

FORM -:- A

IN THE COURT OF SENIOR MUNICIPAL MAGISTRATE CALCUTTA
-:- PRESENT -:- Smt. Parijat Kumar (JO Code No. WB-01111) Senior Municipal Magistrate <u>Calcutta</u>
GR CASE NO. 324 OF 2024
T. R. NO.
CNR NO. WBCS03-000363-2024
Case under Section 401A/392 r/w 584/610 and section 618 of Kolkata Municipal Corporation Act, 1980.
Delivery date of Judgment: 4th day of June, 2026.
Details of the FIR/ Police Station – The instant case is in connection with Narkeldanga Police Station Case No. 230 dated 16.07.2019

COMPLAINANT	-:-	STATE OF WEST BENGAL
PRESENTED BY	-:-	Sri Somraj Dhar, Learned A.P.P. Senior Municipal Magistrate Court, Calcutta
Name of accused persons	-:- -:-	(1). Raja Goswami @ Somnath Goswami (2). Anjan Chandra @ Anjan Kr. Chandra (3). Sibu Chandra @ Tarun Kr. Chandra
Represented by	-:-	Ld. Advocates, Anirban Dutta and Sweta Modi

FORM -:- B

Date of Offence	-:-	On or before 03.07.2019
Date of FIR	-:-	03.07.2019
Date of Charge-Sheet	-:-	11.06.2024
Date of Framing of Charge	-:-	06.11.2024
Date of commencement of evidence	-:-	18.01.2025
Date on which judgment is reserved	-:-	Not Applicable.
Date of the judgment	-:-	04.06.2026
Date of the sentencing order, if any	-:-	04.06.2026

--: **ACCUSED DETAILS** --:

Rank of the accused	Name of Accused	Date of Arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428 CrPC.
01.	Raja Goswami @ Somnath Goswami	Voluntarily surrendered	31.08.2019	401A/392 r/w 548/610 and section 618 of KMC Act	Acquitted	N.A	N.A
02.	Anjan Chandra @ Anjan Kr. Chandra	Voluntarily surrendered	03.10.2019	401A/392 r/w 548/610 and section 618 of KMC Act	Acquitted	N.A	N.A
03.	Sibu Chandra @ Tarun Kr. Chandra	Voluntarily surrendered	31.08.2019	401A/392 r/w 548/610 and section 618 of KMC Act	Convicted	S.I. and Fine	N.A

FORM --: C

--: **LIST OF PROSECUTION/DEFENCE/COURT WITNESSES** --:

A. PROSECUTION :-

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
01.	Sujit Das	Assistant Assessor Collector, Assessment Collection Department, North, KMC
02.	Debasish Chowdhury	Local Witness
03.	Debabrata Das	Local Witness
04.	Tapas Kumar Laha	Assistant Engineer, Building Department, Borough – III, KMC
05.	Gopal Malakar	Local Witness
06.	Sk. Sarif Mohammad	Sub-Assistant Engineer, Building Department, Borough – III, KMC
07.	S.I Debasish Mondal	Investigating Officer of this case
08.	Gopal Balakar	Local Witness

B. DEFENCE WITNESSES, IF ANY :-

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
Nil	Nil	Nil

C. COURT WITNESSES, IF ANY :-

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
Nil	Nil	Nil

-:- **LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS** -:-

(A). **PROSECUTION** :-

Sl. No.	Exhibit Number	Description
01.	Exhibit-P1/PW1	Demand Details
02.	Exhibit-P2/PW1	Inspection Book
03.	Exhibit-P3/PW4	Certified copy of Written Complaint
04.	Exhibit-P4/PW4	Stop Work Notice
05.	Exhibit-P5/PW4	Service Return
06.	Exhibit-P6/PW4	Police Intimation
07.	Exhibit-P7/PW4	Written Complaint
08.	Exhibit-P8 collectively/PW4	Letter for Round the Clock Police Posting
09.	Exhibit-P9 collectively/PW4	Day to Day Inspection Report with Sketch
10.	Exhibit-P10 collectively/PW4	D/Sketch and Infringement Statement
11.	Exhibit-P11 collectively/PW-5	Written Complaint along with GDE slip
12.	Exhibit-P12/PW7	Formal FIR
13.	Exhibit-P13 collectively/PW7	Rough Sketch Map
14.	Exhibit-P14 collectively/PW7	Photographs
15.	Exhibit- P15 collectively/PW7	Notice u/s 91 Cr.P.C to Assessor Collector and reply
16.	Exhibit- P16 collectively/PW7	Notice u/s 91 Cr.P.C to Assistant Engineer, Building Department and reply
17.	Exhibit- P17 collectively/PW7	Notice u/s 91 Cr.P.C to CESC and reply
18.	Exhibit- P18 collectively/PW7	Notice u/s 91 Cr.P.C to the Fire Department and reply
19.	Exhibit- P19 collectively/PW7	Notice u/s 91 Cr.P.C to Water Supply Department and reply
20.	Exhibit- P20 collectively/PW7	Notice u/s 91 Cr.P.C to Ultadanga Traffic Guard and reply

(B). DEFENCE :-

Sl. No.	Exhibit Number	Description
	Nil	Nil

(C). COURT EXHIBITS :-

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

(D). MATERIAL OBJECTS :-

Sl. No.	Material Object Number	Description
Nil	Nil	Nil

1.Facts of the case

1.1. The case of the prosecution as is revealed from the record revolves around offences attracting sections 401A/392 read with sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as KMC Act) allegedly committed by Raja Goswami @ Somnath Goswami, Anjan Chandra @ Anjan Kr. Chandra and Sibu Chandra @ Tarun Kr. Chandra (hereinafter referred to as accused).

The case was set in motion on written complaint filed by Assistant Engineer (AE), (Civil), Building Department, Br-III, Kolkata Municipal Corporation namely Tapas Kumar Laha on 02.07.2019 against Raja Goswami, Anjan Chanda , Sibu Chanda and others relying on departmental inspection report and other relevant documents prepared by Sub Assistant Engineer (SAE), Building Department, KMC namely Sk. Sarif Mohammad. On the basis of the written complaint a specific case being Narkeldanga P.S. Case No. 230 dated 16.07.2019 was registered and the case was endorsed to S.I Debasish Mondal of Narkeldanga P.S for investigation.

1.2. Going through the written complaint, the principal allegation appears to be unauthorized construction flouting the rules and regulations of KMC Act and building rules promulgated in reference to it. Raja Goswami, Anjan Chanda and Sibu Chanda and others were found to be the persons responsible for undertaking said unauthorized construction work at B/104/H/4, Narkeldanga Main Road, Ward-30, Br-III (hereinafter referred as the case premise). It is the specific allegation of

the prosecution that on inspection by the department it was detected that a four storied structure has been raised by demolishing an old structure without obtaining any sanctioned plan, preparatory to such work. As mandated under KMC Act, notice u/s 401 of the said Act vide number 2433 was served upon Raja Goswami, Anjan Chanda and Sibu Chanda and others on 29.06.2019 and intimation of the same was sent to Narkeldanga P.S on 01.07.2019. Subsequently, during re-inspection on 02.07.2019 Raja Goswami, Anjan Chanda and Sibu Chanda and others were found to be continuing the unauthorized construction in the case premise in blatant defiance of the Stop Work Notice. By that time brick work was going on. Furthermore, the defacto complainant expressed that the legality of the unauthorized construction, structural stability of the existing structure and workmanship are unknown to their department and if continuance of the same is allowed, it may cause danger to human lives as because the building may collapse any moment. Moreover, the construction has been done without following the norms and practice of civil engineering. Due to the said unauthorized construction, safety of the public in general is compromised.

