

**FORM -:- A**

<b>IN THE COURT OF SENIOR MUNICIPAL MAGISTRATE CALCUTTA</b>
-:- PRESENT -:- Smt. Parijat Kumar (JO Code No. WB-01111) Senior Municipal Magistrate Calcutta
GR CASE NO.485 OF 2024
T. R. NO.
CNR NO. WBCS03-000548-2024
Case under Section 401A/392 r/w 584/610 and section 618 of Kolkata Municipal Corporation Act, 1980.
<b>Delivery date of Judgment: 07<sup>th</sup> day of April, 2026.</b>
Details of the FIR/ Police Station – The instant case is in connection with Garden Reach Police Station Case No. 56 dated 18.03.2024

COMPLAINANT	-:-	STATE OF WEST BENGAL
PRESENTED BY	-:-	Sri Somraj Dhar, Learned A.P.P. Senior Municipal Magistrate Court, Calcutta
<b>Name of accused persons</b>	-:- -:-	(1). Md. Wasim @ Wasi (2). Md. Sarfaraz @ Pappu (3). Md. Dilnawaz @ Raza (4). Md. Samim @ Shamimpuriwala (5). Md. Shahnawaz @ Sanjay (filed for present)
Represented by	-:-	Ld. Advocate, Rinki Laha

**FORM -:- B**

Date of Offence	-:-	Sometime before 18.03.2024
Date of FIR	-:-	18.03.2024
Date of Charge-Sheet	-:-	23.11.2024
Date of Framing of Charge	-:-	01.02.2025
Date of commencement of evidence	-:-	15.02.2025
Date on which judgment is reserved	-:-	Not Applicable.
Date of the judgment	-:-	07.04.2026
Date of the sentencing order, if any	-:-	07.04.2026

**-:- 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.	Md. Wasim @ Wasi	Voluntarily surrendered	09.12.2024	401A/392 r/w 548/610 and section 618 of KMC Act	Convicted	S.I and Fine	N.A
02.	Md. Sarfaraz @ Pappu	Voluntarily surrendered	09.12.2024	401A/392 r/w 548/610 and section 618 of KMC Act	Convicted	S.I and Fine	N.A
03.	Md. Dilnawaz @ Raza	Voluntarily surrendered	09.12.2024	401A/392 r/w 548/610 and section 618 of KMC Act	Convicted	S.I and Fine	N.A
04.	Md. Samim @ Shamimpuriwala	Voluntarily surrendered	09.12.2024	401A/392 r/w 548/610 and section 618 of KMC Act	Convicted	S.I and Fine	N.A
05.	Md. Shahnawaz @ Sanjay	Filed for present					

**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.	Debabrata Ghosh	Assistant Engineer, Building Department (Civil), Br-XV, KMC.
02.	Md. Aslam	Local witness.
03.	Md. Saif Ali	Local witness.
04.	Md. Mehtab Alam	Local witness.
05.	Md. Sahiluddin Gazi	Local witness.
06.	Syed Mustafa Ali	Local witness.
07.	Tarun Kumar Mitra	Assistant Assessor Collector, Garden Reach Unit, KMC.
08.	S.I, Sk. Basir Mondal	First Investigating Officer.
09.	S.I, Snehasis Bag	Second Investigating Officer.
10.	S.I, Koushik Mukherjee	Third Investigating Officer.
11.	S.I, Samik Daw	S.I of Homicide Squad, DD.
12.	Inspector, Subhadip Chakraborty	O.C, Homicide Squad, DD.
13.	Firdous Begum	Local witness.
14.	Salma Begum	Local witness.
15.	Md. Safi	Local witness.
16.	Md. Parvez	Local witness.

17.	Harish Joshi	S.I, NDRF, Kaikhali, 2 <sup>nd</sup> Battalion.
18.	Shrayashi Das	Revenue Officer, BL & LRO, Kolkata, South 24 Parganas.
19.	Abhay Kumar	Inspector, NDRF, Kaikhali, 2 <sup>nd</sup> Battalion.
20.	Sandip Kr. Nath	Leader, Central Avenue Fire Station.
21.	Jotirmoy Biswas	Fire Operator, Central Avenue Fire Station.
22.	Debaditya Pal	Executive Engineer, Building Department (Civil), KMC.
23.	Rani Begum	Local witness.
24.	Sabila Begum	Local witness.
25.	Subham Bhattacharya	Sub Assistant Engineer, Building Department (Civil), Br-XV, KMC.
26.	Avijit Lodh	LBS.
27.	Sahina Khatoon	Local witness.
28.	Sasanka Sekhar Biswas	Station Officer, Garden Reach Fire Station, WB Fire & Emergency Services.
29.	Rahul Das	Sergeant, Metiabruz Traffic Guard.
30.	Inspector, Mashood Shawkat	O.C, Metiabruz Traffic Guard.
31.	Ranjan Kumar Mallick	Executive Engineer, Water Supply Department, Br-XV, KMC.
32.	Kailash Pandit	District Engineer, CESC, Taratala Unit.
33.	Jaydeep Mukhopadhyay	Manager, South West, CESC, Taratala Unit.
34.	S.I. Chinmoy Banerjee	Homicide Squad, Detective Department, S.I of Police.

**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 :-**

<b>Sl. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
01.	Exhibit-P1/PW1	SAE Report.
02.	Exhibit-P2/PW1	Written Complaint/FIR.
03.	Exhibit-P3/PW1	Application for Joint Inspection issued by Garden Reach P.S.
04.	Exhibit-P4/PW1	Response of Executive Engineer to Garden Reach P.S. and Assessment Department ,G.R.Unit
05.	Exhibit-P5/PW1	Report of Joint Inspection
06.	Exhibit-P6/PW1	Response of Executive Engineer to Garden Reach P.S. vide Letter dated 21.03.2024
07.	Exhibit-P7/PW7	Authorization letter
08.	Exhibit-P8/PW7	Computerized Demand Details
09.	Exhibit-P9 collectively/PW7	Certified copy of Inspection Book
10.	Exhibit-P2/1/PW8	Endorsement for Investigation in the name of PW 8
11.	Exhibit-P10/ PW8	Formal FIR
12.	Exhibit-P11 collectively/PW8	Photographs
13.	Exhibit-P12 collectively/PW8	Notice u/s 91 Cr.P.C to Assessor Collector and reply
14.	Exhibit-P13/PW8	Notice u/s 91 Cr.P.C to Assistant Engineer, Building Department
15.	Exhibit- P14/PW9	Endorsement for Investigation in the name of PW 9
16.	Exhibit-P15/PW9	Rough Sketch Map
17.	Exhibit-P16 collectively/PW9	Reply from the Executive Engineer, Building Department
18.	Exhibit-P17 collectively/PW9	Notice u/s 91 Cr.P.C to CESC and reply
19.	Exhibit-P18 collectively/PW9	Notice u/s 91 Cr.P.C to the Water Supply Department and reply
20.	Exhibit-P19 collectively/PW9	Notice u/s 91 Cr.P.C to the Fire Department and reply
21.	Exhibit-P20 collectively/PW9	Notice u/s 91 Cr.P.C to Metiabruz Traffic Guard and reply
22.	Exhibit-P21/PW9	Notice u/s 91 Cr.P.C to BL & LRO, KMC
23.	Exhibit-P22/PW9	Notice to KMC Authorities for Joint Inspection
24.	Exhibit-P23/PW9	Reply sent from KMC Authorities
25.	Exhibit-P24/PW9	Inspection Report from KMC Authorities

26.	Exhibit-P25/PW9	Intimation letter
27.	Exhibit-P26/PW10	Endorsement for Investigation in the name of PW 10
28.	Exhibit-P27 collectively/PW10	Notice u/s 41A Cr.P.C to Md. Sarfaraz @ PMC Pappu, Md. Samim, Md. Dilnawaz @ Raja, Md. Wasim @ Wasi.
29.	Exhibit-P28 collectively/PW10	Letter to The Superintendent, Correctional Home
30.	Exhibit-P29 collectively/PW11	Certified copy of Seizure Lists
31.	Exhibit-P30 collectively/PW11	Certified copy of seized documents
32.	Exhibit-P31/PW18	Authorization Letter
33.	Exhibit-P32/PW18	Report of BL & LRO
34.	Exhibit-P29/1/PW23 Exhibit-P33/PW30	Signature of PW-23 on Seizure List dated 23.03.2024
35.	Exhibit-P19/1/PW28	Signature of PW 28 on Report
36.	Exhibit-P20/1/PW29	Signature of PW 29 on Report
37.	Exhibit-P33/PW30	Compliance Report
38.	Exhibit-P17/1/PW32	Signature of Prasenjit Ghatak on Report
39.	Exhibit-P18/1/PW31	Signature of PW-31 on Report
40.	Exhibit-P18/2/PW31	Signature of AE, Kalyan Parui
41.	Exhibit-P29/1/PW34	Signature of PW-34 on Seizure List dated 22.03.2024
42.	Exhibit-P34/PW34	Original Notarized Development Agreement
43.	Exhibit-P35/PW34	Original Notarized General Power of Attorney
44.	Exhibit-P36/PW34	Original General Power of Attorney
45.	Exhibit-P37/PW34	Original Memorandum of Understanding
46.	Exhibit-P38/PW34	Original Deed of Development Agreement
47.	Exhibit-P39/PW11	Original Agreement for booking flat vide seizure list dated 23.03.2024
48.	Exhibit-P40/PW11	Original Agreement for booking flat vide seizure list dated 23.03.2024
49.	Exhibit-P41/PW11	Original Agreement for booking flat vide seizure list dated 23.03.2024
50.	Exhibit-P42/PW11	Original Agreement for booking flat vide seizure list dated 14.04.2024
51.	Exhibit-P43/PW11	Original Agreement for booking flat vide seizure list dated 14.04.2024
52.	Exhibit-P44/PW11	Original Agreement for booking flat vide seizure list dated 14.04.2024

**(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.Genesis of the present case-**

The crux of this case emanates out of a formidable collapse of an allegedly multi-storied unauthorized structure at premises number J-506/B and J-506/C, Azhar Mollah Bagan Lane, Ward – 134, Br-XV of Kolkata Municipal Corporation (hereinafter referred to as KMC) abutting a 1.5 meters narrow corporation passage. Kolkata Municipal Corporation named Md. Nasim, Raja, Md. Wassi and others to be the 'Persons Responsible' (hereinafter referred to as P.R. in short) for raising the said structure which collapsed creating a manmade chaos claiming the lives and property of multiple people.

**1.2. Initiation of Police Case-**

Following the said incident, written complaint was filed by Assistant Engineer (AE), (Civil), Building Department, Br-XV, Kolkata Municipal Corporation namely Debabrata Ghosh on 18.03.2024 against Md. Nasim, Raja, Md. Wassi and others for offence punishable u/s 401 A of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as KMC Act)

relying on departmental inspection report prepared by Sub Assistant Engineer (SAE), Building Department, KMC namely Subham Bhattacharya and pursuant to direction of concerned Executive Engineer (Civil), Building Department, Br-XV. On the basis of the written complaint alleging commission of cognizable offence, a specific case being Garden Reach P.S. Case No. 56 dated 18.03.2024 was registered and the case was endorsed to S.I. Sk. Basir Mondal of Garden Reach P.S for investigation.

