

IN THE COURT OF MUNICIPAL MAGISTRATE, 2nd
COURT, CALCUTTA

PRESENT: **AVISEK MINJ** (J.O. Code: -WB01520),
Municipal Magistrate, 2nd Court, Calcutta.

[On this 08th day of April, 2026]

GR Case No 351 of 2024

C.N.R: WBCS 03 000399-2024

REGN No.: - 351 of 2024

TR- 101 of 2024

STATE OF WEST BENGAL

Vs.

Sunita Mallick

.....Accused person

(Arising out of Jorabagan PS, Case No. 07/2024 dated- 23.01.2024 under Section 401(A) of KMC Act, 1980)

COMPLAINANT	State of West Bengal
REPRESENTED BY	Shri Partha Halder, Ld. A.P.P
ACCUSED PERSON(S)	Sunita Mallick
REPRESENTED BY	Ld. Advocate namely Smt. Rinki Laha for the accused person.

FORM B

Date of Offence	20.01.2024
Date of FIR	23.01.2024
Date of Charge sheet	30.06.2024
Date of Framing of Charges	25.06.2025
Date of commencement of Evidence	20.08.2025
Date on which Judgment is reserved	NIL

Date of the Judgment	08.04.2026
Date of the Sentencing Order, if any	08.04.2026

Accused details:

Rank of the Accused	Name of Accused	Date of Arrest/ Surrender	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 Cr.P.C.
1	Sunita Mallick	10.04.2024 Surrender	10.04.2024	Sections 401A/392/610/618 of KMC Act.	Convicted	TRC and pay fine of Rs.10,000/i/d S.I for one month for section 401A KMC Act, pay fine of Rs.2500/- i/d S.I for 15 days for sections 392/610 of KMC Act and fine of Rs.1000/- i/d S.I for 5 days for section 618 of KMC Act	NIL

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
PW-1	Rajkumar Jaiswal	Local witness
PW-2	Lakshman Chandra Bera	Assistant Engineer, Building Department, KMC Cum defacto complainant.
PW-3	Manoj Kumar Sonkar	Local witness
PW-4	Biswajit Sarker	Sub Inspector of Jorabagan PS (1 st IO)
PW-5	Prosad Kumar Mondal	Sub Inspector of Jorabagan PS (2 nd IO)

B. Defence witnesses, if any: No defence witness adduced;

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: No Court witness adduced;

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
1	Exhibit- P1& P1/1	Notice and S/R
2	Exhibit-P2 series	Day to day report
3	Exhibit-P3	Police Intimation
4	Exhibit-P4	Letter of complaint

5	Exhibit-P5 series	Documents in connection with demolition proceedings
6	Exhibit-P6	Order dated 27.01.2024
7	Exhibit-P4/1	Endorsement of O/C on letter of complaint
8	Exhibit-P7	F.I.R
9	Exhibit-P8 series	Notice u/s 91 Cr.P.C to different departments
10	Exhibit-P9	Notice u/s 41A Cr.P.C.
11	Exhibit-P10	Photograph
12	Exhibit-P11 series	Replies from different department
13	Exhibit-P12 series	Document related to demolition work

B Defence: No defence witness

Sl. No.	Exhibit Number	Description
NIL	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

JUDGMENT

Facts in nutshell: -

1. In the instant case, criminal law was set in motion when the complainant namely Lakshman Chandra Bera, Assistant engineer (c), Building

Department, Borough II, Kolkata Municipal Corporation lodged the FIR being Jorabagan PS, Case No. 07/2024 dated- 23.01.2024 under Section 401(A) of KMC Act, 1980 against the accused person namely Sunita Mallick. The instant case has been filed in connection with **premises no. 170 (Portion), Ahiritola Street, Ward No.19, Borough-II, Kolkata** (hereinafter referred to as the case premises).

2. From the record, it appears that Sub Assistant Engineer namely Swapan Dutta received a complaint and based on such complaint he visited the case premises on 20.01.2024. In the case premises, he observed that P/R is constructing a C.I Shed supported by Iron Pipe and Brick work at ground floor level. On demand, P/R failed to produce any sanction plan or any other relevant documents in favour of the said construction work. Thereupon in order to stop such construction, SAE served stop work notice u/s 401 of KMC Act upon P/R vide. SL. No.4804 dated:20.01.2024.

Sub Assistant Engineer prepared case report and Police intimation. Police intimation was forwarded to the Jorabagan P.S by Assistant Engineer namely Lakshman Chandra Bera.

On 22.01.2024, Sub Assistant Engineer visited the case premises and found that construction activity was continuing in defiance of the stop-work notice. Thereafter a case report was prepared by Sub Assistant Engineer and was sent to the defacto complainant.

3. Thereafter, the defacto complainant namely Lakshman Chandra Bera, Assistant engineer (c), Building Department, Borough II, Kolkata

Municipal Corporation, lodged a written complaint before the Officer-in-Charge, Jorabagan PS on 22.01.2024 regarding some unauthorized construction at the case premises. O.C Jorabagan Police station endorsed SI Biswajit Sarkar on 22.01.2024 to start a case and investigate in the instant case. Thereupon above stated FIR was lodged.