1.3. Considering the gravity of the situation, complaint was lodged against Raja Goswami, Anjan Chanda and Sibu Chanda and others u/s 401A of the KMC Act after completion of all necessary official formalities required to be taken up at the end of the complainant's department, on being prima facie satisfied about the nature and commission of the offence and Raja Goswami, Anjan Chanda and Sibu Chanda and others being covered under the status of 'Persons Responsible' in short PR under the said Act.

1.4. After receiving the complaint, formal FIR was drawn up and Narkeldanga P.S. Case No. 230 dated 16.07.2019 was initiated against Raja Goswami, Anjan Chanda and Sibu Chanda and others which ultimately came to a natural end on filing Charge sheet no. 121 dated 11.06.2024 against the present accused namely Raja Goswami @ Somnath Goswami, Anjan Chandra @ Anjan Kr. Chandra and Sibu Chandra @ Tarun Kr. Chandra.

1.5. On the basis of charge-sheet so submitted in connection with this case, cognizance was taken by this Court.

1.6. The accused persons subsequently surrendered before this court and they were enlarged on bail. Thereafter, the copies of police report and relevant documents or relevant extracts thereof forwarded with the police report under section 173 of the Cr.P.C. were furnished to the accused persons, free of cost, in accordance with the provisions of Section 207 of the Cr.P.C.

1.7. After compliance of the provision enshrined under section 207 of the Cr.P.C, upon consideration of police report and the documents sent with it under section 173 of the Cr.P.C, after hearing both sides, the Court formed opinion that there was sufficient ground for presuming that the accused persons have committed offence triable and punishable under Section 401A/392 read with sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980. On 06.11.2024 formal charge under Section 401A/392 read with sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980 was framed against the charge-sheeted accused persons. The contents of the charge were read over and explained to them. The accused persons pleaded to be not guilty and claimed to be tried and accordingly, this Court proceeded into trial for the examination of the witnesses.

1.8. Subsequently, after completion of the evidence of prosecution, as per mandate of law the accused persons were examined under section 313 of the Code of Criminal Procedure on 29.01.2026 by putting the necessary questions before them which transpired during trial. During the examination of the accused it was stated before this court that they do not intend to adduce evidence and as a result the defence witness was closed. The defence case as it appears from the trend of cross-examination of the witnesses and from the answer given by the accused persons at the time of their examination under section 313 of the Code of Criminal Procedure is denial of the prosecution case with stress on their innocence. After hearing both sides on the points of argument this date was fixed for delivery of judgment.

- **Argument on behalf of Prosecution**

The prosecution opened the argument stating that they have successfully brought home the charges framed against the accused on the basis of cogent, reliable and un rebutted evidence, both oral and documentary. It is further submitted that the main aim of the Kolkata Municipal Corporation Act is to amend and consolidate the laws relating to the municipal affairs of Kolkata. Whereas it is imperative to obtain sanctioned plan before initiating any construction work within the jurisdiction of Kolkata Municipal Corporation u/s 396 of the Act, the accused persons completely disregarding the same have raised illegal construction on the case premise. There is direct and substantial evidence in support of the same. Furthermore, it must be taken into account that such unauthorized construction which still exists is not only a source of continuous menace for the immediate locality and the society at large but also hinders the natural growth of a city and cannot be ignored. The nature of the unauthorized construction at the said premise also poses a serious threat to the safety of human life and limb and may disintegrate the services providing basic amenities at or around the case premise. He prayed for conviction of the accused u/s 401A and other sections under which they have been charged.

- **Argument on behalf of Defence**

Ld. Advocates for the defence submitted that the accused have been falsely arraigned in this case without completing the prerequisites for filing of such complaint. They completely denied the charges framed and argued that the accused persons are not persons responsible within the meaning of section 392/401A/618 of KMC Act. In view of the above arguments, Ld. Defense Counsel prayed for acquittal of the accused.

2. Points for determination

2.1. As the accused persons have been charged under sections 401A/392 r/w sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980, so the prosecution is required to prove the following points.

a. Whether the accused persons constructed/ erected or attempted to so construct/ erect or conspired to so construct/ erect a four storied structure by demolishing an old structure at the case premise in contravention of the provisions of the Kolkata Municipal Corporation Act, 1980 or the rules made thereunder, as endangers or is likely to endanger human life, or any property of the Corporation, whereupon the water supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard?

b. Whether the accused persons erected or commenced to erect a four storied structure by demolishing an old structure at the case premise or executed any of the works specified in the sections 390 of the Kolkata Municipal Corporation Act, 1980 except with the previous sanction of the Municipal Commissioner, in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980 in relation to such erection of building or execution of work on payment of such fees as may be determined by the Corporation?

c. Whether the accused persons failed to comply with any notice, order or requisition issued under any provisions of the Kolkata Municipal Corporation Act, 1980 or otherwise contravened any of the provisions of the said Act? AND

d. Whether the prosecution have been able to prove all the charges or any of the charges against the accused persons and whether the accused are liable to be convicted and punished accordingly?

3. Burden of Proof and Onus Probandi

3.1. At this juncture it is necessary to refer some of the guiding principles of appreciation of evidence in criminal jurisprudence. The discussion should start referring to sections 101 and 102 of the Indian Evidence Act, 1872.

S. 101- Burden of proof.- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

This section is based on the rule, i.e. **incumbit probation qui dicit, non qui negat**- the burden of proof of proving an act rest on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof.

S. 102. On whom burden of proof lies.- The burden of proof in a suit or proceeding lies on that person whom would fail if no evidence at all were given on either side.

This section embodies a test for ascertaining on which side the burden of proof lies. The prosecution having brought the charges against the accused is thus bound to prove the same or else the matter would fail. The accused on the other hand, must be presumed to be innocent until proven guilty. Presumption of innocence is a human right though subject to statutory exception. The nature of the offence, its seriousness and gravity have to be taken into account into this consideration [**Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, 2011 Cr LJ 705 : (2010) 13 SCC 657**]. Though for the prosecution this burden is initial and may be discharged by production of relevant evidence requiring the onus of proof to shift on the accused.

The extent of this proof in criminal cases is proof beyond reasonable doubt as the potential consequences for the other side are severe. But that does not mean absolute, metaphysical certainty which is practically impossible to achieve. Instead it requires a level of certainty that would satisfy a reasonable person. At the same time, the doubt cast on such proof produced by the prosecution must be reasonable, meaning it must be based on logic and commonsense and not on speculation or prejudice.

3.2 It is also necessary to note that it always the quality of the witnesses and not their quantity that is crucial for the just adjudication of a case. And the veracity of a witness can be best judged by comparing the ocular evidence with the available documentary exhibits.

List of prosecution witnesses is already provided (Supra) (Form no. C).

The list of all exhibited/admitted documents is already provided (Supra) (Form no. C).

In consideration of the above principles, the evidence forwarded by the prosecution must be discussed in detailed to determine if the ingredients of charges framed have been proved or not.

4. Decision with Reasons

4.1. The quintessence of the prosecution case is unauthorized construction within the purview of the KMC Act and non-compliance of directions/notices issued thereunder, thereby, attracting both penal provisions being 392/401A read with section 610 and section 618 of the KMC Act and demolition of the impugned construction by Court as provided under section 584 of the KMC Act.

4.2. At the onset it is necessary to mention that prosecution has brought charges under the above mentioned provisions against accused Raja Goswami @ Somnath Goswami, Anjan Chandra @ Anjan Kr. Chandra and Sibu Chandra @ Tarun Kr. Chandra referring them to be “*Persons Responsible*” for raising such construction.