### **1.3. Contents of the Written Complaint-**

Going through the written complaint, the principal allegation appears to be collapse of an unauthorized construction raised flouting the rules and regulations of KMC Act and Building Rules promulgated in reference to it. On being satisfied prima facie about the nature and extent of the incident, the complainant named Md. Nasim, Raja, Md. Wassi and others to be the persons responsible for undertaking said unauthorized construction work at northern side of premise no. J-509/1 Hari Babu Pally Lane, Ward-134, Br-XV. After joint inspection, the said address was later changed to premises no. J-506/B and J-506/C, Azhar Mollah Bagan Lane, Ward-134, Br-XV ( hereinafter referred as the case premise). It is the specific allegation of the prosecution that on inspection by the department it was detected that due to the said collapse, human lives, water supply, drainage, sewerage etc. have been endangered. In consideration of the gravity of the situation and safety of adjoining and neighbouring structures as well as safety of public in general the instant complaint had been issued requesting necessary action u/s 401A of the KMC Act, 1980.

### **1.4. Investigation leading up to Chargesheet-**

After receiving the complaint as formal FIR was drawn up to initiate Garden Reach P.S. Case No. 56 dated 18.03.2024 against Md. Nasim, Raja, Md. Wassi and others, its investigation was endorsed to three police officers consecutively. S.I. Basir Mondal is the first I.O. as has been named in the Formal F.I.R. Thereafter, S.I. Snehasis Bag was endorsed with the

investigation as the second I.O. Finally, S.I. Kaushik Mukherjee received the charge of the case and on completion of investigation, he filed Charge sheet no. 156 dated 23.11.2024 against Md. Wasim @ Wasi, Md. Sarfaraz @ Pappu, Md. Dilnawaz @ Raza and Md. Samim @ Shamimpuriwala for offence punishable u/s 401A of the Kolkata Municipal Corporation Act,1980.

**1.5. Cognizance by Court-** Officer-in-Charge, Garden Reach P.S. forwarded the Final Report under section 173 of the Cr.P.C. submitted by I.O. vide Charge sheet no. 156 dated 23.11.2024 along with relevant documents, duly placed before this court on 25.11.2024. After careful consideration of the Chargesheet so placed before the court and exercise of judicial discretion to the facts and circumstances of the case, cognizance was taken.

**1.6. Appearance of the Accused persons-** The accused persons were subsequently produced before this court from judicial custody and they were enlarged on bail on 09.12.2024. Bail bonds as filed were accepted.

**1.7 Compliance under Section 207 of the Cr.P.C.-** 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.

**1.8. Framing of Charge-** 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 01.02.2025 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.

**1.9 Evidence-** Column 13 of the Chargesheet mentions 38 witnesses. The prosecution initially examined 33 witnesses on its behalf in order to prove the case. Eventually, on the basis of clarification sought by this court, prosecution taking the refuge of section 311 of Cr.P.C. endeavored to examine further witnesses. S.I. Chinmoy Baneerjee was examined as PW-34 and PW-11 namely S.I. Samik Daw was further examined to exhibit original copies of documents already marked **Exhibit-29** and **Exhibit-30** respectively. Prosecution exhibited several documents marked **Exhibit-1** to **Exhibit-44**.

**1.10. Examination under Section 313 of the Cr.P.C.-**Subsequently, after completion of the evidence for prosecution, as per mandate of law the accused persons were examined under section 313 of the Code of Criminal Procedure on 26.11.2025 and on further introduction of evidence by prosecution, accused were again examined under section 313 of the Code of Criminal Procedure on 12.03.2026 by putting the necessary questions before them which transpired during trial. During the examination of the accused both the times 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 answers 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, technical anomalies and evidentiary loopholes/shortfall.

**1.11.** After hearing both sides on the points of argument this date was fixed for delivery of judgment. Said arguments forwarded by the parties may be summed up as hereunder :

**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 unrebutted 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 KMC Act and Rules framed thereunder, the accused persons completely disregarding the same have raised illegal construction on the case premise which ultimately collapsed causing the death of multiple people living in the said facility or around it.
- The collapse also caused electrical fault at the said premises.
- LBS Abhijit Lodh informed the authorities about the collapse of the structure at the case premise.
- After joint inspection, the identity of the case premises has been duly established.
- There is ample evidence establishing the relation of the accused with the case premise and the alleged construction therein.
- The ownership of the case premise has been duly proved.
- He stressed on the involvement of NDRF in the rescue operation and their evidence revolving around the consequences of collapse of such unauthorized construction.
- The exhibited documents have laid further ground to the prosecution case.
- In this scenario, he prayed for stringent punishment of the accused u/s 401A and other sections under which they have been charged.

**Argument on behalf of Defence**

- Ld. Advocate for the defence submitted that the accused have been falsely arraigned in this case without completing the pre-requisites for filing of such complaint.
- She mainly stressed on the absence of any Stop Work Notice.
- Only telephonic complaint was received. No Police Intimation was issued before lodging complaint.
- Furthermore, the relation of the accused with the case premises and their status of being P.R. is under doubt here.
- Only photocopies of the Agreements have been filed. There is no original document in this respect.
- The written complaint does not specify the nature of the unauthorized construction or the number of stories therein.
- There is no document as to who conducted the construction. No local complaint was ever lodged. As such, the case in the instant form does not lie.
- She completely denied the charges framed and argued that the accused persons are not persons responsible within the meaning of section 401A of KMC Act along with other sections under which charge has been framed.
- In view of the above arguments, Ld. Defence 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 new G+IV storied structure at the case premise without any sanctioned plan in contravention

of the provisions of the Kolkata Municipal Corporation Act, 1980 or the rules made thereunder, which collapsed endangering human life, and property of the Corporation, whereupon the water supply, drainage or sewerage or the road traffic was disrupted and which was likely to cause a fire hazard?

b. Whether the accused persons erected or commenced to erect new G+IV storied structure at the case premise or executed any of the works specified in section 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?

d. Whether the accused are responsible for collapse of the structure at the case premise endangering human life and property?

AND

e. Whether the prosecution has been able to prove all the charges or any of the charges against the accused persons beyond reasonable doubt 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 with 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 probatio 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 who 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 is 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. Appreciation of Evidence**

**4.1** The quintessence of the prosecution case is collapse of a structure alleged to be starkly unauthorized, blatantly illegal and prima facie erected in violation of all norms of the KMC Act and Rules framed thereunder. Nonetheless, the collapse took place at the dead of the night wreaking havoc among unsuspecting occupants of the case premises being J-506/B and J-506/C, Azhar Mollah Bagan Lane, Ward-134, Br-XV of Kolkata Municipal Corporation and around it. There were deaths and destruction and the accused have been allegedly held responsible for the same 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 order of 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 Md. Wasim @ Wasi, Md. Sarfaraz @ Pappu, Md. Dilnawaz @ Raza and Md. Samim @ Shamimpuriwala referring them to be 'Persons Responsible' in short P.R. 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 provisions, Debabrata Ghosh bearing the post of Assistant Engineer (AE), Civil, Building Department, Br-XV, KMC having jurisdiction over the case premises being no.J-506/B and J-506/C, Azhar Mollah Bagan Lane, Ward-134, Br-XV lodged the present complaint on the direction of Executive Engineer, Civil, Building Department, Br-XV, KMC upon receiving inspection report from Sub Assistant Engineer (SAE) of said Borough namely Subham Bhattacharya.

**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 and produced thirty-four witnesses. The witnesses are both office bearers involved in initiating the case, rescue operators, representatives of essential departments like Fire, Water, Traffic etc. and

local people who suffered the blow of the collapse. Considering the course of the alleged incident and its consequences coupled with the requirement of technical expertise to perceive the same, said office bearers are qualified to depose about the intricate details of the incident. At the same time local people who experienced the incident first hand and being aware of the course of business of the locality of case premise, also some of them being the occupants of the said case building are qualified to depose about the fact of the alleged incident and about events which took place before and after the said incident. The evidence of the investigating officers belongs to yet another genre. Accused did not prefer to produce any evidence in rebuttal. The crux point of this judgment is dependent upon the analysis of the probative value of the evidence on record.

**4.6** A detailed reading of both oral and documentary evidence on record suggest that for precise understanding of the incident in issue here including its cause and effect, categorized discussion of the witnesses accompanied by the relevant documents is required as hereunder.

**4.7 Complainant and other officials attached to KMC, Building Department, Br-XV along with LBS Abhijit Lodh:-**

**4.7.1 The evidence of AE Debabrata Ghosh, SAE Subham Bhattacharya and LBS Abhijit Lodh are being discussed simultaneously considering the nature of their evidence and close proximity in the time of their visiting the P.O.**

**4.7.2 Information of the collapse at the case premise to the KMC Building Department-** Complainant being AE Debabrata Ghosh examined as PW-1 deposed that on 18.03.2024 being posted as AE, Building Department (Civil), Br-XV, he received information over telephone at around 1.50 am from Land and Building Surveyor(hereinafter referred to as LBS) namely Abhijit Lodh that a five storied building has collapsed at the case premises. SAE Subham Bhattacharya examined as PW-25 admitted that he himself had received similar information about the collapse of a five

storied building at the case premises on the same day over telephone from LBS Abhijit Lodh at around 1.50 am. LBS Abhijit Lodh deposing as PW-26 stated that he is associated as an LBS with KMC and on 18.03.2024 at about 1.00 am, SAE Subham Bhattacharya called him over phone informing him that a building has collapsed at Azhar Molla Bagan Lane.

**4.7.3 Evidence of the complainant (AE) i.e. PW-1-** He stated that when he went to the spot, SAE i.e. PW-25 was already present there. He found rescue operation ongoing at the case premises by Disaster Management Team. They came to know that certain residents of the building have died at the spot. Next day, Director General (Building Department) arrived at the spot and inspected the case premises. After inspection, SAE Subham Bhattacharya submitted one report. Certified copy of the said report has been marked as **Exhibit-P1/PW1**. Thereafter, Executive Engineer ( EE ) , Br-XV, Debaditya Paul directed AE to lodge FIR. **Exhibit-P1/PW-1** also contains the said direction. AE conducted local enquiry along with SAE and other officials of KMC present at the case premises. On said enquiry, they came to know that Md. Nasim, Raja, Md. Wasim and others were responsible for such catastrophe at the case premises. Thereafter, AE lodged written complaint against the persons responsible at Garden Reach P.S which has been marked as **Exhibit-P2/PW1**.

**4.7.4 Exhibit-P1/PW-1 is the report of SAE dated 18.03.2024.**

SAE noted in the Report that on receiving a complaint from KMC control room duly forwarded by Executive Engineer (C), Building Department, Br-XV, inspection was carried out at northern side of premise no. J-509/1 Hari Babu Pally Lane, Ward-134, Br-XV. During inspection it was observed that a structure had collapsed. On checking departmental computer records it was observed that the structure was constructed without any sanctioned plan. The construction was abutting one narrow KMC passage being 1.5 meters wide. AE had forwarded the report to Executive Engineer who directed to lodge notice u/s 401A of KMC Act.