- 4.** Then the investigating officer of the instant case, visited the case premises, prepared a rough sketch map, took photographs, issued notices to different departments and to the accused under Section 41A Cr.P.C, and upon completion of investigation submitted charge-sheet being no. 55 of 2024 dated 30.06.2024, u/s 401A of K.M.C Act against Sunita Mallick.
- 5.** Thereafter, Ld. Senior Municipal Magistrate, Calcutta took cognizance of this case on 05.07.2024.
- 6.** On 19.08.2024, this court received the case record on transfer for disposal. As per record, on 24.09.2024, accused namely Sunita Mallick surrendered before this court and was enlarged on court bail. On the same day, served the copies of the FIR, final report and its annexure to the accused person as appeared under section 207 of Cr.P.C.

Charge against the accused person: -

- 7.** On 25.06.2025, charge was framed **u/s 392/610/618 & 401A of KMC Act.** The substance of accusation was read over U/S 392/610/618 & 401A of KMC Act in respect of the offence committed in the **premises no. 170 (Portion), Ahiritola Street, Ward No.19, Borough-II, Kolkata.** Charge

was read over and explained to the accused person to which she pleaded not guilty by saying “Ami Nirdosh” and claimed to be tried and hence, the trial commenced.

Evidence adduced in this case: -

8. To prove the case, the prosecution examined five witnesses. Defacto complainant namely Lakshman Chandra Bera deposed as PW-2. I.O namely Biswajit Sarkar deposed as PW-4 and 2nd I.O namely Prosad Kumar Mondal deposed as PW-5. Two local witnesses deposed as PW-1 and PW-3. During the evidence, many documents are marked as Exhibit on behalf of the prosecution witnesses.

Statement u/S 313 Cr.P.C: -

9. After closure of the evidence of prosecution, the accused person was examined as per provision u/S 313 Cr.P.C. At the time of such examination the accused person denied the material allegation brought against her. At the time of such examination, on being asked, accused Sunita Mallick denied to adduce any evidence on her behalf. Thereafter, the evidence was closed on 16.03.2026.

Argument by the Ld. A.P.P and the Defence: -

• **Argument by the Prosecution: -**

10. Ld. APP in his argument stated that the name of the accused is found in the notice, S/R, then in the letter of complaint and also in the charge sheet.

Ld. A.P.P pointed out that the accused herself received the notice u/s 401

of KMC Act as her endorsement can be found in the said notice that is Exhibit P1/1. Ld. APP further pointed out that **one local who deposed as PW 3, who has identified the accused on dock and with regard to the case premises, he stated that there was a tile shed house and some construction work was being done by the accused.** Ld. APP further pointed out that PW 4, who is the first IO of this case, in his deposition has stated that some construction of brick work was carried out at the ground floor of the case premises. Ld. APP further pointed out that PW 5 in his deposition stated that he gathered information from Raj Kumar Jaiswal and Manoj Kumar Sonkar that the case premises belongs to Sunita Mallick and she is responsible for the case construction. Ld. APP further stated that the unauthorized construction is reflected from Exhibit P10/Photographs. Ld. APP further pointed out that the **accused person has violated the Rule 3 of KMC Building Rules, 2009 as the nature and character of the case premises has been changed by the P/R without permission.**

- **Argument by the Defence: -**

11. Ld. Counsel for the accused submitted that no proof of document relating to construction by the accused person submitted by the prosecution. Ld. Counsel for the accused further submitted that no building material was seized by the IO or the Corporation officials of KMC. No sketch map prepared in this case by the IO or the Corporation Officials of KMC. Ld. Counsel for the accused has further stated that the construction

by the accused has not been proved by the prosecution. Ld. Counsel stated that demolition of the case premises has already been done so prosecution in this case against the accused is not proper.

Points of Consideration: -

- A.** Whether the prosecution has succeeded in establishing its case beyond all reasonable doubt by leading cogent, credible, and legally admissible evidence?
- B.** Whether the accused person can be held responsible for the unauthorized construction alleged to have taken place at the case premises?
- C.** Whether, on the basis of the evidence on record, the accused person is liable to be held guilty for the alleged commission of offence punishable under Sections 401A/392/610/618 of the Kolkata Municipal Corporation Act, 1980?

Decision with reasons: -

- 12.** In the instant case, prosecution has alleged the accused person of committing offence under section 401A/392/610/618 of the Kolkata Municipal Corporation Act, 1980. Prosecution has adduced the evidence of five witnesses along with documentary evidences in supports of its case. Now it is the duty of this court to separate the grain from the chaff by judicial scrutiny by thoroughly going through the evidences adduced in this case both oral and documentary.

13. The primary objective of stopping an illegal construction by the corporation is to ensure public safety, protecting public property, preserving environmental standards, planned development as per law and many others. Any breach of the rules and regulations set by the corporation as per law leads to endanger the life and quality of the environment of such locality. Here in the instant case, there is allegation of illegal construction by the accused person without the permission of the corporation.

