

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 11266 of 2026

**Tapas Mazumdar
Versus
Kolkata Municipal Corporation & Ors.**

For the petitioner : Mr. Souri Ghosal
Mr. Subhojit Mukherjee

For the Kolkata : Mr. Alok Kumar Ghosh
Municipal Corporation Ms. Ananya Das

Heard on : 14.07.2026

Judgment on : 14.07.2026

Raja Basu Chowdhury, J (Oral):

1. The instant writ petition has been filed by a flat owner who claims to have acquired a flat measuring 1100 sq. ft. super built up area (built up area 880 sq. ft.) on the 4th floor, Block A, along with a garage in the ground floor of Block D within the premises No. 138A Ananda Palit Road, Police Station- Entally, Kolkata (hereinafter referred to as the "said premises").

2. Consequent upon purchase of the aforesaid flat, the petitioner has also got his name mutated in the records of the municipal authorities. The petitioner claims that the respondent no.4 as the

proprietor of M/s. Star Construction and is also the constituted attorney of the erstwhile owners of said premises. The petitioner claims that at the time of purchase of the property the petitioner was disclosed certain material information by the respondent no.4 relating to said premises which, inter alia, included sanctioned building plan and accordingly, being satisfied about the sanctity and legality of the same, the petitioner had purchased the said flat. Unfortunately, according to the petitioner, the respondent no.4 had started making illegal and unauthorized construction over the sanctioned portion of the building comprised within the Block A of the said premises without the sanction of the municipal authorities. The aforesaid action on the part of the respondent no.4 was met with the demolition order issued by the municipal authorities. Unfortunately, in course of demolition work carried out by the municipal authorities, the roof of the petitioner's flat was also demolished though the same was within the sanctioned portion. The petitioner claims to have made several representations before the municipal authorities. Since the representations did not evoke any response, the petitioner has approached this Court by filing the instant writ petition complaining overaction on the part of the municipal authorities.

3. In support of his contention, the petitioner has placed before this Court the deed of conveyance dated 24th March, 2022, the mutation certificate issued by the municipal authorities wherein the petitioner's flat has been allotted an assessee no. 110550206961, and the demand justice dated 23rd March, 2026.

4. When the matter was taken up for consideration, by an order dated 11th June, 2026, this Court had directed the municipality to file a report. Pursuant to such direction, the municipal authorities have filed a report, which has been taken on record.

5. From the aforesaid report it would transpire that the proceedings initiated by the municipal authorities were on the basis of the complaint received by the department on 20th January, 2023 from the Entally Police Station regarding unauthorized construction at the said premises. Accordingly, the department had caused inspection and found ongoing construction work at the 5th storey and several number of RCC columns had been erected at 6th storey over an existing four storied building. On demand the person present at the site failed to produce any sanction plan in support of the said construction, following the same the department issued a stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the "said Act") on 28th January, 2023. Simultaneously, notice of intimation was given to the local police station for necessary steps at their end. Subsequently, the department prepared a demolition sketch and infringement statement and placed the file before the higher authority, to process the file under suitable subsection of section 400 of the said Act. Records reveal that hearing was held at the chamber of Ex. Engr(C)/Bldg./Br.-VI on 4th March, 2023 and 7th June, 2023 as per MC circular 24 of 2021-22 after giving prior intimation to all the effective parties. On both the hearing dates the persons responsible were absent. Subsequently the Ex.

Engr(C)/Bldg./Br.-VI passed the demolition order on 15th June, 2023 and the said demolition order was served to person (s) responsible and in furtherance thereof the demolition programme was finalized on 18th July, 2023 and accordingly the notice under Section 544 and 546 of the said Act was served. Initially, the demolition programme was postponed in terms of an order passed by this Court in WPA 16808 of 2023 (*Buddhadev Kundu v. The Kolkata Municipal Corporation & Ors.*). Subsequently, a further demolition programme was fixed on 27th June, 2024 and on that particular date two number of slab panel of an unoccupied and incomplete flat at 5th storey were demolished with the police assistance from Entally police station. It has been further recorded in the said report that the department received a letter issued by the petitioner herein claiming that the portion of the 5th storey which the department had demolished lies in legal portion, it is only then the department had searched the records and found that there is a sanction plan vide building permit no.2009060021 dated 28th August, 2009 for construction of G+4 storied residential building and the said plan was valid upto 27th August, 2014. In the later part of the report it was clarified, since the plan expired long ago and none had brought the aforesaid sanctioned building plan to the notice of the Executive Engineer (C), Building, Borough-VI on 4th March, 2023 and 7th June, 2023, the demolition order was passed and executed. To morefully appreciated the same, the relevant portion of the report is extracted hereinbelow:

“This is to be mentioned that during the inspection on 28.01.2023 when construction work at 5th storey and above was identified by this department the persons present at the site didn’t informed about sanction plan in respect to the case premises, moreover it is revealed from the office record the sanction plan was already expired more than 8 years ago. Even during the hearing at the chamber of Ex. Engr(C)/Bldg./Br.-VI on 04.03.2023 and 07.06.2023 no one mentioned about the said sanction plan. Demolition work order was passed under Section 400(1) of KMC Act 1980 and demolition work was executed after serving of notice under section 544 & 546 of KMC Act 1980”.