**4.7.5 Exhibit-P2/PW-1 is the written complaint** (ref: Bldg/Br-XV/L-223/23-24 dated 18.03.2024) filed by AE Debabrata Ghosh against P.R. Md. Nasim, Raja, Md. Wassi and others for collapse of unauthorized construction at northern side of premise no. J-509/1, Hari Babu Pally Lane, Ward-134, Br-XV. Photocopy of report of SAE Subham Bhattacharya was enclosed with the complaint.

**4.7.6** Subsequently, AE received a letter from I.O, S.I Snehasis Bag for confirming the address of the case premise.

**Exhibit-P3/PW-1 is the application for Joint Inspection of the case premises.** In this letter , I.O mentioned that he could not identify the case premise and locate the unauthorized construction. Hence, AE was requested to hold joint inspection with the police authorities to fix the location of actual P.O. enabling effective investigation.

**4.7.7 Exhibit-P4/PW-1 is the response of Executive Engineer(ref: Bldg/Br-XV/Gen/L-403/23-24 dated 22.03.2024).** Executive Engineer informed OC, Garden Reach PS and Assessor Collector, Assessment Department, Garden Reach ( G.R.) Unit about scheduling joint inspection on 22.03.2024 at 1.40 pm.

**4.7.8** AE further deposed that on 22.03.2024 joint inspection was conducted by the officials of KMC along with Assessor Collector, Assessment Department, G.R. Unit and police personnel where AE himself was present. Said inspection culminated into fixing the identity of the case premises as J-506/B & J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV and Md.Shamim and Md.Safique to be the respective owners of the said premises.

**4.7.9 The report of joint inspection has been marked as Exhibit-P5/PW-1.** Said Joint inspection report signed by Executive Engineer, Assistant Engineer and Sub-Assistant Engineer issued vide memo no. Bldg/Br.XV/Gen/L-407/23-24 dated 22.03.2024 refers to Garden Reach PS Case No. 56 dated 18.03.2024 and was addressed by Executive

Engineer (C), Building Department, Br-XV to Officer-In-Charge, Garden Reach Police Station. This letter details that in reference to request from P.S. dated 22.03.2024, a joint inspection was conducted along with Assessor Collector, Assessment Department, G.R. Unit and Garden Reach P.S. on 22.03.2024 at 1.40 pm. As per the Assessment Department the premises number of the collapse site is J-506/B, Azhar Molla Bagan Lane, Ward-134, Br-XV (Owner Name : Md. Samim) and J-506/C, Azhar Molla Bagan Lane, Ward 134, Br-XV (Owner name : Md. Safique). Now, in reference to the above captioned letter (ref: Bldg/Br-XV/L-223/23-24 dated 18.03.2021) sent by building department, the premises No. is to be read as J-506/B, Azhar Molla Bagan Lane, Ward-134, Br-XV and J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV instead of Northern side of Premises No. J-509/1, Hari Babu Pally Lane, Ward-134, Br-XV and P.R. names to be read as Md. Samim, Md. Safique, Raja, Md. Wassi and others instead of Md. Nasim, Raja, Md. Wassi and others.

**4.7.10** AE further stated that they were also asked to produce the Infringement Statement by the Garden Reach P.S.

**Exhibit-P6/PW1 is the response of Executive Engineer(ref: Bldg/Br-XV/Gen/L-404/23-24 dated 21.03.2024).** Executive Engineer replied to Officer-In-Charge, Garden Reach Police Station that the nature of construction at the case premise was a R.C.C. frame structure. There was no possibility of preparing any Building Rule Infringement Statement and from office records it is found that no Sanctioned Plan was issued from Building Department, Br-XV, regarding the case premise.

AE too reiterated verbally on dock that even after enquiry in their department no Sanctioned Plan was found to have been issued for any construction at the case premise.

**4.7.11 Cross-examination of AE-** He admitted that while being posted at Br-XV since 2023, he only visited that case premise for the first time on 18.03.2024 after receiving information over telephone. No Stop Work

Notice was ever issued regarding construction at the case premise. No Demolition proceeding was undertaken. He did not procure any document as to who had raised the construction at the case premise. No complaint was ever received regarding any unauthorized construction at the case premise from the local P.S., Sewerage and Drainage Department, Water Supply Department and others or from the local inhabitants of the case premises. Joint inspection of the case premise was conducted with Assessment Department using Tax Bills and the names of the owners were confirmed.

**4.7.12 Evidence of SAE-** Subham Bhattacharya (SAE) being PW-25 has corroborated AE in totality. He confirmed that he was present at the spot when AE arrived, witnessed rescue operation undergoing there and that certain residents of the building died on spot. He admitted to have prepared inspection report i.e. **Exhibit-P1/PW-1**, took part in the local inquiry to confirm the names of the P.R. initially and then in the joint inspection to pin point the case premises and the P.R. finally. He had put his signature on the written complaint along with AE. SAE also assured that on enquiry at his department, no Sanctioned Plan was found to have been issued for construction at the case premises. The spot was also inspected by D.G. (Building) on the next date of the incident. From the answers given by SAE during cross-examination it becomes clear the he too had not visited the case premises prior to the incident even while being posted in Br-XV since 2023. He did not find any complaint regarding any unauthorized construction at the case premises from local P.S., other essential departments of K.M.C. or from local people around the spot. The names of the P.R. being owners were confirmed from the Tax Bills but no specific document was collected to establish the Persons Responsible for raising the construction. There lies no prior Notice to stop work at the said premises and similarly no Demolition proceeding was ever initiated.

Both AE and SAE denied the suggestion that accused were not involved in the construction at the case premise.

**4.7.13 Evidence of LBS - PW-26,** Avijit Lodh stated that on request by said SAE Subham Bhattacharya who was suffering from a leg problem, he took SAE to the spot on his scooty as the spot was in a bit interior area. As such, he picked up SAE at 'Unicall Nursing Home' and tried to reach the spot on his scooty. They could not take the scooty to P.O. entirely. Finally, on reaching the spot they saw that a building has collapsed and many people were standing there. He heard that some people had been trapped under the building debris. NDRF personnel and police personnel were working there. He was at the spot till 10 am and saw people being rescued in injured condition. He could not show any document to reveal the P.R. responsible for construction at the case premises but he heard from some people at the P.O. that Md. Wasim was the promoter who had constructed the building at the case premises, though neither he could name such informer nor produce any documentary evidence to prove the status of Md. Wasim as promoter.

**4.7.14 Evidence of Executive Engineer-** The last witness under this head would be the then Executive Engineer (EE), Building Department (Civil), Br-XV namely Debaditya Pal examined as PW-22. On being questioned by Ld. A.P.P., he narrated that on 18.03.2024, he being posted at the said borough, received information at 12.15 a.m. from the Control Room that a building has collapsed at premise no. J-509/1, Hari Babu Pally Lane, Ward-134, Br-XV. As he was out of station, he called AE and SAE over telephone. AE was not available over telephone. So, he asked SAE to visit the spot. He himself reached the spot on 9.30 a.m. and saw that a building has collapsed and several departments of KMC were engaged in rescue work including the NDRF. As the building had collapsed, it was difficult to ascertain the relevant premise number. On local enquiry they came to know that the premise number would be . J-509/1, Hari Babu Pally Lane, Ward-

134, Br-XV. Subsequently, during investigation, police authorities prayed for joint inspection to identify the P.O. Assessment Department confirmed that the case building had collapsed covering area of two premises being J-506/B, Azhar Molla Bagan Lane, Ward-134, Br-XV and J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV. EE confirmed that the corrected case premise numbers were communicated to the police authorities vide letter marked **Exhibit-P5/PW-1**. All required documents were sent to the P.S. as were asked for. They themselves had participated in the rescue work and EE had asked the AE to report on the rescue work. There was also confirmation on his part that no Sanctioned Plan was issued from their department for any construction at the case premises. During cross-examination he revealed that he had visited the case premises in the morning of 18.03.2024. He had not visited the case premises before that. Even after searching official documents, he could not find any complaint regarding the case premises filed prior to the date of the instant incident. The KMC had never lodged any complaint themselves before the collapse of the building. No complaint was lodged by them before the Drainage, Sewerage or other departments. They had not sent any materials from the case premises for testing.

**4.7.15 Opinion as to safety laches at the case premises and consequences thereof-** Executive Engineer, Assistant Engineer and Sub-Assistant Engineer also stated that no supervision report of LBS/ESE was submitted at their department by the Persons Responsible in respect of the alleged construction. No report was submitted before their department regarding the safety measures taken by the Persons Responsible for raising such construction at the case premises. No report was submitted before them regarding testing of building materials by the Persons Responsible. No document regarding 'No Objection' certificate was issued by the Fire Department, Sewerage and Drainage Department and Water Supply Department as well as other departments of KMC or ever filed

before them. There was no document of structural stability. There was no document regarding quality of materials used. Executive Engineer added that they had not received any report from any department about any safety measures taken while construction of the building at the case premises.

Executive Engineer, Assistant Engineer and Sub-Assistant Engineer all opined that due to raising of such kind of unauthorized construction, there was every possibility of the construction causing damage to the drainage, sewerage system and the water supply. There was possibility of disruption of road traffic and fire hazard and there was every possibility of causing danger to human life and property.

LBS, Avijit Lodh also deposed being a Licensed Building Surveyor that Sanctioned Plan and supervision of LBS/ESE are required for undertaking any construction within the jurisdiction of the Kolkata Municipal Corporation area. 'No Objection' certificate from other departments is also necessary. Notice must be given to KMC before initiating construction. If any unauthorized construction is raised, there is every possibility of that construction causing damage to the Drainage, Sewerage system and Water Supply. There is possibility of disruption of road traffic and fire hazard. There is every possibility of danger to human life and property due to the collapse of such building at any time.

#### **4.8 Evidence on behalf of the Assessment Departments being PW-7 and PW-18-**

**4.8.1 Evidence of Assistant Assessor Collector - PW-7** namely Tarun Kumar Mitra being posted as Assistant Assessor Collector, Assessment Collection Department, Garden reach Unit, KMC deposed on behalf of the Assessor Collector on the strength of an authorization letter marked as **Exhibit-P-7/PW7**. He deposed that the case premises being J-506/B and J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV is within their jurisdiction and thereby produced its computerized Demand Details marked as **Exhibit-P8/PW7**. He also produced certified copy of relevant Inspection

Book ( IB ) of second quarter 2006-2007 and first quarter 2010-2011 marked as **Exhibit-P9 collectively/PW7**. After preparation of this IB, no application was made by anybody for any mutation, separation, amalgamation in respect of the case premises. Taxes in respect of the premises are paid at the old rates. Even though this witness had visited the case premises but had no knowledge about Persons Responsible for undertaking construction therein.

