disposal.
4. WPO 813 of 2025 has been filed, inter alia, questioning the authority of the Executive Engineer (Building) to issue a hearing notice in relation to a proceeding under Section 397 of the KMC Act, 1980 for revocation of sanctioned building permit bearing No. 2024110142 dated 13th August, 2024 pertaining to premises No. 87 Milan Park ward No. 110, Borough XI, Kolkata 700084.

5. The first two writ petitions have been filed by the person in whose favour the sanctioned building permit has been issued, while the third writ petition has been filed by a person claiming to be an owner of a neighbouring premises who, inter alia, also claims that the aforesaid municipal building permit has been issued without following statutory provisions and is liable to be cancelled. An application seeking cancellation of the building permit is also on record.
6. Having heard the learned advocates appearing for the respective parties, I find that the writ petitioner in the first two writ petitions in the Original Side who is the holder of the sanctioned building plan claims to be seized and possessed of the land measuring 2 cottahs 11 chitak together with three storied building more fully described as premises No. 87 Milan Park as aforesaid. The aforesaid writ petitioner claims that the property stands mutated in her name and an assessee number has also been allotted.
7. Mr. Chakraborty, learned advocate representing the petitioner in the first two writ petitions would contend that though the municipal authorities after carrying out detailed scrutiny had issued a sanctioned building permit upon realization of statutory fees all on a sudden, a notice has been served on the petitioner in the first two writ petitions inviting the petitioner to appear in a hearing in relation to revocation of the sanctioned building permit. He submits that though an order of revocation can only be issued by the municipal commissioner, the proceeding has been initiated by the Executive Engineer building and as such the entire

proceeding is *non est*. Independent of the above, he would submit that though there was no reason to issue the notice under Section 401 of the said Act dated 14th January, 2025 the same has been illegally issued thereby, jeopardizing the entire project. He would submit that although, the petitioner had brought in men and machinery and has invested huge amount to carry out construction in accordance with the sanctioned building permit, the notice of stop work has been issued in the most mala fide manner. The municipal authorities should not be permitted to act in an arbitrary fashion. In any event, the notice does not highlight the violations committed, accordingly the same also cannot be sustained on such ground as well.

8. Mr. Ghosh, learned advocate representing the municipality has filed a report which is counter signed by the Sub Assistant Engineer (C), Assistant Engineer (C) Building and the Executive Engineer (C), Borough XI dated 20th November, 2025 to highlight the fact that there are irregularities in the petitioner in the first two writ petitions obtaining sanctioned building plan for which appropriate proceedings under Section 397 of the said Act has been initiated. According to him, the notice under Section 401 of the said Act, indicates that the petitioner in the first two writ petitions has acted in violation of the sanctioned building permit, and accordingly, there is no irregularity on the part of the municipality in issuing the same.

9. The writ petition in the Appellate Side pertains to issuance of directions for cancellation of the sanctioned building permit issued in favour of the writ petitioner in the first two writ petitions filed in the Original Side.
10. Having heard the learned advocates appearing for the respective parties, I find that there is a validly issued sanctioned building permit in favour of the petitioner in the first two writ petitions in the Original Side. The municipal authorities, however, are enquiring into certain alleged misrepresentation being made by the said petitioner while obtaining the sanctioned building permit. Mr. Ghosh, however, could not identify the particulars or the reasons why the notice under Section 401 of the said Act has been issued. What has been attempted to be portrayed by the municipality is that since, the sanctioned building plan might have been issued on the basis of incorrect representation being made by the petitioner in the first two writ petitions, the construction should not proceed further.
11. On such ground, I am of the view that it is too premature at this stage to restrain the petitioner in the first two writ petitions from carrying out construction on the basis of a validly and/or invalidly of the sanctioned building permit. If, ultimately the municipal authorities come to a conclusion that the building permit has been issued on the basis of suppression or misrepresentation, it is always open to the municipal authorities to revoke the same and the petitioner in the first two writ

petitions cannot claim any equity, for the municipal authorities having issued the sanctioned building plan.

12. Although on such ground, I find that the notice issued under Section 401 of the said Act is not sustainable since the Statute does not recognize any authority of the municipal commissioner to take any interim step to stop construction on the basis of a purported invalidity of the sanctioned building plan which is yet to be decided. Accordingly, the notice issued under Section 401 stands quashed.
13. Coming back to the writ petition being WPO 813 of 2025, I find though the petitioner in the first writ petition contends that the notice of the proceeding under Section 397 of the said Act can only be issued by the municipal commissioner and the notice issued by the Executive Engineer is *non est*, I find that the Act does not stand in the way of the Executive Engineer intimating the parties of a notice of hearing which in this case is to be held by the municipal commissioner. Simply because the Executive Engineer has notified the petitioner in WPO 813 of 2025 of the date of hearing, the same does not render the proceeding non est or bad. Once, the proceeding has been initiated under Section 397 of the said Act, such proceeding must be brought to a logical conclusion.
14. Considering the peculiar facts at hand and the likelihood of multiplicity of proceedings, it is expected that the municipal authorities shall dispose of the proceeding under Section 397 of the said Act, as expeditiously as possible preferably within six weeks from the date of communication of

this order. In interregnum, the construction, if any, shall take place at the risk and cost of the petitioner in the first two writ petitions provided the notice of commencement of construction has already been issued. If, however, no notice of commencement of construction has been issued, no such notice shall be issued or received by the municipality for a period of eight weeks from the date, within which the proceeding under Section 397 of the said Act must be concluded.

15. Insofar as the writ petition in the Appellate Side is concerned, I am of the view, that the petitioner in the third writ petition may also be heard by the municipal commissioner in relation to the complaint made by the petitioner in the third writ petition. It is expected that the municipal authorities shall disclose all documents which the municipal authorities seek to rely while deciding the application under Section 397 of the said Act, for the writ petitioner in the first two writ petitions to respond to the same.
16. Since, this Court has not called for any affidavits, the allegations made in the writ petitions are deemed not to have been admitted by the respondents.
17. It is also made clear that this Court has not entered into the merits of the cause and it shall be open to the municipal commissioner or its delegates to decide the proceeding in accordance with law. This order shall also not be construed as a blanket injunction restraining the municipal authorities from exercising power under Section 401 of the said Act.

18. With the above observations and directions the writ petitions are disposed of.

19. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(RAJA BASU CHOWDHURY, J.)

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