4.3. It is also relevant to note that Kolkata Municipal Corporation Act being a special Act has delineated a specific window for initiating trial of the cases of instant nature before Court under section 620 of the said Act. The relevant provision is reproduced hereunder:

S. 620 Prosecutions- Save as otherwise provided in this Act, no Court shall proceed to the trial of any offence punishable by or under this Act except on the complaint of, or upon information received from the Municipal Commissioner or any person authorized by him by general or special order in this behalf.

Kolkata Municipal Corporation has issued Circular No.173 of 2019-2020 dated 04.03.2020 whereby Municipal Commissioner of Kolkata delegated his power under the KMC Act vide section 48, which reads as follows:

“ It is hereby ordered that the structure of delegation of Municipal Commissioner’s Power regarding various aspects of the Building Department of KMC will henceforth be as mentioned below:

Generation of 'Stop work' Notice u/s 401 of KMC Act – SAE (C/Building)/of concerned Borough/Ward

Notice u/s 401A of the KMC Act- Action against construction of building in contravention of the provisions of the Act or Rules- AE(C/Building)/of concerned Borough/Ward upon obtaining report from SAE(C/Building)/of concerned Borough/Ward

4.4. In consonance to the said provision, Tapas Kumar Laha bearing the post of Assistant Engineer (AE), Civil, Building Department, Br-III, KMC having jurisdiction over the case premise being no. B/104/H/4, Narkeldanga Main Road, Ward-30, Br-III lodged the present complainant and has been examined as PW-4. He was assisted by Sub Assistant Engineer (SAE) of his Borough namely Sk. Sarif Md. examined as PW-6 in conceptualizing the case. Investigating Officer i.e. S.I Debasish Mondal examined as PW-7 was endorsed with the investigation of the case and he prepared the formal FIR to initiate Narkeldanga P.S. Case No. 230 dated 16.07.2019. The representative of the Assessment Department has been examined as PW-1. Additional three local witnesses have been examined as PW-2, PW-3 ,PW-5 and PW-8.

4.5. At this stage,whether the evidence adduced from the side of the prosecution is enough to prove the case beyond reasonable doubts, is the matter which needs elaborate discussion. Prosecution has taken the lead to establish its case. The witnesses are mostly office bearers. Be that as it may, considering the nature of the offences with which the accused have been charged and the requirement of technical expertise to perceive the same, office bearers are the best witnesses on condition that they are able to prove the charges satisfactorily. The evidence of the independent witnesses must also be scrutinized to understand its probative value.

4.6. A detailed reading of both oral and documentary evidence on record suggest that the process of this case was set into motion when SAE along with AE examined as PW-6 visited the case premise on 29.06.2019 after receiving written complaint from Gopal Malakar. The certified copy of the written complaint has been marked as **Exhibit-P3**. This led to detection of construction of four storied

building raised after demolishing the old structure. They did not find any display board at the site of the construction and on demand nobody present at the site and engaged in construction work could produce any valid document in support of the construction work which led them to conclude that the said construction is unauthorized in nature. On further local inquiry, they came to know that Raja Goswami, Anjan Chanda and Shibu Chanda and others were the persons responsible for raising such construction. The said situation prompted SAE to take action and he prepared a Stop Work Notice u/s 401 KMC Act bearing his signature. The Stop Work Notice was received but S.R was refused to be signed. The certified copy of said notice and SR have been marked as **Exhibit-P4** and **Exhibit-P5** respectively.

In this respect the specific provision u/s 591 of the KMC Act regarding admissibility of certified copies must be mentioned.

S. 591 Admissibility of document or entry as evidence – A copy of any receipt, application, plan, notice, order or other document or any entry in a register in the possession of any municipal authority shall, if duly certified by the legal keeper thereof or other person authorized by the Municipal Commissioner in this behalf, be admissible in evidence of the existence of the document or entry, and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original document or entry would, if produced, have been admissible to prove such matters and transactions.

In this case AE has produced these documents stating that SAE had prepared the same. SAE also admitted such documents. Thus, on collective reading of Circular No. 173 of 2019-2020 dated 04.03.2020 and Section 591 of the KMC Act certified copies of Stop Work Notice and S.R are admissible as if were the original copies of those documents. In this principle, the other documents produced by AE and confirmed by SAE are also admissible.

SAE also prepared an inspection report with sketch on the basis of which AE sent police intimation to Narkeldanga P.S on 01.07.2019 for restraining unauthorized construction at the case premise. Certified copy of police intimation has been

marked as **Exhibit-P6**. Subsequently, SAE revisited the case premise on 02.07.2019 and found the unauthorized construction being continued in blatant defiance of the Stop Work Notice. By that time brick work was going on. Accordingly, SAE prepared a report. On the basis of the said report AE (PW-4) lodged written complaint/FIR at Narkeldanga P.S against the accused/PR. The said written complaint in original duly signed by PW-4 has been marked as **Exhibit-P7**. On subsequent occasion they again inspected the case premise and found that construction work has commenced. Letters for Round the Clock Police Posting were issued on 27.08.2019, 09.07.2019 and 08.07.2019 marked Exhibit-P8 collectively. During the several visits at the case premise, Day to Day Inspection Report was prepared reflecting the findings at the case premise and the corresponding steps taken by the department. Certified copy of said Inspection Report has been collectively marked as **Exhibit-P9**. As the construction work was not stopped a proposal for demolition was made and the matter was referred to Superior Authority. Certified copy of D/Sketch and Building Rule Infringement Statement have been marked as **Exhibit-P10 collectively**. The total area of unauthorized construction was ascertained to be 696 Sq. mtrs. The evidence of Assistant Engineer examined as PW-4 and Sub-Assistant Engineer examined as PW-6 are mutually corroborative. Both PW-4 and PW-6 deposed that no LBS/ESE report was found in respect of the alleged construction. There was no document of structural stability. Additionally, due to raising of such kind of unauthorized construction, there is every possibility of the construction causing damage to the drainage, sewerage system and water supply. There is possibility of disruption of road traffic and fire hazard and there is every possibility of causing danger to human life and property.

4.7. Adhering to the cardinal principle of initial burden of proof on the prosecution, it is evident that in the cases of instant nature the prosecution must prove the following to succeed:

i) The corpus delicti i.e. the unauthorized construction.

ii) Involvement of the accused in raising such unauthorized construction being person responsible.

4.8. At the same time, accused have challenged the instant proceeding mainly on the ground prosecution could not prove the charges. Accused have prayed for acquittal on this ground.

4.9. A detailed discussion of the evidence on record has to be undertaken to determine the factum probandum.

4.10. **Exhibit-P3** is the certified copy of written complaint as available in the office of KMC Building Department. Vide this complaint it was alleged that Gopal Malakar resides at premise No. 104/5, Narkeldanga North Road and unauthorized construction is undergoing at premise No. 104/4, Narkeldanga North Road. Promoter Raja Goswami had already made construction in illegal manner up to three storied building by demolishing the existing structure. He has fixed a large size gate opposite to the window of his residential room with ulterior motive. The construction has been made in a *Busti* area in the way of narrow and blind lane. As a result of this construction, his privacy is hampered.

4.11. **Exhibit-P4** is the **Stop Work Notice**.

Section 401 KMC Act is the underlying provision.