**4.8.2 Demand details marked Exhibit-P8/PW7-** Pertinently, the Demand details shows that Md. Samim is the recorded owner of premise no. J-506/B, Azhar Molla Bagan Lane, Ward-134, Br-XV. These details range from the year 2006 till the year 2024 and it is found that the tax was initially paid regularly and later till presentation date 24.01.2022 has been paid but irregularly. After that no tax has been paid. Thus, it is clear that the tax has been received on behalf of the owner of this premise more or less. Md. Safique is found to be the recorded owner of premise no. J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV. The relevant details range from the year 2008 till year 2024 and it appears that no tax has been paid after 2015.

**4.8.3 Inspection Book marked Exhibit-P9 collectively/PW7-** The IB copy of premise no. J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV reveals that this premise has been transferred from one Shanawaz Akhtar to Md. Safique.

**4.8.4 Evidence of Revenue Officer-** PW-18 namely Shreyashi Das is Revenue Officer at the office of BL & LRO, Kolkata, South 24 Parganas. She deposed on behalf of BL & LRO, Kolkata. The relevant authorization letter has been marked as **Exhibit-P31/PW18**. She deposed that a notice was received from Garden Reach P.S. regarding premise nos. J-506, J-506/B and J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV. On 28.03.2024 reply was sent to the investigating authority. A joint enquiry was conducted in the presence of police personals regarding the case plot

being no. 114 of JL no. 714 and 115 of JL no. 715. Thereafter, a comprehensive report was sent to the concerned P.S. The certified copies of the reports prepared by them and bearing their departmental seal have been marked as **Exhibit-P32 series/PW18**. During cross examination, she could not recall the date of first inspection. She was not present at the time of enquiry and her team had conducted the same. Her team had reported that the building was entirely demolished. She did not have any personal knowledge about who had carried out construction at the case premises.

**4.8.5** Now, **Exhibits-P21 and P-32 series** must be discussed in detail to understand the nature and character of the case premises and compare the same with the corresponding report of the Assessment Department of KMC.

**4.8.6 Details of Exhibits P-21 and P-32 series** - PW9 namely S.I. Snehasis Bag had issued notice u/s 91 Cr.P.C. to BL & LRO and obtained reply. The said notice has been marked as **Exhibit-P21/PW9**. Vide this notice, PW9 required the said department to provide opinion regarding the nature and character of land situated at case premise being J-506/B and J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV in respect of the instant case. PW 9 only provided the photocopy of the relevant reply which was not marked. Later, PW 18 produced the certified copy of the same reply marked as **Exhibit-P-32 series**. It has been stated in the reply that their office does not have any premise wise record and hence, premise wise plot number can only be ascertained by suitable technical person. However, on physical inspection, the case premise numbers J-506/B & J-506/C were found to be situated approximately in the noted four plots. Premises J-506 was not ascertainable exactly vis-a-vis plot numbers on enquiry. Let us now go through the relevant annexed report which mentions the plot numbers as 196, 199, 202 & 164. The said report pertains to RS/LR map sheets and plots thereof. They do not have premise wise record as given by KMC. Garden Reach sheet no. 114, JL no. 714 covers 3 plots which are 196,199

and 202. Garden Reach sheet no. 115, JL no. 715 covers 1 plot being 164. At the LR stage plot nos. 164,196,199 and 202 have been classified as "Bastu". Only plot no.164 was classified as "Pukur" in RS stage and later as "Bastu" in LR stage. In the last 3 years no mutation and conversion has been allowed. Thus, on comparing the documents produced by the Assessment Department and the BL & LRO, it is divulged in clear sight that both these departments even though are referring to the same property but are identifying it with separate numbers. They also adhere to separate processes of quantifying and mapping such properties which only creates more confusions in their identifications. Secondly, from the joint inspection and assessment documents it appears that P.O. covers two separate premises being J-506/ B and J-506/C. Whereas, according to the report of BL & LRO, four plots as numbered above form the same P.O. Assessment Department has added that no prayer for amalgamation was received by them. From the report of BL & LRO, it is clear that part of the case premise was initially a "Pukur" (water body). Thus, not only a construction was allegedly raised at the case premise, at the same time more than one property were amalgamated for such construction without obtaining any prior approval of the relevant department.

#### **4.9 Victims of the ordeal -**

**4.9.1** Prosecution has produced several such witnesses giving a vivid detail of the ordeal. Most of these witnesses claimed to be the occupants of the case premise or residing in the surrounding locality. When the collapse took place, they were present either inside the case premise or within its vicinity. Then there are people who had entered into transactions with one or more accused to rent/purchase part of the case building. Composite reading of their evidences even though throws sufficient light on the aftermath of the alleged incident or reveal the association of some of the witnesses with the case premise, at the same time some discrepancies have lurked in which have to be analyzed keeping in view of the entire network of prosecution

evidence. Let us now jot down the relevant portions of their evidence as hereunder:-

**4.9.2 PW 2 is Md. Aslam** who deposing on 15.02.2025 stated that he resided by the side of the case premise being J-506/B and J-506/C, Azhar Mollah Bagan Lane, ward- 134, Br- XV. He was sleeping at his residence and in the morning heard that the building at the case premise had collapsed during night and several residents had died on spot. He came to know that 10-12 people had died on spot. He identified the accused on dock as owners of the case premises. Further that Md. Wasi is the person responsible for construction at the case premise but could not say any further detail regarding it. He was interrogated by police. Apart from the oral evidence, he could not file any document to prove the ownership of the case premises.

**4.9.3 PW 3 being Md. Saif Ali** is also acquainted with the case premises residing in the same locality. While he was at his residence, he heard the sound of a building collapsing and the electric connection of the entire locality went off. The building at the case premises had collapsed over his house and consequently, his mother namely Sama Begum and maternal uncle namely Nasir Ahmed got injured and died on spot. Their bodies were brought out from under the debris. His brother namely Md. Haider Ali also got injured. Due to this accident, even his grandmother namely Mariam Bibi expired. Identifying the accused persons, he stated that Md. Wasi, Raja, Md. Samim being the owners constructed the case building with the aid of promoters. There was no display board in front of the building raised at the case premises when it was being built. He never lodged any complaint regarding illegal construction at the case premises. Furthermore, no document was submitted by him to prove the ownership of the case premises and the persons responsible for construction therein.

**4.9.4 PW 4 namely Md. Mehtab Alam** resides in the locality of the case premises. He deposed that there was a five storied building at the case

premise. According to him the incident took place on 16.03.2024. On that day while doing household chores at his house, he came to know that his maternal aunt had got injured. The daughter of said maternal aunt had given him such information. After coming out of his house, he found that the building at the case premises had collapsed and people were crying for help. He somehow managed to save his family members from the debris under which they were buried. The building has collapsed over his residential unit. He identified the accused as the persons who had raised the construction at the case premises being its owners and promoters. Four of his family members died due to such catastrophe. There were no display board in front of the building raised in the case premises when it was being built. No safety measures were adopted by the owners prior to starting that construction. He could not produce any document regarding the construction of the case building, persons responsible for such construction and its owners.

**4.9.5 PW 5 is Md. Sahiluddin Gazi** who identified the case premises as is situated in his locality and further stated that there was a four storied building therein. On 16.03.2024 at around 11:30 pm, the building collapsed while he was present in that building. He was injured and took treatment. Furthermore, four of his friends namely Md. Imran, Md. Rizwan, Moniul Haque, Md. Chote and Abdul Rauf all died due to such collapse of the building as they were severely injured. He could only identify accused Md. Wasim. But he did not have any personal knowledge as regards who had constructed the building at the case premises.

**4.9.6 PW 6 is Syed Mustafa Ali.** His house is also situated by the side of the case premises where a G+4 storied building stood. On 17.03.2024, at around 11.24 p.m. said building collapsed and fell over his residential building. He heard a noise while outside his house and found that the building at the case premises had collapsed over his tile shed residence damaging it. His family members being his wife, Sama Begum, brother-in-

law, Nasir Ahmed, mother-in-law, Mariam Bibi and sister-in-law, Hasina Begum died on spot due to collapse of the building. Total sixteen people died due to the catastrophe including his family members. He had forbidden the unauthorized construction at the case premise from its inception. He confirmed that the accused namely Md. Samim, Md. Sarfaraz and Md. Wasim are the owners and promoters who raised the construction at the case premises without paying any heed to his requests against such construction. But he could not produce any documentary evidence as to who constructed the building at the case premises.

**4.9.7 After that PW 13 being Firdous Begum is the next local witness.**

She identified the case premises along with Md. Samin as its owner and Md. Wasi as its promoter. She had executed an agreement with Md. Wasi for purchasing a flat and identified her LTI over agreement marked **Exhibit-P30 collectively/PW11** along with seizure list marked **Exhibit-P29 collectively/PW11**. But she also could not produce any document regarding the title of Md. Samim.

**4.9.8 Moving on, PW 14, Salma Begum, also identified the case premises.** She herself along with her sister-in-law had executed an agreement for booking a flat with Md. Wasi who is the promoter. The witness identified Md. Wasi. **Exhibit-P29 collectively/PW11** was shown to her. She identified her signature on the relevant seizure list. She also identified her signature on the relevant agreement. She also identified Md. Samim as the owner of the case premise but could not produce any supporting document.

**4.9.9 PW 15 is Md. Safi.** He identified the case premises and stated that he had executed an agreement for booking a flat with Md. Wasi who is the promoter. The witness identified Md. Wasi. **Exhibit-P30 marked collectively/PW11** was shown to him. He identified his signature over the agreement. He had put his signature on the seizure list, marked **Exhibit - P29 collectively/PW11**. The documents were seized in his presence. He

too identified accused Md. Samim as the owner of the case premise but could not produce any supporting document.

**4.9.10 PW 16 namely Md. Parvez** is the son in law of PW-15 that is Md. Safi. He is acquainted with the case premises and confirmed that Md. Safi had executed an agreement for booking a flat with the promoter who is accused Md. Wasi. He identified Md. Wasi. **Exhibit-P30 marked collectively/PW11** and **Exhibit-P29 marked collectively/PW11** were shown to the witness. He identified his signature on the agreement and the seizure list. The documents were seized in his presence. He reassured that Md. Samim is the owner of the case premise and also identified him. But he could not produce any document regarding the title of accused Md. Samim.

**4.9.11** Again, additional witnesses under this head appeared as PW-23 , PW-24 and PW-27.

**PW 23, Rani Begum** resided near the case premises and admitted to be acquainted with the same on dock. She stated that the building at the case premises had collapsed and on being put up with the photographs marked **Exhibit-P11 marked collectively/PW8** supported those to be representing the collapsed building at the case premises. She knows Sabila Begum. Thereafter, **Exhibit-P29 marked collectively/PW11** being seizure lists were shown to the witness. She identified her signature on the relevant seizure list which was marked **Exhibit-P29/1/PW23**. She identified accused Dilnawaj as Raja. During cross-examination she could not say the contents of the seizure list. Further she claimed to have signed on the seizure list as she was asked to do the same so that she could call Sabila Begum when required.

**4.9.12 PW 24 is the said Sabila Begum.** She is acquainted with the case premises and had entered into an agreement with Wasim ( Pointed towards accused Md. Wasim @ Wasi identifying him). She claimed to have paid money to said Md. Wasim for purchasing a flat at the case premises. The building at the case premises where she was to get the flat has collapsed.