6. Mr. Ghosh, learned advocate appears on behalf of the municipality to justify the above action. He would submit that the petitioner does not have any right to question the order passed by the municipal authority. Secondly, he submits that the previous writ petition filed at the instance of Buddhadev Kundu was though entertained and the demolition order passed by the Executive Engineer dated 15th June, 2023 was directed to be supplied upon payment of requisite fees to the person aggrieved to challenge the same in accordance with law before the appropriate forum, since no further steps had been taken, the municipality had executed the said order. To morefully appreciate the above direction passed by the Coordinate Bench of this Court on 18th July, 2023, the relevant portion of the said order is extracted hereinbelow:-

*“The notice of hearing ought to have been issued to both the addresses.
Admittedly, no notice, opportunity of hearing was granted to the petitioner.*

The petitioner has disclosed his intention to challenge the order of demolition before the statutory appellate forum. As the petitioner was not aware of the proceeding and was not communicated the order of demolition, accordingly, the petitioner did not have any opportunity to approach the appellate forum.

In view of the above, the Executive Engineer (Civil)/Building Department, Borough – VI is restrained from giving any affect or further effect to the impugned notice under Sections 544 and 546 of the KMC Act, 1980 till 30th November, 2023 or until further order whichever is earlier.

In the event the petitioner fails to obtain an order of stay/setting aside/modification of order of demolition dated 15th June, 2023 within the time as stipulated above, then it will be open for the Corporation to proceed with the demolition work.

From the documents annexed to the writ petition, it appears that an application for obtaining the certified copy of the order of demolition dated 15th June, 2023 was made by the petitioner on 22nd June, 2023. The same is yet to be supplied.

The Executive Engineer of the said Borough is directed to immediately supply the certified copy of the order of demolition dated 15th June, 2023 upon payment of the requisite fees.

As the subject property is suffering an order of demolition, accordingly, the petitioner is restrained from making any construction at the subject premises and is further restrained from transferring, alienating the subject property in favour of third parties till the matter is finally adjudicated by the appellate forum.

The Officer-in-Charge, Entally P.S. is directed to keep strict vigil over the property to ensure that no construction in any manner whatsoever takes place at the subject property and the property in question is not transferred/handed over or alienated in favour of third parties.

The writ petition stands disposed of.

Report filed by the Officer-in-charge, Entally P.S. dated 18th July, 2023 be retained with the records”.

7. Independent of the aforesaid it is submitted that the sanctioned building permit which was issued on 28th August, 2009 having long expired and since, portion of the 5th storey was incomplete and

construction work was being carried out at the said portion the municipality had demolished such portion by demolishing the roof of such portion. According to him there is no irregularity in such action. Mr. Ghosh has also placed reliance on an unreported judgment delivered by the Hon'ble Division Bench of this Court in the case of ***The Kolkata Municipal Corporation & Ors. v. M/s Adya Residency (P) Limited and M/s Rajveer Infrastructure Reality Pvt. Ltd. & Ors.***, in APO 47 of 2022 on 30th September, 2022, to drive home the point that unless a sanctioned building plan which has a validity period, is applied for extension before its expiry, the sanction lapses. According to him since the sanction had lapsed, there is no irregularity on the part of the municipal authorities in demolishing the portion at the 5th storey level though such portion was originally sanctioned.

8. The petitioner is represented. He has placed before this Court a copy of the complaint lodged by the petitioner with the West Bengal Real Estate Regulatory Authority in relation to the alleged defaults committed by the respondent no.4. Let such document as placed before this Court be taken on record.

9. Having heard the learned advocates appearing for the respective parties, I find that admittedly in this case the municipal authorities had sanctioned G+4 storied building. It is not in dispute that the flat of the petitioner is at the 4th storey. It would also appear from the materials on record that the Executive Engineer has passed the order impugned in the most reckless manner without bothering to consult his own records. It is utterly shocking that for an officer of the municipality who

passed the order of demolition without bothering to even consult its own records, would take shelter by claiming that none had brought the same to his notice. It must be noted that the legislature taking into consideration the seriousness of an order and the adjudicatory function involved had entrusted the responsibility of adjudicating the same on the Municipal Commissioner. At the same time the Municipal Commissioner whom the legislature felt can be entrusted with such responsibility, in terms of the provisions contained in the said Act, has been allowed the power to delegate his power to such other officer as specified. In the instant case, the Municipal Commissioner did not adjudicate upon the demolition proceedings rather the same was entrusted on a person who did not even bother to consult the records and by reasons of his ignorance the petitioner has been made to suffer. Although, Mr. Ghosh, learned advocate representing the municipality has tried to submit that since the building permit had lapsed, the municipal authorities were within their authority to pass the demolition order, I, however, find that the authority concerned while passing such order did not proceed on such premise. It is well-settled that an order passed by an authority which is impugned cannot be supplanted by way of affidavit or otherwise. Admittedly, the order impugned does not take into consideration the fact that the construction carried out by the person responsible was beyond the validity of the sanctioned building plan. There has been no enquiry into the facts as regards the same. On the contrary, the disclosure made in the report by the Ex.

Engr(C)/Bldg./Br.-VI dated 29th June, 2026 as noted hereinabove, speaks of his ignorance while passing such order.

10. In the peculiar facts as aforesaid, the municipal authorities are directed to forthwith restore the damaged roof of the petitioner's flat and completion thereof shall certify the same through the Executive Engineer. The restoration process should be completed within eight weeks from the date of communication of this order. Time limit indicated is peremptory.

11. Insofar as the petitioner's claim for damages is concerned, I am of the view, it shall not be appropriate for this Court to adjudicate the same as such this Court while keeping such question open, leave it to the petitioner to take appropriate steps before the appropriate forum as may be advised.

12. With the above observations and directions the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)

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A.R. (Court)