Exhibit-P4 is notice no. **2433** issued to PR Raja Goswami, Anjan Chanda, Shibu Chanda and others for stopping all construction work including addition and alteration at premise no. B/104/H/4, Narkeldanga Main Road, Ward-30, Br-III dated 29.06.2019. **Exhibit-P5** is the return of service of the Stop Work Notice. Both **Exhibit-P4** and **Exhibit-P5** have been prepared by SAE, examined as PW-6 who had deposed that the said notice was duly served but the S.R was refused to be signed. AE has corroborated such service of Stop Work Notice. That apart there is a specific column regarding the mode and manner of such service of notice. The categories are on the person addressed, on adult male member of present owners family, on his servant, being affixed at the premise or sent by registered post. PW-6 has left this column vacant. Moreover, he has not obtained the signature of any

independent witness to prove such service further. It is not clear as to why the other modes of service were not used.

4.12. Next document is the **Police Intimation** marked **Exhibit-P6**. PW-4 admitted that he had issued police intimation to O.C, Narkeldanga P.S referring to notice u/s 401(1) of KMC Act being served on the persons responsible in reference to the case premise requesting followup action in prevention of unauthorized construction therein. To pursue the same further information given relates to the specifications of Stop Work Notice, status and nature of unauthorized construction. The nature of unauthorized construction is mentioned as four storied RCC framed structure.

4.13. The **written complaint** marked **Exhibit-P7** was filed against PR, Raja Goswami, Anjan Chanda, Shibu Chanda and others on 02.07.2019. The gist of the written complaint can be produced in the following manner:

- This case was started for four (04) storied RCC framed structure construction was going on without obtaining sanction from The Kolkata Municipal Corporation. No sanctioned documents were found for the ongoing construction. Stop Work Notice Vide No. 2433 dated 29.06.2019 was issued upon the P.Rs, P.S- Narkeldanga was informed accordingly on 01.07.2019.
- On further departmental inspection it was seen that P.R continued the unauthorized work of by brick work defying Stop Work Notice u/s 401 of KMC Act.
- It has been mentioned here that the premises is situated within a congested area and if this construction is allowed to continue may collapse at any date endangering adjoining property and human lives of the inmates, neighbours and passerby and may disrupt water supply, Drainage, Sewerage or the Road Traffic system and may cause fire hazard. Structural stability against all possible action of loading including Earthquake load & quality of material used for the said construction is also unknown. The whole

unauthorized construction work is being done in a haphazard manner without maintaining the Civil Engineering code of practice.

- Hence, written complaint was lodged u/s 401A of the KMC Act against the person responsible.

4.14. The letters for Round the Clock Police Posting dated 27.08.2019, 08.07.2019 have been marked as **Exhibit-P8 collectively**.

4.15. At this stage it is necessary to discuss the **Day to Day Inspection Report** marked **Exhibit-P9 collectively** to grasp the various stages before the filing of written complaint. The relevant document shows a hand drawn sketch of the case premise which is not to scale. There are two parts to the sketch i.e. plan and section. The sketch shows construction of four storied RCC framed structure at the case premise. On perusal of the daily entries, the depositions of PW-4 and PW-6 are corroborated to the effect that on inspection it was found that PR has constructed four storied RCC frame structure. On demand PR could not produce any valid document for such construction and as a result Stop Work Notice was issued. PI was submitted. Even then the construction continued defying notice after which FIR was lodged. Proceeding u/s 400 of the KMC Act was also initiated.

4.16. **D/sketch and Infringement Statement** have been marked as **Exhibit-P10 collectively**. The **D/Sketch** shows construction of four storied structure. **Infringement statement** shows that several provisions of KMC Building Rules 2009 have been violated. In violation of Rule 62 no open space has been provided on any side of the building and the open space provided in the front and rear of the building is less than the permissible limit. FAR is found to be 3.83 where the sanctioned limit was 1.75. Hence, Rule 69 has been violated. Ground coverage has been mentioned as 98.01% where the statutory limit was 60%. Hence, Rule 70 has been violated. The height of the building is mentioned as 12 meter raised without obtaining any sanction plan where the permissible limit was 10 meter. Hence Rule 74 has been violated. Furthermore, nothing is known regarding structural design

and quality of materials used including workmanship. As such, Rules 133 and 134 have been violated respectively.

4.17. During investigation I.O being S.I, Debasish Mondal deposing as PW-7 narrated that on 03.07.2019 he was endorsed with the investigation of this case. The relevant endorsement has been marked as **Exhibit-P7/1**. On the basis of the written complaint he prepared the formal FIR marked as **Exhibit-P12**. He visited the PO on 16.07.2019 and saw that there was a G+III storied building constructed at the case premise. He specifically noted the case premises to be B/104/H/4, Narkeldanga Main Road, Ward-30, Br-III. He prepared the rough sketch map marked **Exhibit-P13**. He took certain photographs using his mobile phone and obtained printouts. The said photographs have been marked as **Exhibit-P14 collectively**. He had recorded the statements of Debobrata Das and Debasish Chowdhury who have been duly cited in the charge sheet as corroborative local witnesses. From their examination he came to know that accused were constructing at the case premise. There was no display board at the site. During investigation I.O issued several notices u/s 91 Cr.P.C to Assessor Collector, Assistant Engineer Building Department, CESC, Fire Department, Water Supply Department and Ultadanga Traffic Guard. The relevant documents have been marked as **Exhibit-P15 collectively to Exhibit-P20 collectively**.

He could not issue any notice upon accused as he could not find them. No sanction was produced by the accused in respect of the construction at the case premise. KMC also did not provide any sanction plan. Subsequently, charge sheet no. 121/2024 dated 11.06.2024 u/s 401A of KMC Act was filed against accused persons and is tagged with the record.

4.18. **Corpus delicti** means that before seeking to prove that the accused is the author of the crime it must be established that the crime charged has been committed. The strongest proof of corpus delicti in the instant case is to prove the existence of a construction which is unauthorized under the KMC Act and rules framed thereunder.

4.19. Before embarking on further discussion, it is necessary to discuss the provisions related to requirement of sanction before construction and consequences of contravention thereof. The relevant provisions being sections 390 (1) (a)/ (k), 393, 396, 398 of Kolkata Municipal Corporation Act, 1980 read with Rule 3 and 4 of Kolkata Municipal Building Rules, 2009 are enumerated for understanding the gravity of the offences alleged.

Section 390- In this Chapter, unless the context otherwise requires-

(1) the expression “to erect a building’ means-

(a) to erect a new building on any site, whether previously built upon or not.

(k) to make any addition to a building.

S. 393, Erection of building.- Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form together with such fees including Drainage Development fee and containing such information as may be prescribed:

Provided that the Corporation may also levy fees under this section with retrospective effect.

Section 396 provides for sanction or provisional sanction or refusal of building or work.

S. 398. When building or work may be proceeded with.- (1) Where within a period of sixty days or, in cases falling under clause (b) to clause (m) of Sub-section (1) of section 390, within a period of thirty days of the receipt of any notice under section 393 or section 394 or of any information under section 395 the Municipal Commissioner does not refuse the sanction to the erection of any building or the execution of any work or, upon refusal, does not communicate the refusal to the person who has given the notice, such person may make a representation in writing to the Mayor.

Provided that if it appears to the Municipal Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Municipal

Commissioner may withhold sanction to the erection of the building or the execution of the work for such period, not exceeding six months, as he may deem fit, and the period of sixty days or, as the case may be, the period of thirty days, specified in this sub-section , shall be deemed to commence from the date of the expiry of the period of which the sanction has been withheld.

(2) Where the erection of a building or the execution of a work is sanctioned the persons who has given the notice shall erect the building or execute the work in accordance with such sanction and shall not contravene any of the provisions of this Act or the rules or the regulations made thereunder or of any other law in force for the time being.

(3) If the person as aforesaid or any one lawfully claiming under him does not commence the erection of the building or the execution of the work within two years of the date on which the erection of the building or the execution of the work is sanctioned, he shall give notice under section 393 or , as the case may be, under section 394 for fresh sanction and the provisions of this section shall apply in relation to such notice as they apply in relation to the original notice.