Police had seized the original documents from her in connection to the money she paid to Wasim and that document had the signature of Wasim and her LTI. Seizure list dated 23.03.2024 was show to the witness and she claimed to have put her LTI therein. Apart from Md. Wasim, she could not identify any other accused.

**4.9.13 Lastly, PW-27 is one Sabina Khatoon.** The case premises is near her house. On 17.03.2024, the building at the case premises collapsed over her house. At that time, she herself and her parents were sleeping and thus were buried inside the debris. She herself sustained injuries on her head and chest. The head injury was bleeding. Her parents also sustained injuries including bleeding head injury. They were rescued by several people and were treated at P.G. hospital. The building which collapsed was developed by Wasim. No document was filed by her in support of the same. The owners are Pappu, Sanjay, Raza and Samim but could not file any supporting documents. She identified all the accused persons.

#### **4.10 The Rescue operators –**

**4.10.1** This head includes the officials of the National Disaster Response Force (NDRF) and Fire Department.

**4.10.2 PW 17 namely Harish Joshi** is posted as SI at NDRF, Kaikhali, 2<sup>nd</sup> Battalion. On 18.03.2024 as per information received at the Control Room regarding disaster management, he left for the duty allotted to him. He reached the case premise no. J-506/B and J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV on 18.03.2023 at around 3 am to 4 am. Their rescue operation continued on 18.03.2024 and 19.03.2024. They rescued eleven people from under the debris. Eight of them were already dead and three were alive. He was performing duty at the base of the operation. He had no knowledge about the ownership of the case premises.

**4.10.3** Similarly, **PW 19 namely Abhay Kumar** is also the inspector of 2<sup>nd</sup> Battalion, NDRF, Kaikhali. He identified the case premises by its number and stated that on 18.03.2024 at around 2 am to 3 am he received

information from the control room that a building has collapsed at Garden Reach. After 15 to 20 minutes, he moved towards the spot with his team and reached there at around 3 am to 4 am. They searched the place on the basis of the inputs of the local people and found many trapped victims. Till 8 pm to 9pm on 18.03.2024 they rescued eight to ten victims from the spot. Then again search work was started from 6 am on 19.03.2024 and it continued till 8 pm on that day during which one more victim was rescued. Seven people were rescued alive and three were unconscious. The victim rescued on 19.03.2024 was also unconscious. He was not put any questions during cross-examination.

**4.10.4** The remaining two witnesses under this head are from the Fire Department.

**4.10.5 PW 20, Sandip Kr. Nath** is posted as Leader, Central Avenue Fire Station. On 18.03.2024 he was at the same post. Case premise is known to him and on 18.03.2024 after receiving Fire Bell and information from the control Room, he went to the case premises along with his team. His senior Officers were already present there. He saw that a building had collapsed at the case premises. On instruction from the superior Officers, they started moving the debris to clear the road. They were asked to wait at the spot for further instruction. He confirmed the presence of the NDRF and the police at the spot. He saw people being rescued from the collapsed building at the case premises. They also assisted the NDRF. During cross-examination he claimed to have no knowledge about any complaint filed by the KMC or his department in respect of the case premises.

**4.10.6 PW 21 namely Jotirmoy Biswas** is posted as Fire operator, Central Avenue Fire Station. On 18.03.2024, he was at the same post. He too claimed to be aware of the case premises and deposed that he heard Fire Bell on 18.03.2024. On instructions from the Control Room, they went to the case premises and found that a building had collapsed therein. Further corroborating PW 20, he confirmed the presence of the NDRF officials at

the spot and that his team started moving the debris to clear the road and assisted the NDRF. During cross-examination, he answered that he has no knowledge as to who had made the construction at the case premises. They have not received any complaint from the corporation.

#### **4.11 The investigating Officers (I.O.) and the other Officers of the Homicide Department –**

**4.11.1** The investigation of the case changed hands among three investigating officers examined as PW 8, PW 9 and PW 10.

**4.11.2** PW 11 and PW 34 are the officers from Homicide Department who seized some relevant documents in connection to the impugned incident.

**4.11.3** PW 12 is the O/C of Homicide Department.

**4.11.4 Evidence of First I.O.( PW 8 )-** First, S.I. Sk Basir Mondal while being posted at Garden Reach P.S. was endorsed with the investigation of the case. He was examined as PW 8 and narrated that Assistant Engineer Br-XV, KMC namely Debabrata Ghosh had lodged a written complaint before Garden Reach P.S. on 18.03.2024. The then O.C. endorsed him to investigate the same. The relevant endorsement has been marked as **Exhibit-P2/1/PW 8**.

**4.11.5 Formal FIR-** Thereafter, PW 8 prepared Formal FIR in his own hand writing marked as **Exhibit-P10/PW8**.

**The relevant details of the Formal FIR are noted in the following manner:**

- The Formal FIR initiated Garden Reach P.S. case no. 56 dated 18.03.2024.
- General Diary reference no. is 1172
- The information was received on 18.03.2024 at 12.30 hrs.
- Place of occurrence has been identified as northern side of premise no. J-509/1 Hari Babu Pally Lane, Ward-134, Br-XV which is at a distance of 1 km from P.S.

- The brief facts of column 12 state that on or before 18.03.2024, the FIR named accused persons being Md. Nasim, Raja and Md. Wasim @ Wassi and others carried out unauthorized construction work of raising a building at northern side of premise no. J-509/1 Hari Babu Pally Lane, Ward-134, Br-XV without any Building Sanctioned Plan issued by KMC.
- The said construction has ultimately affected the essential services and human lives at the said premises.
- The written complaint has been treated as FIR for this case.
- Inspector Tanmoy Samui, O/C garden Reach P.S. had endorsed his signature on this document while giving the charge of investigation of the case to PW 8.

**4.11.6 Visitation of P.O.-** During investigation he visited P.O on 18.03.2024 and saw a five storied building previously constructed therein had already collapsed and the debris were lying on the ground.

**4.11.7 Photographs of the P.O. and contents thereof-** He took photographs with his mobile phone and obtained printouts from a private studio. The said printouts have been marked as **Exhibit-P11 collectively/ PW8**. On perusal of these photographs, it appears that four of these photographs were taken in the day time and the remaining at night. These photographs show portions of collapsed structure where newly constructed beams and brick work are found shattered and lying on ground and in some of the photographs even over furniture like bed and cupboard. In one photograph, it is found that the construction has also fallen over other old structure and further separate new construction lies standing beside the collapsed structure. In one photograph a rescue operator is found standing. In other photograph many other people are found standing.

**4.11.8 Legal position regarding the admissibility of photographs being Electronic Evidence-**

Admission of electronic evidence may be both in primary or in secondary form. A primary electronic record is proved by exhibiting the source device which in this case would be the mobile phone used for clicking the photographs if the photographs were saved in the phone memory or the storage device as the case may be. In **Vikram Singh and Anr vs State of Punjab and Anr** (2017) 8 SCC 518 a three Judge Bench of the Hon'ble Supreme Court has clearly held that where primary evidence in electronic form has been produced, no certificate under Section 65B of the Indian Evidence Act would be necessary.

I.O had not seized the mobile phone/memory card used for this purpose.

In case of secondary evidence Section 65B of the Indian Evidence is applicable which is noted as hereunder:

**S. 65B. Admissibility of electronic records** – (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely :-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly, or if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one of more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to be best of the knowledge and belief of the person stating it.

(5) For the purposes of this section-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processes for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or ( with or without human intervention) by means of any appropriate equipment.

Explanation-For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

The investigating officer who prepared the photographs being PW 8 was required to certify to the best of his knowledge the identification and source of the photographs, particulars of the device used that is the mobile phone and the printer, Hash Value, signature by the person in charge or management of the devices and the manner of production of such record. The certificate should state that the said provision of Section 65B has been complied with. In **Arjun Panditrao Khotkar vs Kailash kushanrao Gorantyal & Ors**, 2020 INSC453 : (2020) 7 SCC 1 the Hon'ble Supreme Court has observed that the admissibility and proof of electronic record must follow the drill of Section 65B which is a special provision in this regard. The certification is mandatory. It has been further decided that the presentation of such a certificate could occur at any juncture prior to the commencement of the trial proceedings.

I.O has not only failed to produce any certificate for the photographs u/s 65B of the Indian Evidence Act at the time of filing charge sheet, he did not make any effort to cure the defect at any later stage. Prosecution tried to validate the photographs with the help of oral evidence. PW 23 was put up with the photographs and she identified those to be representing case premise. Ld. Defence Advocate did not cross examine her on this point. But the evolution of judicial opinion on this point is very clear. In view of the non-obstante clause in S.65B (1) and the observation made by the Apex Court, the photographs marked as **Exhibit-P11** are held to have no evidentiary value.

**4.11.9 Examination of witnesses** - That apart IO had also examined Md. Aslam and Jahanara Khatoon u/s 161 Cr.P.C. They submitted certain medical documents and stated that while they were going to sleep after having dinner, suddenly there was a sound of building collapsing and they were almost buried under the debris due to such collapse. They revealed that Md. Safiqul, Pappu, Raju and Sanjay were responsible for the

construction. Md. Shamim is the owner of the case premise. He could not find the accused persons on the spot.

**4.11.10 Notices to Assessor Collector and Executive Engineer, Building Department, Br-XV-** Thereafter, he sent notices u/s 91 Cr.P.C to Assessor Collector and Executive Engineer, Building Department, Br-XV. Reply was received only from Assessor Collector marked as **Exhibit-P12 collectively/PW8**. He did not receive any reply from Executive Engineer, Building Department. The notice to Executive Engineer has been marked as **Exhibit-P13/PW8**.

**4.11.11** Thereafter, he was transferred. During cross-examination, he further stated that he had visited the case premises personally but had not seized any document in connection with this case.

**4.11.12 Contents of Exhibit-P12 collectively/PW8-** Assessor Collector, Br-XV, KMC was served with notice for providing names and particulars of the owners of case premises to S.I Sk. Basir Mondal. As already discussed, the Assessment Department, G.R.U replied on the basis of books of record as maintained by their unit that Md. Samim is the recorded owner of case premise no. J-506/B & Md. Safique is the recorded owner of case premise no. J-506/C both situated at Azhar Molla Bagan Lane, Ward-134.

**4.11.13 Evidence of Second I.O.-** PW-9 namely S.I Snehasis Bag was endorsed with the investigation of the case next on 22.03.2024 by the then O.C of Garden Reach PS. The letter of endorsement has been marked as **Exhibit-P14/PW 9**.

**4.11.14 Visitation of P.O.-** PW-9 visited the case premises on 22.03.2024 and found that the building therein had collapsed and debris were lying over the ground. Rescue operation was going on. He prepared Rough Sketch Map wherein his signature is marked as **Exhibit-P15/PW 9**.

**4.11.15 The Rough Sketch Map** has been prepared for case premises no. J-506/B & J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV, PS-Garden Reach, Kolkata-700024. Premise no. J-506/D and J-509/1 are on the two

adjacent sides of the case premises. **There is a narrow lane in front of the case premises. At the back of the case premises there is another narrow lane which is also shared by premise no. J-540/2/A, Raharpur Road, Azhar Molla Bagan Lane.** But inevitably the major setback of this sketch map is that I.O. failed to mention the width of these lanes abutting the case premises. It is also not clear if the lane on the front of the case premise to the north is abutting the case premise or not.