14. For the sake of convenience and brevity of discussion all the points for consideration are taken up together for determination of the same as all the issues are related to each other.

15. Before delve into the task of evaluating the evidences both oral and documentary, adduced by the prosecution, to determine the allegation against the accused persons, it is pertinent at this juncture that the relevant provisions of the Kolkata Municipal Corporation Act alleged in this case may be delineated.

Section 401A of the Kolkata Municipal Corporation Act, 1980 is attracted when any person being responsible by himself or by any other person on his behalf, constructs or attempts or conspires to construct any new building or additional floor or floors in any building in contravention of provisions of this Act or rules thereunder endangers or likely to endanger

human life or any property of the corporation, water supply, drainage or sewerage or the road traffic or cause fire hazard.

To be more concise, offence under section 401A of KMC Act occurs when there is unauthorized construction or attempt or conspire to construct a building illegally. and such construction endangers or likely to endanger human life and the municipal order.

Section 392 of the Kolkata Municipal Corporation Act, 1980 contemplates that when any person erect or commence to erect any building or execute any work as prescribed under section 390 without prior sanction of Municipal commissioner as per provisions and rules of corporation and payment of fee as determined in such regard will attract penal liability.

Section 610 of the Kolkata Municipal Corporation Act, 1980, prescribes penalty for contravention of the provisions mentioned in the column 1 of schedule VI or failure to comply any lawful direction or requisition made under such sections shall be punishable with fine or imprisonment or both.

Section 618 of the Kolkata Municipal Corporation Act, 1980 provides for general penalty in case of the non-compliance of the any notice, order or requisition issued under any provision of this Act or contravenes any provision of this Act. This section prescribes for monetary punishment in case of non-compliance and continued non-compliance.

16. It is cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving beyond reasonable doubt lies on the prosecution. A strong presumption of innocence is laid down upon the accused person. Prosecution has the duty to rebut such presumption by bringing the oral and documentary evidence. Here in the instant case, burden to prove the allegation against the accused person lies on the prosecution. Relating to onus of proving the allegation, the Hon'ble Supreme court of India in the case of **S.L. Goswami (Dr) v. State of M.P., (1972) 3 SCC 22**, held that:

“... In our view, the onus of proving all the ingredients of an offence is always upon the prosecution and at no stage does it shift to the accused. It is no part of the prosecution duty to somehow hook the crook. Even in cases where the defence of the accused does not appear to be credible or is palpably false that burden does not become any the less. It is only when this burden is discharged that it will be for the accused to explain or controvert the essential elements in the prosecution case which would negative it. It is not however for the accused even at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence with which he is charged, and even if the onus shifts upon the accused and the accused has to establish his plea, the standard of proof is not the same as that which rests upon the prosecution. Where the onus shifts to the accused and the evidence on his behalf probalises the plea, he will be entitled to the benefit of reasonable doubt.”

In the case of ***Akram Khan v. State of West Bengal, 2010 SCC OnLine***

Cal 1787, the Hon'ble court observed that:

“41. It is well-settled that credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny. Marginal mistakes and minor inconsistencies cannot demolish the prosecution case. It cannot be disputed that truth may also suffer from infirmity when projected through human process. The prosecution is required to prove the charge beyond any reasonable doubt. It is not that such proof must be beyond all doubt.

It is not necessary for the prosecution in order to establish the guilt of the accused person to “dot every ‘i’ and cut every ‘i’ What matters is how far the prosecution could prove the charge beyond the scope of any confusion or controversy.”

Appreciation of Evidence: -

17. For the prosecution case, five witnesses adduced evidence in this case.

On the other hand, for the defence, no witness adduced evidence in this case. It is now pertinent to thoroughly scrutinize the oral and documentary evidence adduced by the prosecution witnesses. Relating to appreciation of evidence, in the case of ***Prem Prakash v. State of Haryana, (2011) 11 SCC 687***, the Hon'ble Supreme court of India held that:

“19. The evidence, essentially, must be viewed collectively. The statement of a witness must be read as a whole. Reliance on a mere line in the statement of the witness, out of context, would not serve the ends of justice and the con-

clusion of the court based on such appreciation of evidence could be faulted.”