(4) Such person shall, before commencing the erection of the building or the execution of the work within the period specified in sub-section (3), give notice to the Municipal Commissioner of the proposed date of commencement of such erection or such execution:

Provided that if the commencement does not take place within fifteen days of the date so notified, the notice shall be deemed not to have been given and a fresh notice shall be necessary in this behalf.

The relevant provisions of Kolkata Municipal Corporation Building Rules, 2009 which must find mention here are as follows:-

Rule 3. Prohibition of erection of building without Building Permit.- (1) No person shall erect a new building, or re-erect, or make addition to, or alteration of any building, or cause the same to be done as specified in section 392, without obtaining a sanction in the form of a Building Permit from the Municipal Commissioner under the Act, and without obtaining such permission for

development from the concerned authority as may be required under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Ben. XIII of 1979).

Rule. 4. Notice for erection or alteration of a building.- (1) Every person who intends to erect a new building on any site whether previously built upon or not or re-erect or make addition to or alteration of any building shall apply for sanction by giving notice in writing to the Municipal Commissioner.

4.20. The trend of evidence as forwarded by prosecution suggests that on the basis of written complaint, SAE (PW-6) visited the case premise along with AE (PW4) and found that a four storied RCC framed structure has been constructed without any building sanction plan. As such Stop Work Notice was issued and police intimation was sent. It is further deposed that Stop Work Notice was defied and construction was carried on. Written complaint was filed wherein it has been mentioned that the premises is situated within a congested area and if this construction is allowed to continue may collapse at any date endangering adjoining property and human lives of the inmates, neighbours and passerby and may disrupt water supply, Drainage, Sewerage or the Road Traffic system and may cause fire hazard. Structural stability against all possible action of loading including Earthquake load & quality of material used for the said construction is also unknown. The whole unauthorized construction work is being done in a haphazard manner without maintaining the Civil Engineering code of practice. For stopping the progress of work application for Round the Clock Police Posting has been made. In the Day to Day Inspection Report it is noted that work was in progress and it was a four storied building. Accordingly, demolition proceedings were initiated and D/sketch and infringement statement were prepared. D-sketch also showed that the structure at the case premise is four storied. I have already discussed the infringement statement which revealed violation of Rule 62, 69, 70, 74, 133 and 134 of the KMC Building Rules 2009. The area of the unauthorized construction is stated to be 696 sqm.

Investigating Officer prepared rough sketch map locating the PO. But he apart from locating the P.O by the side of Narkeldanga North Road did not mention a single premise beside it. Several photographs of the PO marked **Exhibit-P14 collectively** which shows an under construction four storied building. IO being PW-7 stated that he had clicked these photographs using his mobile phone and obtained printouts. The said photographs to be tendered as primary evidence must be supported by the seizure of the instrument or the memory card used for clicking the photographs. Admittedly the mobile phone used by IO should have been seized. In the case of secondary evidence the observation made in the following precedent is most relevant.

In **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors.** Hon'ble Supreme Court has observed that the non-obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf. Oral evidence in place of such certificate cannot possibly suffice as Section 65B (4) is a mandatory requirement of the law. It clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise.

But such certificate can be filed anytime before the commencement of trial. In this case IO (PW-7) neither seized the original instrument used for making the photographs nor provided any certificate. During cross-examination I.O admitted that he had taken the print out of the photographs from the P.S printer. That he did not submit any certificate for the photographs and the premise number is not visible in the photographs.

Consequently, such photographs marked **Exhibit-P14 collectively** cannot considered to have any evidentiary value.

But that apart I.O admitted to have seen a G+III storied building at the case premise.

At this stage the cross-examination of the witnesses must be discussed. AE and SAE stated that after obtaining permission from Executive Engineer. FIR was

lodged. The Day to Day Inspection Report was shown to the Executive Engineer who had signed on the same. On the basis of Day to Day Report other documents were prepared. The consequences of unauthorized construction is not mentioned in the said report. They are not structural engineers. They did not communicate with the complainant or try to procure any other documents regarding involvement of the accused. They did not prepare any foundational sketch and did not take any step for testing of building materials. They did not receive any complaint from other departments of KMC. I.O stated that he did not pray for joint inspection. He did not receive any complaint from other departments of KMC.

Now coming to the evidence of local witnesses. The prime evidence in this respect is of PW-5 namely Gopal Malakar. He stated that the case premise is next to his house. There is a G+III storied building constructed at the case premise. He knows the accused. Raja Goswami is the promoter who constructed the building at the case premise. The other two accused are the owners of the case premise. Now the persons who have purchased portions of the building stay there. Shibu Chandra also stays in the building. He had informed the matter to police vide GDE No. 1169 dated 11.05.2025. The relevant GDE slip has been marked as **Exhibit-P11** collectively. During cross-examination he stated that police did not interrogate him. He could not submit any document to show that Raja Goswami is the promoter. He could not say who had written his complaint, the dimensions of the case premise and the address of the adjacent premises. He is deposing in this manner as he has anger over the promoter due to his activity. The promoter has demolished his house. He could not say if he had written the fact of demolition of his house by promoter in the complaint to PS. He does not understand English.

Now, considering the nature of the arguments and cross-examination of PW-5 it is clear that defence has tried to question the exact address of the case premise. From the written complaint marked **Exhibit-P3** it appears that it was in respect of premise No. 104/4, Narkeldanga North Road and only against Raja Goswami. PW-5 claimed that he is a resident of premise No. 104/5, Narkeldanga North Road. On the basis of this complaint KMC initiated process in respect of premise No.

B/104/H/4, Narkeldanga North Road. All the evidence in this case pertain to the premise No. B/104/H/4, Narkeldanga North Road. The representative of Assessment Department did not mention premise No. 104/4 and B/104/H/4 both on Narkeldanga North Road to be same premise. Accused Shibu Chanda stated during cross-examination that the premise is a Busti area and there is one storied house in this premise. For this reason defence had questioned I.O regarding joint inspection. Moreover, in the written complaint i.e. **Exhibit-P3**, PW-5 has stated that he being resident of premise No. 104/5, Narkeldanga North Road is a tenant under Jogmaya Basak, Soroma Pal, Anima Ghosh and Nilima Basak respectively but from the Inspection Book marked **Exhibit-P2**, Madhabi Basak and Janabi Basak are found the recorded owners of premise No. B/104/H/5, Narkeldanga North Road. Now coming to the GDE marked **Exhibit-P11**, it appears that PW-5 had submitted an injunction from court on 07.11.2022. In spite of that promoter Somnath Goswami came to his house on 06.07.2023 and threatened him. There is no allegation of unauthorized construction regarding the case premise in the GDE. Moreover, these documents were not seized during investigation. PW-5 was not interrogated by police or examined by the KMC Building Department. PW-5 could not submit any document to show that Raja Goswami is the promoter. He could not mention the address of the adjacent premises to the case premise. He added that promoter has demolished his house but this fact is not mentioned in the written complaint filed by PW-5 marked as **Exhibit-P3**. He could not say who had written his complaint and admitted that he does not understand English. The other independent witnesses i.e. Debasish Chowdhury and Debabrata Das as examined by I.O did not identify the accused. Debasish Chowdhury is a resident of the locality of the case premises and stated that there is a two storied building at the case premise. He does not have any knowledge regarding construction at the case premise. Debabrata Das is also a resident of the same locality, identified the case premise and stated that there is a four storied building at the said premise. The last independent witness was examined as PW-8 stated that accused used to reside at the case premise but

could not show any document in support of the same. He stated that there is a four storied building at the case premise.