**4.11.16 Display Board-** As the building had collapsed there was no display board to be found at case premises.

**4.11.17 Reply from Executive Engineer, Civil, Building Department, K.M.C.-** The replies dated 04.04.2024 and 21.03.2024 have been marked as **Exhibit-P16 collectively/PW9**. Said reply dated 21.03.2024 was also produced by PW-1 and was previously marked as **Exhibit-P6**. Pertinently, previous I.O. vide **Exhibit-P13/PW8** addressed to Executive Engineer (C) of the Building Department, KMC , Br-XV required information regarding nature of unauthorized construction at the case premises, copy of Building Rule Infringement Statement and Sanctioned Plan if any. Vide reply dated 21.03.2024, Executive Engineer (C) of the Building Department, KMC of said Borough could only say that there was a RCC framed structure at the case premises. No Building Rule Infringement Statement could be prepared. They did not find any Sanctioned Plan regarding any construction at the case premises from the official records of the Building Department, Br-XV. Reply dated 04.04.2024 has been provided by the Executive Engineer (C), Building Department , KMC to O.C Garden Reach Fire Station stating that no sanction has been obtained for construction at the case premises where the building erected has collapsed. As such, considering the stage after the collapse of the building, it was not possible to ascertain the total built up area and the number of stories accurately in respect of the construction undertaken at the case premises. Photocopy of

the relevant requisition letter from the Fire Department has also been submitted with it.

**4.11.18** The investigation proceeded and other essential departments of the KMC were served with notices u/s 91 Cr.P.C. CESC, Water Supply Department, Fire Department, Metiaburz Traffic Guard and BL & LRO KMC were served with such notices and PW 9 received replies from these relevant departments. I am now going to discuss these documents in the sequence these were admitted.

**4.11.19** The notice and reply to CESC have been marked as **Exhibit-P17 collectively/PW9**. The notice required CESC to provide valued opinion regarding hazards due to disconnection of electric supply or any other disturbances to be faced by the locality or the building collapsed at the case premises along with documents. It was further requested that no new electric meter connection may be issued against said unauthorized/collapsed building. Manager (South West), CESC replied to Mr. B. Chatterjee, Assistant Commissioner of Police (Homicide), Detective Department, Lalbazar, providing a copy of the same to O.C Garden Reach P.S in reference to the instant case i.e. Garden Reach P.S Case No. 56 dated 18.03.2024. The relevant portions of the reply narrate that as a distribution licensee; they are under a statutory obligation to provide supply to Bonafide occupiers of premises. Pursuant to applications received from such occupiers of premises J-506, J-506/B and J-506-C, Azhar Molla Bagan Lane, Kolkata – 700024, under KMC, Ward no. 134, Borough no. 15, they duly provided supplies to such occupiers in due discharge of their statutory obligation. Details of the said supplies are furnished as Annexure "A". While effecting supplies, they duly adhered to all safety protocol and measures and ensured that no electrical hazards occur. After collapse of the premises J-506/B and J-506/C Azhar Molla Bagan Lane, they took necessary steps to de-energize their service cables to the above premises and also premises no. J-506 Azhar Molla Bagan Lane. Consequently, all

supplies to the above three premises stood disconnected. Such a measure was taken in compliance of the advice from the competent authority. Pertinent to note that even when Premises no. J-506/B and J-506/C collapsed, no electrical hazard occurred. After disconnection of the supplies to the said premises as stated aforesaid, they did not foresee any electrical hazard emanating from their works to such premises or in the vicinity thereof. The said annexure mentioned the names of Md. Shamim, Md. Safi and Umed Ali as consumers regarding premise no. J-506B and the name of Nagma Khatoon in premise no.J-506C.

**4.11.20 The notice to D.G Water Supply Department, KMC and reply** of Executive Engineer, Water Supply Department, GRU Unit, Br-XV have been marked as **Exhibit-P18 collectively/PW9**. Second I.O. being PW 9, had required the Water Department to supply necessary documents for the purposes of the instant case along with information about the type of hazard that will occur in drainage and sanitation system due to the unauthorized construction at the case premises. In reply the said department informed that on receipt of notice, an inspection was carried on at the case premises. As per available departmental records there was no water connection in those premises and the water supply of that locality was found normal.

**4.11.21 Notice to Divisional Fire Officer, South Kolkata Division, West Bengal, Fire & Emergency Services along with reply** of the said department dated 05.04.2024 have been marked as **Exhibit-P19 collectively/PW9**. PW 9, had required the department to provide valued opinion and documents if any, regarding basic and general rules of fire safety measures maintained at the case premises, if the unauthorized construction may cause any fire hazard in the locality along with any other relevant point. The department replied that an inspection was carried out at the case premises by O.C Garden Reach Fire Station. It was found that the structure/building therein has collapsed. So, in the absence of the relevant

structure i.e. the number of stories and the total built up area and further details of nature of occupancy, the assessment of risk of fire hazard and its emergent exigency could not be done. Accordingly, requisition was sent to Executive Engineer, Building Department, Br-XV, KMC for obtaining the said details of the construction. In the absence of any reply from Building Department, necessary reply could not be filed. Yet it was informed that any unauthorized construction built without any inspection or supervision from the fire department creates a high probability that such structures may endanger human life and safety. A copy of notification no. 279/DS/FS/O/C-1/F1A-3/96, dated 08.07.2023 regarding high-rise and high-risk building is enclosed.

**4.11.22 Notice to O.C Metiabruz Traffic Guard and the relevant reply** has been marked as **Exhibit-P20 collectively/ PW 9**. The said department was requested to visit the P.O and provide valued opinion regarding the traffic hazards caused by collapse of the building therein. Vide reply dated 28.03.2024, Sergeant Rahul Das reported that he visited the case premises and found that the unauthorized construction therein had collapsed on the night of 17.03.2024 which resulted in the death of twelve people and several were injured. It is further observed that all the approaching lanes to this location are very narrow and it was difficult to reach the spot using any vehicle. Thus, the vehicles used by the emergency services like the Fire Tender, Ambulance including NDRF, DMG and QRT faced difficulties in reaching the ill-affected spot during rescue operation. Moreover, during the rescue operation, the movement of two wheelers, slow moving vehicles and of the pedestrians were severely hampered. This unauthorized construction was built up without obeying norms of KMC Act for which KMC Authorities may take legal actions.

**4.11.23** Next is the **notice to BL & LRO, KMC and the relevant reply** along with tax receipt. The notice was marked as **Exhibit-P21/PW 9**. These

documents have already been discussed in the previous head regarding assessment.

**4.11.24 Examination of witnesses** - PW9 continued his deposition and stated that he had examined Md. Saif Ali, Md. Mehtab Alam, Syed Mustafa Ali, Abhijit Lodh, Murselim Islam, Sahina Khatoon, Md. Sahiluddin Gazi. He also examined the complainant Debabrata Ghosh and SAE. They stated that the entire building at the case premises was constructed without adhering to the guidelines and relevant rules and regulations. No Sanctioned Plan was obtained from KMC. As a result, the building has collapsed and resulted in such catastrophe.

**4.11.25** He corroborated the complainant i.e. PW-1 regarding joint inspection of the case premises. PW-9 stated that there had been some confusion regarding ascertainment of the premise number due to which joint inspection with the KMC authorities was conducted. The relevant notice issued to KMC Authorities for joint inspection, reply from KMC along with report have been marked as **Exhibit-P22/PW9 to P24/PW9** respectively. The said documents as produced by PW-1 previously was marked as **Exhibit-P3, Exhibit-P4 and Exhibit-P5** respectively. Additionally, PW 9 also adduced the letter submitted by him informing this court about the joint inspection for fixing up the actual P.O as well as the P.R. marked **Exhibit-P25/PW9**. I.O confirmed that pursuant to the joint inspection, the case premise was established. Thereafter, the case was transferred to another department i.e. D.D, Homicide Department.

**4.11.26** During cross-examination PW-9 further deposed that the names of the accused persons are mentioned in the reply of CESC. He has not submitted any document regarding direct involvement of the accused persons with the unauthorized construction. He denied all the suggestions put to him.

**4.11.27 Evidence of Third I.O.( PW 10 )-** On 29.03.2024, S.I Koushik Mukherjee being posted at Homicide Squad, Detective Department was

endorsed with investigation of this case by the then O.C. He received a letter of endorsement in his name along with the C.D. The endorsement has been marked as **Exhibit-P26/PW10**.

**4.11.28 Visitation of the P.O.-** After receiving the C.D he found that notices u/s 91 Cr.P.C were already issued and replies were also received. As another case under Indian Penal Code being Garden Reach P.S/DD Case No. 55 dated 18.03.2024 was also initiated on the basis of the selfsame incident, he had previously visited the case premises several times. After being endorsed, he again visited the case premises. He confirmed that the building at the case premises had collapsed and still the debris were lying over the ground.

**4.11.29** He conducted raid and issued notices u/s 41A Cr.P.C to Md. Sarfaraz @ PMC Pappu, Md. Samim, Md. Dilnawaz @ Raja, Md. Wasim @ Wasi. The relevant notices have been marked as **Exhibit-P27 collectively/PW10**.

**4.11.30** He had prayed before Ld. Chief Judicial Magistrate, Alipore for service of the notices upon the accused persons who were in custody in connection to Garden Reach P.S/DD Case No. 55 dated 18.03.2024. He also issued a letter to Superintendent of the Correctional Home. The relevant prayer and letter have been marked as **Exhibit-P28 collectively/PW10**. On perusal of the notices, it appears that those were served.

**4.11.31 Contents of Exhibit-P28 collectively/ PW10-** The letter addressed to the Court of Ld. Chief Judicial Magistrate, Alipore narrates the chain of incident starting from the collapse. PW-10 had noted in this letter that due to the collapse of the building at the case premises, human life, water supply, drainage, fire, sewerage, road traffic etc. were affected. As thirteen people died due to such collapse, another case being Garden Reach PS Case No. 55 dated 18.03.2024 u/s 302/307/288/427/34 IPC was initiated. This letter also indicates that eventually the instant case and

Garden Reach PS Case No. 55 both dated 18.03.2024 were investigated by the Homicide Squad and SIT was formed under the leadership of D.C, D.D Special, Lalbazar for investigating both the case simultaneously. PW-10 had prayed before the court for permission to interrogate the accused persons in the light of the instant case after serving notice u/s 41A Cr.P.C at Presidency Correctional Home, Alipore. Superintendent of the said Correctional Home was also intimated regarding the prayer for interrogation of the accused. Copy of necessary permission was attached. The relevant photocopy of order-sheet of court shows that due permission for interrogation of the accused was granted within the periphery of statutory obligations. But this photocopy of the order sheet has not been exhibited.