18. PW-2 namely Lakshman Chandra Bera, Defacto complainant, being the Assistant Engineer of KMC, deposed in his evidence that:

The premises No. 170 (portion) Aihiritolla Street, Ward No. 19, Borough-II, fell within the area of his jurisdiction. Sub Assistant Engineer, namely, Swapan Dutta went to the case premises for routine inspection on 20.01.2024 after receiving a complaint from higher authorities. At the case premises, he found that CI shed with iron pipe had been constructed at the ground floor at the case premises. No sanction plan or display board was found at the case premises. Upon local enquiry, they got to know that the construction work is being done by Sunita Mallick and others. No valid documents were produced on demand. Thereafter, SAE served a notice under Section 401 of KMC Act to the persons responsible. The notice and S/R of the notice marked as Exhibit-P1 and P1/1 in this case. The notice was duly received by Sunita Mallick. PW-2 further deposed that SAE submitted a report to him. The day-to-day report (consisting of two pages) marked as Exhibit-P2 (series) in this case. Thereafter, he received the report and accordingly he sent a police intimation to Jorabagan PS. The police intimation marked as Exhibit-P3. On 22.01.2024, SAE visited the case premises again and he found that construction work is being continued in defiance of stop work notice. SAE submitted a report to him which is part

of day to day report. After receiving the report, he lodged a FIR before Jorabagan PS on 22.01.2024. The letter of complaint marked as Exhibit-P4 in this case. No sanction plan, LBS or structural report, building material test report or workmanship report was found at the case premises. The case premises is in a slum area. The case construction may collapse at any time and endanger human life, create fire hazards and disrupt water supply, sewerage and drainage of the area. Thereafter, they prepared D Sketch plan and Infringement Statement along with forwarding report in connection with the case premises. These are the documents prepared to initiate demolition proceedings for the case construction. The documents in connection with demolition proceeding (consisting of four pages) marked as Exhibit-P5 Series in this case. The total area of unauthorized construction is 13.44 Square Meter approximately. Subsequently, an order was passed u/s 400 (8) of KMC Act on 27.01.2024. The order dated 27.01.2024 marked as Ext. P6 in this case.

During his cross examination, PW 2 has stated that he has visited the premises. Demolition work had been carried out at the case premises. At present there is no construction as alleged at the case premises.

PW-4 namely Biswajit Sarker, being the first Investigating Officer, deposed in his evidence that:

On 22.01.2024, he was posted as Sub-Inspector at Jorabagan PS. The premises No. 170P, Ahiritola Street, Ward No.19 falls within the jurisdiction of Jorabagan PS. On 22.01.2024, Assistant Engineer, Lakshman Ch Bera had filed a complaint to the PS in connection with unauthorized construction at the case premises against Sunita Mallik and others. The then OC of Jorabagan PS namely, Badisatya Pramanick endorsed him to investigate in the instant case. The endorsement marked as Exhibit-P4/1 in this case. He drew the formal FIR being Jorabagan PS case No.07 dated 23.01.2024. The formal FIR marked as Exhibit-P7. After being endorsed, he visited the place of occurrence and observed that construction of brick work was carried out at the ground floor of the case premises. He did not find any sanction plan or display board. He had searched for the FIR named accused, Sunita Mallik at the spot but she could not be found. He served notice under Section 91 Cr.P.C to Water supply department, fire services, Assessor Collector, Drainage & Sewerage Department, Asst. Engineer, Building Department, and Jorabagan Traffic Guard. The notices under Section 91 Cr.P.C, marked as Exhibit-P8 Series in this case. He had issued notice under Section 41A Cr.P.C to accused Sunita Mallik. The notice was received by her family member namely Gungun Mallik. The notice was not complied during his tenure. The Notice under Section 41A marked as Exhibit-P9 in this case. Thereafter he was transferred and as such he handed over the CD.

During his cross examination, PW 4 has stated that he has no document to indicate the connection of Sunita Mallick with the case premises or to indicate that she had carried out the case construction. He denied all negative averments during his cross examination.

PW-5 namely Prosad Kumar Mondal, being the 2nd Investigating Officer, deposed in his evidence that:

On 02.02.2024, he was posted as Sub-Inspector at Jorabagan PS. He is the 2nd IO of this case. The premises No.170P, Ahiritola Road, Ward No.-19 falls within the jurisdiction of Jorabagan PS. After being endorsed, he visited the place of occurrence on 03.04.2024 and observed construction of a tin shed with brick work at the case premises. He did not find any sanction plan or display board. He examined some local witnesses namely Manoj Kumar Sonkar and Raj Kumar Jaiswal. He was informed that the premises belongs to Sunita Mallik and she is responsible for the case construction. She was not found at the spot on that day. He clicked photographs of the case premises. The pictures marked as Exhibit-P10 in this case. He received reply from different departments. The replies to notices under Section 91 Cr.P.C and other annexures marked as Exhibit-P11 Series in this case. Subsequently, KMC had directed demolition at the case premises. A copy of the said order was received from the building department. The demolition work was carried out at the case premises. The documents in connection with demolition work marked as Exhibit P12 series in this case.

The accused person was enlarged on bail. After conclusion of his investigation, he submitted charge sheet being no. 55 of 2024.

During his cross examination he has stated that partial demolition work has been carried out at the case premises. The case premises is in a slum area. PW-5 denied all negative averments during his cross examination.

PW-1 namely Rajkumar Jaiswal, being the local witness, deposed in his evidence: -

There is a huge slum in premises no. 170. He does not know Sunita Mallick. He does not know the specific building in 170 (portion) Ahiritola Street. His cross examination has been declined by the defence side.