In view of the above discussion, it can be concluded that PW-3, PW-5 and PW-8 have stated that there is a four storied building at the case premise. I have already discussed the doubts regarding the evidence of PW-5. The role of the accused would be discussed under the second point.

During investigation, I.O had issued several notices u/s 91 Cr.P.C, the KMC Building Department had submitted Infringement Statement. Ultadanga Traffic Guard vide report marked **Exhibit-P20** stated that there is a four storied building at the case premise.

4.21. Section 392 of the KMC Act provides that no person shall erect or commence to erect any building or execute any of the works specified in section 390 except with the previous sanction of the Municipal Commissioner and in accordance with the provisions of this Chapter (ch-22) and of the rules and the regulations made under the KMC Act in relation to such erection of building or execution of work. Schedule VI of the Act provides the respective penalty.

4.22. As a necessary consequence of the above discussion, it becomes clear that the prosecution has succeeded in proving the presence the four storied structure at the case premise for which the KMC Building Department has brought the allegation which has been raised without any sanction plan. During investigation no sanction plan was obtained by I.O. Such construction is proved to be covered u/s 392 of the KMC Act. Hence, corpus delicti is proved.

4.23. Moving on to the next penal provision, section 401A of the Act starts with a non obstinate clause and stipulates that notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person who being responsible by himself or by any other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of this Act, or the rules made thereunder as endangers or is likely to endanger human life, or any property of the Corporation whereupon the water-

supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard, shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees. Here “Person” shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new building or additional floor or floors of any building as aforesaid.

4.24. There is a basic difference in the nature of unauthorized construction covered under section 392 and section 401A of the KMC Act. Whereas the former covers within its ambit any unauthorized construction the latter does not punish every deviation but only those which contain gravity of endangering human life, limb and property along with dismantling the basic civic amenities. In this particular case it is well established that no sanction was taken for construction at the case premise.

The investigating Officer during the course of investigation had issued several notices u/s 91 Cr.P.C for obtaining reports of the various departments being affected by any unauthorized construction. Pertinent to note that CESC replied that no application for temporary construction purpose was received for the case premise. The relevant report has been marked as **Exhibit-P17 collectively**. Fire Department reported that the buildings which come under the purview of West Bengal Fire Service Act 1950 are high rise building. A copy of notification NO. 279/DS/FS/O/C-1/F1A-3/96, dated 08/07/2023 was enclosed. The relevant report has been marked as **Exhibit-P18 collectively**. Water Supply Department reported that they did not receive any application for new filter water connection. The unauthorized construction at the case premise may cause disruption in local water supply system if the building collapses and damages the filter water main. The relevant report has been marked as **Exhibit-P19 collectively**. Ultadanga Traffic Guard replied that they found a four storied building at the case premise which is abutted Narkeldanga North Road about 6-7 feet wide. The said lane is used for

pedestrian or two wheeler movement. There is no pavement around the building. The building is situated in a densely populated area and if collapses. There is possibility of disruption of movement of pedestrian traffic and vehicular traffic in that locality and may also disrupt water supply, drainage, sewerage etc. in the locality. The relevant report has been marked as **Exhibit-P20 collectively**. Thus, the essential departments have completely put forward and supported the possible consequences of the unauthorized construction at the case premise. It is irrelevant if such consequence were not mentioned in the Day to Day Inspection Report.

It must be perceived that the instant case is related to a building which has been extended without any sanction. The entire construction process has been taken up skipping every vigilance protocol of government specially structural assurance of any technical person either government empanelled or private. Structural stability certificate of the case premise is not available. The building rule infringement specifically states that nothing is known regarding the materials used and structural design. AE and SAE were questioned about their capacity of judging the structural stability of the construction at the case premise. Both of them admitted that they are not structural engineers. They did not prepare any foundation sketch. They did not receive any complaint from other departments.

In this respect following provisions of the KMC Building Rules 2009 are noteworthy.

S. 133. Structural design

(1) The structural design of foundation, masonry timber, plain concrete, reinforced concrete, pre-stressed concrete and structural steel shall be in accordance with the provisions of the latest edition of National Building Code of India or Bureau of Indian Standards (BIS).

S. 134 Quality of materials and workmanship

All materials and workmanship shall be of good quality conforming generally to the accepted standards of the Public Works Departments of the Government of West Bengal or Indian Standard Specifications as included in Part V Building

Materials and Part VII on Construction Practices and Safety, of the latest edition of the National Building Code of India.

S.136 Tests

Whenever there is insufficient evidence of compliance with the provisions of these rules or there is evidence that any material or method of design does not conform to the requirements of these rules, or in order to substantiate any claim for alternative materials, or design, the Municipal Commissioner may require tests to be made sufficiently in advance as proof of compliance and such tests be made at the expenses of the owner and in such manner as the Municipal Commissioner may direct.

It is the intention of the legislature that every construction undertaken within the jurisdiction of the KMC must confirm to the said standards and the P.R is required to ascertain the same. Hence, it is the P.R who had the duty of proving the quality of the materials used in the construction to confirm to the statutory requirements. But the Infringement Statement speaks otherwise. Violation of Rules 133 & 134 were noted. Moreover, the sole fact that the building at the case premise was raised without any knowledge to the Essential Departments is no ground for doubting the presence of such building and its consequences in the face of evident oral and documentary evidence as discussed so far. As a necessary inference of such evidence, the consequences of such construction undertaken at the case premise in violation of statutory provisions are clearly established.

4.25. In this situation the alleged unauthorized construction at the case site can be a catalyst leading to a catastrophe which may claim the life of the people using the building or the locality and can damage government property and basic amenities. Answering Ld. A.P.P for the prosecution, Assistant Engineer and Sub-Assistant Engineer of KMC narrated during their examination-in-chief that no LBS/ESE report was found in respect of the alleged construction. There was no document of structural stability or quality of material used. Additionally, due to raising of such kind of unauthorized construction, there is every possibility of the construction causing damage to the drainage, sewerage system and water supply. There is

possibility of disruption of road traffic and fire hazard and there is every possibility of causing danger to human life and property. The defence has not made any effort to dismantle the prosecution case with regard to the particular fact that this construction is not endangering human life or property or that there is no possibility of any fire hazard or disruption of traffic or disruption of water supply, drainage or sewerage system. There is also no evidence that the said unauthorized construction has been demolished. At this juncture it is pertinent to discuss the observation made by The Hon'ble Supreme Court of India relying upon several precedents; in **Dipak Kumar Mukherjee v. Kolkata Municipal Corporation, in Civil Appeal No. 723 of 2012** on 8 October, 2012, which is quoted as follows:—

“8. What needs to be emphasized is that illegal and unauthorized constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorizedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

27.....It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc.

Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

In **Sandhya Pal & Anr vs The Kolkata Municipal Corporation : W.P. No.- 11225 (W) of 2018** it has been observed that : The authorities cannot ignore the dicta of the Supreme Court in Dipak Mukherjee's case laid down in para 8.

In **K. Ramadas Shenoy v. Chief Officers, Town Municipal Council : (1974) 2SCC 506** the Hon'ble Apex Court has been pleased to observe that : An illegal construction.....materially affects the right to or enjoyment of the property by persons residing in the residential area.