**4.11.32** PW-10 had also reiterated on dock that a Special Investigation Team was constituted in connection with both the cases. He produced photocopy of order dated 29.03.2024 by Joint Commissioner of Police (Crime), Kolkata which was kept with the record but not exhibited. He collected certified copies of seizure lists and certain documents including Memorandum of Understanding and Agreements from S.I. Samik Daw. He was not provided any Sanctioned Plan either by the accused persons or by the KMC officials regarding the construction at the case premises. Thereafter, he closed the investigation on obtaining permission from the higher authority and submitted charge-sheet no. 156 dated 23.11.2024 against the accused persons for offence punishable u/s 401A KMC Act.

**4.11.33** During cross-examination, he further deposed that as per Assessor Collector report, the accused persons were responsible. As the original documents were submitted in connection with Garden Reach PS Case no. 55 dated 18.03.2024, certified copies of those documents were collected. He had visited the case premises immediately after the incident. While concluding his evidence, he denied all the suggestions put to him about improper investigation and lack of involvement of the accused with the unauthorized construction.

**4.11.34** The officers of the Homicide Department have been examined as PW 11, PW 12 and PW 34.

**4.11.35 PW-11 is S.I Samik Daw.** He viewed **Exhibit-P26/PW 10** and confirmed that it was the order received by his department i.e. Homicide Squad, Detective Department for investigation of this case. He had seized certain documents in connection to Garden Reach PS Case No. 55 dated 18.03.2024. During investigation of this case, S.I. Koushik Mukherjee collected the certified copies of seizure list and photocopies of seized documents from him. The relevant original of those documents had been seized and lying in connection with Garden Reach PS/D.D Case No. 55 dated 18.03.2024. He submitted certified copy of seizure lists dated 22.03.2024, 23.03.2024 and 14.04.2024 marked as **Exhibit-P29 collectively/PW11**. He also submitted certified copy of seized documents duly certified being Memorandum of Understanding, Development Agreements, Agreements for booking of flat and General Power of Attorney which were marked as **Exhibit-P30 collectively/PW11**. During cross examination he admitted that these documents are not certified by any court. The concerned O.C has certified these documents. Further that these documents are not registered.

**4.11.36** Eventually, prosecution was asked to produce the original copies of documents marked **Exhibit-P29 collectively and Exhibit-P30 collectively** vide order dated 16.01.2026. In pursuance of the same, S.I. Samik Daw appeared before the court on 30.01.2026 and submitted that the relevant documents were with QUB CID for examination and prayed for time. Ld. APP submitted petition u/s 311 Cr.P.C. for summoning PW 11 and Additional O/C Chinmoy Baneerjee as they had seized the relevant documents. Said prayer was allowed and summons were issued accordingly.

**4.11.37** On 24.02.2026 Additional O/C Chinmoy Baneerjee was examined as PW 34 and PW 11 was further examined.

**4.11.38 Evidence of PW 34-** He stated that on 22.03.2024 he was posted at Homicide Squad, Detective Department as S.I. During investigation of Garden Reach P.S. case no.55 dated 18.03.2024 he had seized certain documents vide seizure list dated 22.03.2024. PW 34 was shown certified copy of seizure list dated 22.03.2024 marked **Exhibit- P29** and he admitted to have prepared it in his own handwriting bearing his signature. Thus, the signature of PW 34 on said seizure list has been marked as **Exhibit-P29/1/PW34**. During cross examination he stated that he had visited the case premises physically after the building had collapsed. He had not visited the spot before that. No complaint was lodged at their department from the KMC before the building had collapsed. The documents seized by him are not registered.

**4.11.39** PW 11 and PW 34 produced the original copies of the documents previously marked **Exhibit- P30 collectively**. The said original copies have been marked as **Exhibit-P 34 to Exhibit-P44**.

**4.11.40** It is now necessary to discuss the documents exhibited under the head of **Exhibit-P34 to Exhibit-P44**.

**4.11.41** PW-11 produced seven seizure lists.

**4.11.42** Vide the seizure list dated 22.03.2024 marked **Exhibit- P29 collectively** following documents were seized which have been categorized according to the relevant premise number:-

a).**Exhibit-P34/PW34 and Exhibit-P35/PW34-** Original Development Agreement marked **Exhibit-P34/PW34** and General Power of Attorney marked **Exhibit-P35/PW34** executed between Md. Samim S/o. Abdul Rahman and Md. Wasim S/o. Lt. Md. Hanif through notary bearing non-judicial stamp paper nos. 64AB749487 and 64AB819906 respectively both dated 03.02.2022 and notarized on 07.03.2022 before Notary Kazi Khalekujjaman.

From these documents it appears that Md. Samim as owner entered into an Development Agreement with Md. Wasim being a developer and it was

agreed upon that a G+4 storied building would be constructed at Premise No. J-506/B, Azhar Molla Bagan Lane, P.O & P.S: Garden Reach, Kolkata-700024, measuring more or less 2 (two) Cottahs, appertaining to Dag No. 196, Khatian No. 238, Sheet No. 114, Mouza Garden Reach, Dist. South 24-Parganas, within the limits of K.M.C. Garden Reach Unit, Ward No. 134, Assessee No. 51-134-0300810 after demolishing tile shed structures. It was further agreed upon that the developer would settle the existing tenants at the ground floor and new tenants at the ground to fourth floor. The developer was also given full right to receive bookings in advance and receive construction cost from the new tenants. The landlords would have no right over the construction cost but the rents would be collected by them solely. The scope of work describes the basic details according to which construction is to be done.

In support of such agreement a Power of Attorney was executed simultaneously among the said parties whereby Md. Wasim was authorized to manage the construction of G+4 storied new building at the said premise and represent the land owner before public bodies and in respect of sanction and other procedures. The developer was delegated the authority to settle new tenants and realize construction cost.

b). **Exhibit- P36/ PW 34, Exhibit- P37/ PW 34 and Exhibit- P38/ PW 34-** Original General Power of Attorney marked **Exhibit- P36/ PW 34**, Memorandum of Understanding marked **Exhibit- P37/ PW 34** and Development Agreement marked **Exhibit- P38/ PW 34** executed among Md. Sarfaraz, Md. Sahanawaz and Md. Dilnawaz all sons of Md. Safique and all residents of J-506/C Azhar Molla Bagan Lane, P.O & P.S: Garden Reach, Kolkata-700024 or as first party with Md. Wasim S/O. Md. Hanif or Abdul Rauf Nezami as second party as the case may be having non-judicial stamp nos. 65AB606963, 64AB999262 and 64AB999264 respectively.

This Memorandum of Understanding was entered among the three sons of Md. Safique namely Md. Sarfaraz being the first party and Md. Dilnawaz,

Md. Sahanawaz being the second party. It was declared that they are the joint owners of case premise no. J-506C, Azhar Molla Bagan, Garden Reach and they had appointed Md. Wasim and Abdul Rouf Nezami as developers for construction at the said premise. Further details relate to apportionment of shares and profits arising from such new construction. The first party agreed to sell their allocated portion to the intending tenants. The relevant General Power of Attorney was executed on 01.04.2022 among the said parties where Md. Sarfaraz, Md. Dilnawaz and Md. Sahanawaz declared that they are the owners of case premise no. J-506/C, Azhar Molla Bagan, P.O & P.S: Garden Reach, Kolkata-700024, measuring more or less 1 (one) Cottah, 8 (eight) Chittacks, appertaining to R.S.Dag No. 196 under R.S. Khatian No. 108, C.S.Sheet No. 119 and R.S.Sheet No. 114, Touzi No. 58, Mouza Garden Reach, Dist. South 24-Parganas, within the limits of K.M.C., Garden Reach Unit, Ward No. 134, Assessee No. 51-134-03-0087-0 with existing tile shed structure thereon. The second party i.e. Md. Wasim and Abdul Rauf Nezami were authorized to manage the construction of proposed G+4 storied new building at the said premise and represent the first party before public bodies and other appropriate authorities. The developer was delegated the authority to settle new tenants and realize construction cost. This General Power of Attorney was to be irrevocable till the construction was completed.

The relevant Development Agreement clearly stated the intention of the first party being the three sons of Md. Safique namely Md. Sarfaraz , Md. Dilnawaz and Md. Sahanawaz and their agreement with the second party being Md. Wasim and Abdul Rauf Nezami that a G+4 storied building would be constructed at the same schedule of property as mentioned in the Power of Attorney after dismantling the tile shed structure. It was further agreed upon that the developer shall have the right to receive bookings in advance and receive construction cost from the new tenants. The landlords would have no right over the construction cost but the rents would be

collected by them solely. This agreement also mentions the scope of work and the details of construction.

These documents are neither registered nor notarized.

Pertinently all these documents were seized from inside the flat of accused Md. Wasim at premise no. J-416, Azhar Molla Bagan Lane on being produced by Shamed Aftab being the brother-in-law of accused Md. Wasim in the presence of witnesses.

**4.11.43** Next vide seizure lists dated 14.04.2024 marked **Exhibit- P29 collectively** three separate documents have been seized from three different places which are elaborated hereunder:-

a). **Exhibit- P42/ PW 11-** One original agreement for booking of flat typed over non-judicial stamp no. 70AB917992 executed between developer as first party namely Md. Wasim with tenant/second party namely Iqbal Raja seized from inside the dwelling room of Iqbal Raja situated at J-425/B, Azhar Molla Bagan (4<sup>th</sup> floor) on being produced by Iqbal Raja in the presence of other witness. Vide this agreement Iqbal Raja agreed to rent one flat of 450 sq.ft on fourth floor of G+4 storied building at premise no. J-506/C, Azhar Molla Bagan having construction cost settled @ Rs.1150 per sq.ft. It is further mentioned in the seizure list that in the original copy seized, the information regarding payment entries having signature of Md. Wasim in blue ink and signature of Iqbal Raja in blue ink appeared. This document again refers Md. Sarfaraz, Md. Sahanawaz and Md. Dilnawaz as the owners of the case premise. The second party could apply for sub meter from CESC and water would be supplied for 15 minutes two times a day. The said flat could be reassigned/transferred by the second party. There was no right to use the roof of the building.

b). **Exhibit- P43/ PW 11-** One original agreement for booking of flat typed over non-judicial stamp no. 70AB576963 executed between developer as first party namely Md. Wasim and Abdul Rauf Nezami with tenant/second party namely Md. Mustak seized from inside the dwelling room of Md.

Mustak situated at J-512, Azhar Molla Bagan on being produced by wife of Md. Mustak in the presence of other witness. Vide this agreement Md. Mustak agreed to rent one flat of 450 sq.ft on first floor of G+4 storied building at premise no. J-506/C, Azhar Molla Bagan having construction cost settled @ Rs.1700 per sq.ft. It is further mentioned in the seizure list that in the original copy seized, the information regarding payment entries having signature of Md. Wasim in blue ink and signature of Md. Mustak in blue ink appeared. This document again refers Md. Sarfaraz, Md. Sahanawaz and Md. Dilnawaz as the owners of the case premise. The second party could apply for sub meter from CESC and water would be supplied for 15 minutes two times a day. The said flat could be reassigned/transferred by the second party. There was no right to use the roof of the building.

c). **Exhibit- P44/ PW 11-** One original agreement for booking of flat typed over non-judicial stamp no. 70AB376935 executed between developer as first party namely Md. Wasim with tenant/second party namely Sajad Ali seized from inside the dwelling room of Mohammad Munna situated at J-507, Azhar Molla Bagan on being produced by uncle of Sajad Ali in the presence of other witness. Vide this agreement Sajad Ali agreed to rent one flat of 450 sq.ft on first floor of G+4 storied building at premise no. J-506/C, Azhar Molla Bagan having construction cost settled @ Rs.1600 per sq.ft. It is further mentioned in the seizure list that in the original copy seized, the information regarding payment entries having signature of Md. Wasim in blue ink is found. This document again refers Md. Sarfaraz, Md. Sahanawaz and Md. Dilnawaz as the owners of the case premise. The second party could apply for sub meter from CESC and water would be supplied for 15 minutes two times a day. The said flat could be reassigned/transferred by the second party. There was no right to use the roof of the building.