PW-3 namely Manoj Kumar Sonkar, being the local witness, deposed in his evidence that:

He knows the case premises. He resides at the case premises. He knows Sunita Mallick and identified her in the Court. He has further deposed that there was a tile shed house belonging to Sunita Mallick. Some construction works were being done using tin. Corporation officials have demolished the construction work.

During his cross-examination, PW-3 has stated that construction had been demolished.

19. From the scrutiny of the evidences of the prosecution witnesses, it can be observed that the defence could not shake the veracity of the prosecution witnesses by cross- examination. This court finds reliability on the evidence adduced by the prosecution witnesses no. 2, 3, 4 and 5 as it brings confidence upon the case of the prosecution. The statement of the witnesses is corroborated.

20. Before going further in this case, it is pertinent to meticulously evaluate the documentary evidence adduced in this case by the prosecution witnesses. In the instant case, Twelve (12) documents have been marked as exhibit.

Exhibit P-1 and P1/1 is the notice and S/R. It appears from the said notice vide serial no.4804 dated 20.01.2024 that the PR is Sunita Mallick and others of the case premises. Stop work notice was issued to stop forthwith all construction work including addition and alteration at the case premises. It can be found in the Exhibit P1/1 that the **notice was served upon the PR namely Sunita Mallick on 20.01.2024 as it contains endorsement of Sunita Mallick.** From the Service report it appears that notice was served properly upon person responsible.

Exhibit P-2 (series) is the day to day report which was submitted by the SAE in this case. From the day to day reports it appears that on 20.01.2024, SAE received a complaint letter and inspected the case

premises. There he found the construction as alleged in this case. On demand, PR failed to produce any sanction plan or any other relevant documents in her favour. On the same day, notice u/S 401 of KMC Act was served upon the PR. On 20.01.2024, Police intimation was served upon the Jorabagan P.S. **On 22.01.2024, SAE visited the case premises along with AE(c)/building and found that work is resumed defying stop work notice.** On 22.01.2024, F.I.R was lodged against P/R. Thereupon on 24.01.2024, D/sketch and infringement statement were put up by SAE.

Exhibit P-3 the police intimation. Assistant Engineer (c)/ Bldg/Wd-19/ Br-II of this case had received the day to day report and accordingly sent a police intimation to Jorabagan PS on 20.01.2024.

Exhibit P-4 is the letter of complaint. Assistant Engineer namely Lakshman Ch. Bera after receiving the report, he lodged FIR before Jorabagan PS on 22.01.2024 against PR namely Sunita Mallick as PR was found to have resumed the work as masonry work defying the stop work notice u/S 401 of KMC Act, 1980.

Exhibit P-4/1 is the endorsement of the then OC of Jorabagan PS on the written complaint filed in this case.

Exhibit P-5 series is documents in connection with demolition proceedings. These documents are prepared to initiate demolition proceedings for the case construction. **In the infringement statement dated 24.01.2024,**

area of total U/A construction is mentioned as 13.44 approximately.

D/sketch plan shows the illegal construction evidently.

Exhibit P-6 is an order u/s 400 (8) of KMC Act dated 17.01.2024. The said order was passed in connection with the unauthorized construction at the case premises. In the order, it is observed and mentioned that “Since such unauthorized construction is unsafe and may lead to accident resulting in loss of human life and property, appropriate action towards demolition of such unauthorized construction be taken forthwith under section 400(8) of the KMC Act, 1980 with the help of police.”

It appears from the order passed by Hon’ble Mayor, KMC that unauthorized construction in the case premises was unsafe and might had resulted into loss of human life and property.

Exhibit P-7 is the formal FIR being Jorabagan PS, FIR no. 07 dated 23.01.2024 u/S 401(A) of KMC Act,1980.

Exhibit P-8 (series) is the notices u/S 91 of Cr.P.C to various departments. The Investigation Officer had sent notices u/s 91 Cr.P.C to various departments regarding the case premises.

Exhibit P-9 is the notice u/S 41A Cr.PC sent to the accused Sunita Mallick by SI namely Biswajit Sarkar of Jorbagan P.S. The notice was duly been complied the accused person after its issuance.

Exhibit P-10 is regarding photographs of the case premises clicked by the 2nd Investigating Officer namely Prosad Kumar Mondal during investigation of this case.

Exhibit P-11 (series) and Exhibit P-11/1 are the received copy of replies from different departments. These are the replies of the said notices which were sent by the 1st IO of this case to various departments u/S 91 of Cr.P.C. Subsequently the 1st IO during his tenure did not receive the said replies from various departments. Accordingly, the 2nd IO of this case had received the said replies from various departments.

Exhibit P-12 (series) are the documents in connection with demolition work. The KMC had directed demolition at the case premises. A copy of the said order was received from the building department. Subsequently demolition work was carried out at the case premises.