In **Lakhu Dubey vs The Kolkata Municipal : WP 85 of 2014** it has been held that: **Unauthorized structures are a real threat to life and limbs and it is common knowledge that many an accident, including fatal accidents, have occurred by such unauthorised constructions collapsing without prior warning.**

In this instant case, considering the evidence as adduced by the prosecution in this respect it can be concluded that the alleged unauthorized construction raised at the case premises is of such a nature which is sufficient to attract the provision as enshrined under section 401 A of the Kolkata Municipal Corporation Act. Any construction without sanction has to be deemed unsafe as sanction is granted after examining structural safety aspects and after clearance from the fire services authorities. Section 400 contemplates action in all cases of unauthorized construction, be it unauthorized construction in contravention of the applicable building rules, be it commencement of construction without sanction of building plan or be it deviation from sanction. (**Partha Dey vs The Kolkata Municipal Corporation : WP 85 of 2014**).

4.26. The second consideration is the relation of the accused persons with the unauthorized construction at the case premise. It is the duty of the prosecution to prove them as persons responsible for under taking said unauthorized construction within the explanation as stipulated in section 401A KMC. Section 400(1) defines “the person at whose instance” applicable for the entire chapter 22 of the KMC Act including section 401 and section 401A.

The relevant provisions are noted for ease of discussion:

Section 400. Order of demolition and stoppage of buildings and works in certain cases and appeal.- (1).....

Explanation- In this Chapter, “the person at whose instance” shall mean the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations or additions if any, or does it by himself.

S. 401. Order of stoppage of buildings or works in certain cases.- (1)

Where the demolition of any heritage building or the erection of any building or the execution of any work has been commenced or is being carried on without or contrary to the sanction referred to in section 396 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or the rules or the regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, by order, require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.

S. 401A. Construction of building in contravention of the provisions of the Act or the rules made thereunder.- (1).....

Explanation- “Person” shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new building or additional floor or floors of any building as aforesaid.

4.27. In this respect the KMC authority concerned through its Assistant Engineer and Sub Assistant Engineer i.e. PW-4 and PW-6 respectively revealed that they found accused to be the persons responsible for the unauthorized construction at the case premise. Accordingly, they initiated the process through issuance of notice upon the persons at whose instance the unauthorized work has been commenced and subsequent reporting in the name of above persons was made. FIR was also lodged against the same persons. After police investigation finally charge sheet was filed against the present accused persons.

During investigation I.O received the assessment details marked **Exhibit-P15** collectively which shows that the property is recorded in the name of Anila Chakraborty. Prosecution has produced the evidence of the representative of Assessment Department as PW-1. He produced the computerized demand details marked **Exhibit-P1** and Inspection Book of third quarter 2004-2005 marked **Exhibit-P2** where also Anila Chakraborty was found the recorded owner. I.O noted in the brief fact of the charge sheet that Anial Chakraborty could not be found. AE and SAE did not procure any other document apart from the written complaint regarding the involvement of the accused. They did not communicate with the complainant. I.O also admitted that the name of the accused is not reflected in the report of Assessment Department. He did not get any document to elaborate the status of accused and relied on the statement of the witnesses. I have already discussed that I.O had examined PW-2 and PW-3 and had relied on their statements to file charge sheet against the accused. But these accused did not make any allegation against the accused or identify them before court. That apart due to the anomalies as already discussed in the evidence of PW-5, his sole evidence cannot be used to fix responsibility on the accused in the absence of any documentary proof. There is no Development Agreement to prove that Raja Goswami is the promoter of the case premise. There is no document to prove that Anjan Chandra is any way related to the case premise. These two accused have denied relation with the case premise during examination u/s 313 of Cr.P.C. But accused Shibu Chandra @ Tarun Kumar Chandra had admitted during examination

u/s313 of Cr.P.C that he is the owner of the case premise. He pays tax for the same but there is only one storied house at the case premise which he failed to prove.

4.28. Hence, in view of the materials available in record both oral and documentary and the admission of the accused during examination under section 313 Cr.P.C and further arguments of both the sides it is clear that prosecution has proved the unauthorized construction at the case premise and relation of accused person Shibu Chandra @ Tarun Kumar Chandra to be the owner of the case premise. Thus, he is found to be the person responsible for the unauthorised construction at the case premise.

4.29. Therefore, it can be concluded by saying that the prosecution has succeeded in proving the charges under Sections 392/401A of the Kolkata Municipal Corporation Act framed against the accused person namely Sibbu Chandra @ Tarun Kr. Chandra beyond reasonable doubt. Prosecution failed in proving these charges against the other two accused.

4.30. The accused persons are also charged for commission of offence punishable under Section 618 of the Kolkata Municipal Corporation Act. For convenience, the Section is reproduced here:

“ whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing failure of contravention, with an additional fine which may extend to one hundred rupees for every day after the first during which he has persisted in such failure or contravention.”

4.31. The penalty under this section would get attracted if the prosecution successfully proves issuance of notice upon the accused. **Exhibit-P4** is notice no. **2433** issued to PR Raja Goswami, Anjan Chanda, Shibu Chanda and others for stopping all construction work including addition and alteration at premise no. B/104/H/4, Narkeldanga Main Road, Ward-30, Br-III dated 29.06.2019. **Exhibit-P5** is the return of service of the Stop Work Notice. Both **Exhibit-P4** and **Exhibit-**

P5 have been prepared by SAE, examined as PW-6 who had deposed that the said notice was duly served but the S.R was refused to be signed. AE has corroborated such service of Stop Work Notice. That apart there is a specific column regarding the mode and manner of such service of notice. The categories are on the person addressed, on adult male member of present owners family, on his servant, being affixed at the premise or sent by registered post. PW-6 has left this column vacant. Moreover, he has not obtained the signature of any independent witness to prove such service further. It is not clear as to why the other modes of service were not used.

Moreover, accused have denied to have received any such notice.

4.32. So at this stage, it would be safe to hold that the prosecution has not succeeded in proving service of Stop Work Notice upon the accused persons, beyond reasonable doubts. Accordingly it can be stated that the prosecution has failed in proving the specific charge framed against the accused persons u/s 618 of the KMC Act, 1980.

4.33. Hence, the prosecution has succeeded in proving commission of offence punishable under Section 401A/392 of the Kolkata Municipal Corporation Act, 1980 by the accused person namely Sibü Chandra @ Tarun Kr. Chandra

5. Hence, it is.

O-R-D-E-R-E-D,

that the accused persons namely **Raja Goswami @ Somnath Goswami and Anjan Chandra @ Anjan Kr. Chandra** are found not guilty of the offences punishable under section 401A/392 read with section 610 and section 618 of the Kolkata Municipal Corporation Act, 1980 and they are accordingly acquitted in accordance with the provisions of Section 248 (1) of the Code of Criminal Procedure, 1973.

The accused are released from their bail bonds.

The sureties are discharged from the respective bail bonds.

that the accused persons namely **Sibü Chandra @ Tarun Kr. Chandra** is found guilty in respect of the charges framed against him for having committed offences

punishable under sections 392/401A of the Kolkata Municipal Corporation Act, 1980 and he is accordingly convicted in accordance with the provisions of Section 248 (2) of the Code of Criminal Procedure, 1973.

Bail bond of the accused person/ convict is cancelled.

The convict is taken into custody.

The surety is discharged from the respective bail bond.

5.1. Now the question is whether it would be expedient to release the convict on probation in terms of the provision of Section 360 of the Code of Criminal Procedure, 1973 or the provisions of the Probation of Offenders Act, 1958.

5.2. It has already been established that the convict had undertaken the work of unauthorized/ illegal construction and which is of such a nature that it is endangering human life and property. The consequences of any unauthorized and illegal construction may cause huge damage and loss to life and property. The offender did not show any kind of responsibility towards the society and violated the law deliberately. Such desperate attitude of the offender cannot be treated leniently. Having regard to all circumstances, it seems that releasing the offender on probation shall not be sufficient to meet the ends of the justice. The offender should be punished to prevent such miscarriage of justice.