Admissibility of documents submitted in this case: -

21. Documentary evidence submitted by PW-2 are certified copies of the original documents. No original documents submitted by the PW-2 during the evidence. A question might arise that documents submitted are not the primary evidence, so documents should not be admissible and considered as proper evidence until and unless there are proof of circumstances warranting its acceptance. In this regard, it is pertinent to note that Kolkata Municipal corporation Act, 1980, under section 591 allows submission of

certified copies of the documents in the court. Section 591 of Kolkata Municipal Corporation Act, 1980 reads as follows: -

Section 591. Admissibility of documents 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 authorised 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.*

Section 591 of KMC Act, 1980, being a special law, gives overriding effect over general rule mentioned in the Indian Evidence Act. Therefore, documents adduced by the PW-2 are admissible in this case.

Service of Stop work notice u/S 401 of KMC Act upon the accused person: -

22. Accused person has been alleged to continue unauthorized construction in defiance to the stop work notice issued by the corporation. Stop-work notice under section 401 of KMC Act, 1980 is the initial stage wherein corporation after finding out the unauthorized construction issues notice upon the person responsible to stop the construction. PW-2 deposed that SAE submitted the stop work notice under section 401 of KMC Act to person

responsible. Stop work notice has been marked as Exhibit-P1 and the S/R of the notice has been marked as Exhibit-P1/1. It appears from the exhibit-P1/1 that **notice was received by the Sunita Mallick herself as the notice bears the endorsement of the accused person.** From the S/R of notice, the date of receive of such notice appears to be on 20.01.2024. Accordingly, there is no doubt that the service of notice was made properly upon the accused person by the corporation. **Accused person has been found to be well aware of the notice and the instruction on it.**

Allegation of unauthorized construction: -

23. On careful appraisal of the evidence, it appears that accused person namely Sunita Mallick has made unauthorized construction in the case premises. In the evidence, PW-2, assistant engineer, has stated that Sub assistant engineer namely Swapan Dutta visited the case premises for routine inspection on 20.01.2024 after receiving complaint from higher authorities. There he found CI shed with iron pipe had been constructed at the ground floor. Thereafter, he issued stop work notice upon the accused person and prepared police intimation. This statement can be corroborated from the exhibit-2 (series) which is regarding day to day report. It appears from the day to day report that on 22.01.2024, PW-2 and SAE visited the case premises and found the unauthorized construction was being carried on in defiance to the stop work notice. **No sanction plan, LBS or structural report, building material test report or workmanship report was found**

at the case premises. It is also pertinent to note that from the infringement statement dated 24.01.2024, area of total U/A construction is mentioned as 13.44 approximately. D/sketch plan shows the illegal construction evidently.

24. Photographs submitted by the 2nd investigation officer during the evidence as PW-5, which has been exhibited as Exhibit-10, corroborated the statement of the Assistant engineer and the documents regarding unauthorized construction made by the accused person in the case premises. No objection was raised by the defence relating to the photographs thereby it appears to be admitted by the accused side. PW-5 deposed that when he visited the case premises, he observed construction of tin shed with brick work.

25. PW-4, 1st investigation officer, deposed that he visited the case premises after being endorsed in this case and found that construction of brick work was carried out at the ground floor at the case premises. PW-4 did not find any sanction plan or display board. PW-3 independent witness identified Sunita Mallick in the court and deposed that he knows the case premises as he resides in the case premises. PW-3 stated that there was a tile shed house belonging to Sunita Mallick and some construction work were being carried out using tin which was demolished by the corporation officials.

26. It is also pertinent to mention that as per section 401A of KMC Act, 1980, one of the points need to be established that the person responsible must construct or attempts to so construct or conspires to so construct any new building, or additional floor or floors in contravention of the provision of the KMC Act or the rules. As per section 2(5) of KMC Act, 1980, the definition of building is as follows: -

Section 2(5) "building" means a structure constructed for whatsoever purpose and of whatsoever materials and includes the foundation, plinth, walls, floors, roofs, chimneys, fixed platforms, verandas, balcony, cornice, or projection or part of a building or anything affixed thereof or any wall (other than a boundary wall less than three metres in height) enclosing or intended to enclose any land, signs and outdoor display structure but does not include a tent, samiana or tarpaulin shelter.

Here in the instant case, construction by CI tin shed with brick work was found to be carried out at the ground floor of the case premises. Prosecution witnesses corroborated such fact. From the definition of building in the KMC Act, 1980, it appears that building has been broadly defined. Building includes any structure and constructed for whatsoever purpose. Therefore, it can be concluded that the above-mentioned point under section 401A of KMC Act, 1980 has been found to be fulfilled in this case as the person responsible has constructed a new structure at the case premises.

27. Considering the statement made by the PW-2, PW-4, PW-5 and PW-3 in their evidence and the documents exhibited in this case, it can be clearly found that **there was unauthorized construction at the ground floor of the case premises.**

Whether unauthorized construction is endanger to human life or property:

28. In order to prove the allegation under section 401(A) of KMC Act, it is pertinent to establish that the unauthorized construction was carried out without sanction and such construction endanger the human life or property. Relating to endanger due to such unauthorized construction, in the oral and documentary evidence adduced by the prosecution witnesses many corroborations can be found.