5.3. So now before awarding any sentence, as per the provisions of law, the Court is duty bound to hear the convict on the question of sentence.

5.4. The factum of conviction and the prescribed punishment for the offences punishable under section 392/401A of the Kolkata Municipal Corporation Act, 1980 are explained to the convict and an opportunity is given to him to produce any material as well as to lead any evidence, if necessary before the Court, with regard to the quantum of sentence that may be passed. The convict as well as his Ld. Counsel are also given liberty to express their views with regard to the sentence for the particular offences.

5.5. The convict pleaded innocence and prayed for mercy of the court. Ld. Advocate on behalf of the convict prayed for taking a lenient view in awarding sentence.

5.6. Considered respective prayers. Also considered the age of the convict and his social status. The offence in respect of which sentence is being passed is grave in nature and has got huge social impact. It needs no further discussion and is crystal clear that if unauthorized constructions are not dealt with a strict view, a bad notion would reflect and a proper message to the society won't be given.

6. Decision on Quantum of Sentence

6.1. Now the question that remains to be answered is what sentence should be passed upon the convict. The offence u/s 401A of the Kolkata Municipal Corporation Act, 1980 is punishable with imprisonment for a term which may extend up to five years and also with fine which may extend to Rs.50000/-. The other offences under section 392 of the Kolkata Municipal Corporation Act of which the accused person has been held guilty is punishable with imprisonment which may extend up to six months or also with fine or both. In this case the intention of the convict must be taken into consideration. The convict has done construction at the case premises in unauthorized manner. He did not obtain any sanction for raising construction at the case premise. The convict has shown desperation in raising unauthorized building at the case premises.

Considering all such aspects, this Court is of the considered view that the convict deliberately abused established rules and laws and was well aware of the consequences of the alleged construction. His intention is quite clear from his activities. So at this stage it appears to this Court that a stringent punishment should be given to the convict. Accordingly, at this stage after having considered entire circumstances, this Court is of the considered view that passing of simple imprisonment upon the convict for a period till rising of the Court along with fine shall be just and reasonable.

7. So at this stage, having considered entire circumstances, it is

ORDERED,

that the convict namely **Sibu Chandra @ Tarun Kr. Chandra** to undergo simple imprisonment till the rising of the Court and also with fine of Rs. 50,000/-

(Fifty Thousand only) , for the offence punishable under section 401A of the Kolkata Municipal Corporation Act, 1980. In default of payment of fine, to suffer simple imprisonment for three (03) months .

AND

the convict is also punished with fine of Rs. 2,500/- (Two thousand Five Hundred only), in default of payment of said fine to suffer Simple imprisonment for a term of one month for having committed offence punishable under section 392 of the Kolkata Municipal Corporation Act, 1980.

In case of imprisonment the sentences shall run concurrently.

7.1. The period of detention, if any, undergone by the convict during investigation, inquiry or trial of this case and before this date of conviction, be set off against the imprisonment imposed upon him and the liability of the convict to undergo imprisonment on conviction be restricted to the remainder, if any, of the term of imprisonment imposed upon him.

7.2. The convict is informed in the language understandable by him about his right to prefer appeal against this judgment including his right to avail of legal aid/ assistance in this regard. The convict has refused to avail legal aid.

8. **Demolition of unauthorized, irregular, illegal and unlawful construction work.**

8.1 Any construction work which is carried out without the sanction as referred to in section 396 of the Kolkata Municipal Corporation 1980 or in contravention of any provisions of the said Act and the rules and regulations made thereunder is liable to be demolished. If the Corporation is able to detect unauthorized and illegal construction work, a stop work notice is generally served. Thereafter, the Municipal Commissioner deals with it u/s 400(1) or the Mayor In Council deals it u/s 400(8) of the said Act. U/s 400(1) the case is disposed of by hearing where the structure may be demolished/partly demolished/ fully retained considering degree of violation of Rule as well as structural safety. In cases where there is any danger and/or violation of rule, Kolkata Municipal Corporation may directly demolish the structure without giving chance of hearing u/s 400(8).

8.2. The Municipal Magistrate also has the power to direct demolition of unlawful construction in terms of Section 584 of the Kolkata Municipal Corporation Act, 1980. It is a discretionary power which must be exercised having regard to the larger public interest. Some basic things that need to be considered is that any construction without sanction where it apparently appears to be grossly violating the provisions of law and where it seems to be affecting the interest of the general public should be demolished.

For convenience section 584 is reproduced here:

8.3. Section 584. Power of Municipal Magistrate to direct payment of fine and demolition of unlawful work:-

If, under this Act or the rules or the regulations made thereunder, any person is, in respect of any unlawful work, liable-

(a) to pay any fine, and also

(b) to demolish such work, a Municipal Magistrate may, in his discretion, direct such person to pay the fine and also to demolish the work.

8.4. Considering the documents exhibited, more so the infringement statement it appears that construction has been made in such a manner which is de hors the mandatory provisions of the KMC Act and further rules and regulations framed thereunder. Unless the building rules are implemented strictly the public safety and/or security cannot be maintained properly. The violation of the building rules is serious in nature and there is every chance of public nuisance and/or affection of the sanitation and ventilation of adjacent premises. The act of making unauthorized construction without sanctioned plan is a complete defiance of the provision of law and has to be reviewed seriously without any leniency.

8.5. **Therefore, in this case it now appears that this is a fit situation where the discretion of the Court should be exercised as mandated in section 584 of the Kolkata Municipal Corporation Act.**

8.6. At this juncture it is pertinent to mention herein that in the case of **Romeo Das VS The Kolkata Municipal Corporation & Ors. (IA NO. GA/1/2022 APOT 162 OF 2022 WITH WPO 2468/2022)** the Hon'ble High Court at Calcutta held that, "Since the issue of whether or not, the Municipal Magistrate has power to order demolition under Section 584 of the Kolkata Municipal Corporation Act while convicting a person under Section-401A of the said Act for making illegal/unauthorized construction, is to be decided by a Larger Bench to be constituted by the Hon'ble Chief Justice, we are of the view that the order of demolition, in the present case, which ultimately stems from the order of the Municipal Magistrate, should be temporarily stayed until the aforesaid issue is decided by the Larger Bench. We accordingly, order so.

8.7. We, however, clarify that this order will not, in any manner, stand in the way of the Corporation proceeding against the alleged unauthorized construction under other provisions of the Kolkata Municipal Corporation Act, 1980, observing due procedure."

8.8. As discussed above, after consideration of the observation made by the Hon'ble High Court, Calcutta with regard to exercise of discretionary power under Section 584 of this Act, this Court is not inclined to pass any order of demolition of the unauthorized construction undertaken by the convict over the case premises. However, as per further observation of Hon'ble High Court at Calcutta as reiterated above, this order shall not stand in the way of the Kolkata Municipal Corporation to proceed against the unauthorized, irregular, invalid, illegal and unlawful erection/construction work of the entire building at the case premise no. **B/104/H/4, Narkeldanga North Road, Ward-30, Br-III** under other provisions of the Kolkata Municipal Corporation Act, 1980 and/or relevant Rules/Regulations made thereunder.

9. Let a copy of this judgment be sent to the Municipal Commissioner, Kolkata Municipal Corporation for information.

10. Let a copy of this judgment be supplied to the convict free of cost.

11. The case stands disposed of. Note in the concerned register and upload in the CIS.

Dictated & Corrected by me

Senior Municipal Magistrate,
Kolkata,

Senior Municipal Magistrate,
Kolkata,