29. PW-2 in his oral evidence categorically stated that the case premises is in a slum area. The case construction may collapse at any time and endanger human life, create life hazards and disrupt water supply, Sewerage and drainage of the area.

30. PW-5 deposed that he received reply to the notice under section 91 of the Cr.P.C from different department. Replies marked as exhibit P11 (series). On scrutiny of the reply received from Assistant Engineer (c), building Department, Borough-II, KMC, it appears that such department replied that as per section 400(8) of KMC Act, 1980, demolition of the unautho-

authorized construction has been completed so no infringement exists. It clearly shows, there was infringement, which does not exist now as the unauthorized construction has been demolished. Another reply being marked as Exhibit P-11/1 received from Assistant Engineer (c), Borough-II, pointed out that if any unauthorized construction is raised beyond the sanction, then hazard or disruption of drainage or sewerage at the locality may affect.

31. Photograph marked as exhibit P-10 clearly shows that the unauthorized construction has been carried out adjoining to a public road and the construction has been made in a hazardous manner.

32. It is also pertinent to consider that unauthorized construction has been demolished by an order dated: 17.01.2024 passed under section 400(8) of KMC Act, 1980 by the Hon'ble Mayor, KMC. Order under section 400(8) KMC Act is passed when there is immediate need for demolition due to unsafe structure of the building or when there is violation of the provisions of the Act. Action under section 400(8) of KMC Act is considered as an emergency measure. In the instant case, from the above-mentioned order for demolition it appears that the reason cited by the mayor, KMC is *“Since such unauthorized construction is unsafe and may lead to accident resulting in loss of human life and property, appropriate action towards demolition of such unauthorized construction be taken forthwith under sec-*

tion 400(8) of the KMC Act, 1980 with the help of police force.” It shows the case premises in question was unsafe and hazardous in nature.

33. Considering the above observations, it can be concluded that prosecution has established through the oral evidence, photographs of the case premises, departmental replies to notice u/S 91 of Cr.P.C and the documents relating to demolition proceeding that **unauthorized construction in question was hazardous as per section 401A of KMC Act.** Unauthorized construction was carried out in a slum area and the construction would have collapsed at any time and endanger the human life, create fire hazard and disrupt water supply, sewerage and drainage of the area.

Liability of the accused person for the construction of the case premises: -

34. From the evidence adduced by PW 2, it can be found that upon local inquiry they got to know that the construction work was being done by Sunita Mallick and others. No valid documents were produced on demand by the Person responsible. Inspection report being marked as Exhibit P2 (series) corroborates such facts. It is also to be noted that local independent witness Pw-3 deposed in his evidence that **there was a tile shed house belonging to Sunita Mallick and some construction work was being done by the accused using tin** which was demolished by the corporation. This has also been pointed out by the prosecution during the argument. Statement of PW-3 corroborates the evidence adduced by PW-2.

35. Investigating officer of this case during investigation found that accused namely Sunita Mallick is the person responsible for the case construction. From the evidence of PW 4, it appears that notice u/S 41A of Cr.P,C was served upon the accused namely Sunita Mallick. On going through the notice u/S 41A of Cr.P.C, marked as Exhibit P9, it appears that accused was directed to produce all relevant documents for the purpose of investigation. Accused was also directed to disclose all facts truthfully for the purpose of investigation and to reach to the right conclusion of the case. Surprisingly in the instant case, the accused person has not produced any documents before the investigation officer or before this Court proving her innocence or showing that the unauthorized construction was made with proper sanction or without her knowledge or by any other persons not known to her. If there is any sanction taken from the corporation or any other circumstances which occurred and it is in her knowledge then in that case as per section 106 of Indian evidence Act, the burden is upon the accused to produce document in such regard, but in this case no such document was submitted by the accused person.

36. From the examination of the accused person under section 313 Cr.P.C, it appears that accused person has admitted the fact that she was putting and fixing tin over her house, but she does not know whether she received the notice or not. In the case of ***Rajender @ Rajesh@ Raja Vs. State (NCT of Delhi)***, Criminal appeal no.1889 of 2010, the Hon'ble Supreme Court

held that a statement made by the accused under section 313 Cr.P.C can be used as an aid to credence to the evidence led by the prosecution. Here in the instant case, accused person herself received the notice as it is evident from the exhibit P1/1. During statement under section 313 Cr.P.C, she has admitted that she was putting and fixing tin over her house. As per rule 23 of the Kolkata Municipal corporation building rules, 2009, it is the responsibility of the accused person to keep documents on site. In the instant case, no document was kept on the site by the accused person. Person responsible did not take permission as per rule 3 of the KMC Building rules, 2009, thereby there is breach of rules by the accused person.

37. Upon appraisal of the documents exhibited, oral evidences, statement u/S 313 Cr.P.C and the relevant provisions and rules, **it can be concluded that accused person has been found to be carrying out the construction at the case premises.**

Epilogue: -

38. Upon going through the oral and documentary evidences of the prosecution witnesses, this court comes to the conclusion that **prosecution has established that the accused person namely Sunita Mallick carried out the unauthorized construction at the case premises by constructing new structure without proper sanction from the corporation. Notice under section 401 of KMC Act, 1980 was served properly upon the ac-**

cused person as in the service return, there is endorsement of the accused herself. It has also been established that the unauthorized construction was hazardous to human life and property as the case construction was situated in the slum area and was constructed in violation of the regulatory compliance. Accordingly, all the points of consideration are decided in favour of the prosecution and against the accused person.

39. Hence, it is

ORDERED

that the accusation u/S 401A and 392/610/618 of Kolkata Municipal Corporation Act, 1980 being proved, the accused person namely **Sunita Mallick is found guilty**. Accordingly, she is convicted u/S 248(2) of Cr.P.C.

40. Now it's 2:00 P.M.

41. The convict is taken into custody. The court will hear the convict on the points of sentence at 02:20 P.M. Convict be produced then.

42. Inform all concerned.

Typed by me.

(AVISEK MINJ)
Municipal Magistrate
2nd Court, Calcutta.
(J.O. code- WB01520)

(AVISEK MINJ)
Municipal Magistrate,
2nd Court, Calcutta.
(J.O. code- WB01520)

Later at 02:20 P.M:

1. The convict namely *Sunita Mallick* is produced before me and she is hereby given an opportunity of being heard on the question of sentence.
2. The Ld. A.P.P. and the Ld. Advocate for the convict is present.
3. The Ld. Advocate for the convict submits that his client is innocent. The Ld. Advocate for the convict prays for minimum sentence.
4. Heard the Ld. A.P.P. on the point of sentence.

Release on Probation: -

5. Now the question that whether the convict is entitled to be released on probation in terms of the provisions under section 360 of Cr.P.C or the probation of Offenders Act, 1958. In the instant case, it has already been established that there was an unauthorized construction at the case premises erected by the convict without proper sanction and in breach of the provisions of the Kolkata Municipal Corporation Act, 1980 and the rules made in such regard. It is also established that violating the stop work notice, the convict continued the unauthorized construction. Any unauthorized construction which effects the urban safety and might put the residents nearby into life-threatening situation as it is endanger to human life and property, so these kinds of offences cannot be considered as trivial in nature.

6. In this case, convict has been found to have committed the offence deliberately. Therefore, releasing the convict on probation would not serve any practical purpose as it would run contrary to the very object of deterrence embedded in the KMC Act, 1980. The convict should bear the burden of the illegal act. Therefore, considering the offences committed by the convict, the nature of the offence, and the antecedent of the offender, this court is not convinced to release the convict on probation. The convict should be punished as per law.

Sentence imposed: -

7. This court has found that the unauthorized construction was endanger to human life and property. It is also pertinent to note that demolition of the unauthorized construction has been completed under section 400(8) of KMC Act, 1980. The object of punishment in this kind of cases is to fix deterrence to the similar offences in future.

8. Considering above, this court finds that for the ends of justice, sentencing the convict to **simple imprisonment till the rising of the court along with fine** will suffice in this case. It will fulfill the statutory mandate of both punishment and fine as mentioned under section 401A of the KMC Act, 1980.

Hence, it is

ORDERED

that the convict namely Sunita Mallick is punished with simple imprisonment till rising of court and also with **fine of Rs.10,000/- (Rupees Ten Thousand only) and in default of payment of fine, she shall suffer simple imprisonment for a term of 1 months for committing offence punishable under section 401A of Kolkata Municipal corporation Act, 1980. AND**

This court further directs convict namely Sunita Mallick to pay **fine of Rs.2500/- (Rupees Two thousand five hundred only) and in default of payment of fine, she shall suffer simple imprisonment for a term of 15 days under section 392/610 of Kolkata Municipal corporation Act, 1980. AND**

This court further directs convict namely Sunita Mallick to pay **fine of Rs.1000/- (Rupees One thousand only) and in default of payment of fine, she shall suffer simple imprisonment for a term of 5 days for committing offence under section 618 of Kolkata Municipal corporation Act, 1980.**

The Judicial Cashier is directed to do needful in this regard.

As per Section 363 of the Cr.P.C and in compliance of the order of the Hon'ble High Court of Calcutta in CRA No. of 64 of 2014 and CRA No. 36 of 2011 and in

pursuance of Rule 192A and 192B of Calcutta High Court Criminal Rules and Order, let a copy of this judgment be made available to the convict free of cost forthwith. She has also made aware of her right to prefer an appeal with legal aid (in the language understandable to her).

9. Instant case is thereby disposed of.

10. Sureties concerned be released from their liabilities. Let a copy of this be forwarded to Clerk in Charge, Bail Bond Register, for information and necessary actions.

11. D.A is directed to note in the relevant register.

12. Update C.I.S.

Typed by me.

(AVISEK MINJ)
Municipal Magistrate
2nd Court, Calcutta.
(J.O. code- WB01520)

(AVISEK MINJ)
Municipal Magistrate,
2nd Court, Calcutta.
(J.O. code- WB01520)