**4.11.44** Lastly vide seizure lists dated 23.03.2024 also marked **Exhibit-P29 collectively** three other documents were seized from separate places which are hereunder:-

a). **Exhibit- P39/ PW 11-** One original agreement for booking of flat typed over non-judicial stamp no. 70AB043786 executed between developer as first party namely Md. Wasim with tenant/second party namely Md. Safi seized from inside the dwelling room of Md. Safi situated at J-507, Azhar Molla Bagan (4<sup>th</sup> floor) on being produced by Md. Safi in the presence of other witness. Vide this agreement Md. Safi agreed to rent one flat of 450 sq.ft on second floor of G+2 storied building at premise no. J-506/B, Azhar Molla Bagan having construction cost settled @ Rs.1600 per sq.ft. It is further mentioned in the seizure list that in the original copy seized, the information regarding payment details is noted in blue ink having signature of Md. Wasim. This document again refers Md. Samim as the owner of the case premise. The second party could apply for sub meter from CESC and water would be supplied for 15 minutes two times a day. The said flat could be reassigned/transferred by the second party. There was no right to use the roof of the building.

b). **Exhibit- P40/ PW 11-** One original agreement for booking of flat typed over non-judicial stamp no. 70AB043752 executed between developers as first party namely Md. Wasim and Abdul Rauf Nezami with tenant/second party namely Sabila Begum seized from inside the dwelling room of Sabila Begum situated at Block-A, Room No. 1, CDLB Qtrs, Taratala Road, P.S- West Port on being produced by Rani Begum in the presence of other witness. Said Rani Begum has been examined and identified her signature on instance seizure list marked **Exhibit-P29/1/PW3**. Vide this agreement Sabila Begum agreed to rent one flat of 600 sq.ft on second floor of G+4 storied building at premise no. J-506/C, Azhar Molla Bagan having construction cost settled @ Rs.1250 per sq.ft. It is further mentioned in the seizure list that in the original copy seized, the information regarding

payment entries having signature of Md. Wasim was found. This document again refers Md. Sarfaraz, Md. Sahanawaz and Md. Dilnawaz as the owners of the case premise. The second party could apply for sub meter from CESC and water would be supplied for 15 minutes two times a day. The said flat could be reassigned/transferred by the second party. There was no right to use the roof of the building.

c). **Exhibit- P41/ PW 11-** One original agreement for booking of flat typed over non-judicial stamp no. 70AB707966 executed between developer as first party namely Md. Wasim with tenant/second party namely Firdous Begum and Salma Begum seized from inside the dwelling room of Firdous Begum situated at J-507/A, Azhar Molla Bagan on being produced by Firdous Begum in the presence of other witness. Vide this agreement Firdous Begum and Salma Begum agreed to rent one flat of 450 sq.ft on fourth floor of G+4 storied building at premise no. J-506/B, Azhar Molla Bagan having construction cost settled @ Rs.1200 per sq.ft. It is further mentioned in the seizure list that in the original copy seized, the information regarding payment entries having signature of Md. Wasim was found. This document again refers Md. Samim as the owner of the case premise. The second party could apply for sub meter from CESC and water would be supplied for 15 minutes two times a day. The said flat could be reassigned/transferred by the second party. There was no right to use the roof of the building.

**4.11.45** The last witness under this head is PW-12 namely Inspector Subhadip Chakraborty. On 29.03.2024, he was posted as O.C, Homicide Squad, Detective Department. On being put up **Exhibit-P26**, he deposed that he had endorsed the name of S.I Koushik Mukherjee. Thereafter **Exhibit-P29 marked collectively** and **Exhibit-P30 marked collectively** were shown to the witness. He deposed that he had certified all these documents. During cross-examination, he reiterated that all these

documents were not certified by court but by the concerned O.C. These documents are not registered.

**Legal position regarding the admissibility and probative value of Exhibit- P29 , P34 to Exhibit- P44-**

The impugned incident apart from raising the jurisdiction of this court regarding the allegation of unlawful construction, several provisions of IPC being sections 302/304/288/427/34 were also attracted to initiate Garden Reach P.S / D.D Case No. 55 dated 18.03.2024 against the same accused persons. As the subject matter of both these cases pertain to the same incident merely addressing its different aspects, same set of documents are relevant and required for establishing such cases. Several documents produced and exhibited herein were procured in respect to Garden Reach P.S / D.D Case No. 55 dated 18.03.2024 which are **Exhibit-P32 and Exhibit- P34 to Exhibit-P44. Exhibit-P32** determine the nature and character of the case premises according to the records of relevant BL & LRO office. S.I Samik Daw (PW 11) and S.I Chinmoy Banerjee (PW 34) both hailing from the Homicide Department deposed that they had seized some Development Agreements, Power of Attorney, Memorandum of Understanding and Agreements for booking flats in respect to Garden Reach P.S / D.D Case No. 55 dated 18.03.2024 vide seizure lists dated 22.03.2024, 23.03.2024 and 14.04.2024. PW 11 further stated that the original copies of such documents and seizure lists are lying in the said other case. He only tendered copies of the same certified by the then O.C, Homicide Department which were marked as **Exhibit-P29** collectively and **Exhibit-P30** collectively without any specific objection from the defence. The third I.O being PW 10 admitted to have collected the said certified copies as exhibited from S.I Samik Daw. PW 12 admitted to have certified the documents so exhibited.

Ld. Defence Counsel has equally cross-examined PW 10, PW 11 and PW 12 as to the fact that such documents have not been certified by any court.

PW 11, PW 12 and PW 34 also admitted that these documents marked **Exhibit-P30 collectively** have not been registered. Ld. Counsel had argued that the original copies of such documents have not been produced. Thus, her objections are evident from the nature of her cross examination. This mandates discussion on following legal issues to ascertain the admissibility and the probative value of **Exhibit-P29** and **Exhibit-P34 to Exhibit-P44** :-

**a). Whether certified copies of seizure lists marked Exhibit-P29 collectively are admissible and duly proved?**

These seizure lists were prepared in connection to Garden Reach P.S / D.D Case No. 55 dated 18.03.2024 which was being investigated by the homicide department. The maker of these documents that is PW 11 and PW 34 have admitted to have prepared such documents. The signature of PW 34 on seizure list dated 22.03.2024 has been marked as **Exhibit-P29/1** by PW 34. PW 12 has certified the seizure lists in his official capacity being the then O.C of Homicide Squad, Detective Department and PW 10 being third I.O of this case admitted to have collected such documents from PW 11 during investigation. PW 11 admitted on dock that he had handed over the said certified copies to PW 10. In this scenario the documents have been duly certified by PW 12 in his official capacity and later were collected by the I.O of this case. As already discussed, both PW 11 and PW 34 produced each and every document, seized by the said seizure lists also bearing their signatures on the back side of each page of such documents. Thus, the preparation, custody, collection and the contents of such certified copies of the seizure lists having been duly proved, there appears to be no other doubt in accepting the same.

**b). Whether unregistered Development Agreements, Power of Attorney and Agreements for booking flats marked Exhibit-P34 to Exhibit-P44 are admissible to establish criminal liability of the accused persons in the case?**

PW 11 and PW 34 produced the original copies of these documents seized by them vide seizure lists marked **Exhibit-P 29 collectively**. Both these witnesses admitted that the said documents were seized by them and bears their signature and the signature of witnesses on the back side of each page of such documents which have been wholly exhibited including their signatures again with no specific objection from the defence. Both these witnesses have admitted that the documents are not registered.

The case under consideration is being defended by Md. Wasim who is the developer and Md. Sarfaraz, Md. Dilnawaz and Md. Samim as the owners of the case premises as per the investigation presented by I.O. The instant documents have been placed as evidence. I consider the same to be merely contracts and as such the question of registration raised by the defence is of no avail. This is a criminal liability where the documents clearly indicate the involvement of the above accused in the said status as found during investigation.

Even then going by the defence taken by Ld. Advocate of the accused, the fact of lack of registration of these documents is being discussed.

While Section 17 mandates compulsory registration of documents that create or affect rights in immovable property, Section 49 imposes a bar on the admissibility of unregistered documents to prove those rights. However, a crucial exception exists. Such documents may still be received in evidence for collateral purposes. The relevant provision is mentioned hereunder:-

**Section 49. Effect of non-registration of documents required to be registered** – No document required by section 17 (or by any provision of the Transfer of Property Act, 1882) to be registered shall -

- a). affect any immovable property comprised therein, or
- b). confer any power to adopt, or
- c). be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

(Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act. 1877 or as evidence of any collateral transaction not required to be effected by registered instrument).

The concept of collateral purpose has been judicially interpreted to mean any purpose other than establishing, creating or extinguishing rights in immovable property. The leading authority on this principle is **K.B.Saha and Sons Pvt. Ltd. Vs Development Consultant Ltd. (2008) 8 SCC 564** where the Hon'ble Supreme Court of India held that an unregistered document, though inadmissible to prove the main transaction affecting property, can be used to prove a collateral fact such as possession, the nature of such possession, character of the parties' relationship or the fact of execution. In **Anthony Vs K.C. Ittoop & Sons (2000(6) SCC 394)** it has been held that " Notwithstanding that the landlord and tenant had executed only an unregistered lease deed for a period of exceeding one year, the relationship between them held was that of landlord and the tenant and to that extent the lease deed can be relied on. In **Bondar Singh v. Nihal Singh, (2003) 4 SCC 161** it was observed that an unregistered sale deed, though inadmissible for proving title can be looked into for the limited purpose for proving possession. The expression collateral purpose cannot have a straight-jacket formula and must be decided on the basis of the facts and circumstances of each case.

In this case the Development Agreements, Power of Attorney and the Agreements for Booking Flats are only being used to establish the relation of the parties therein among themselves and with the case premises, their plans and methods of raising a multi storied structure at the case premises which is collateral to the substantive purpose for which they were prepared. Unregistered document can be admitted as evidence of an admission of a fact by a party thereto. **[AIR 1920 Mad 172 (176) DB]**

On further perusal of the Development Agreements marked **Exhibit-P34 and Exhibit-P38** it appears that both the documents have been similarly worded wherein it has been stated in para 2 that developers undertook to develop the case premises at their own cost and expenses which was to be realized by inducting new tenants. The developers were only given the right to induct new tenants for which the landlords would execute Power of Attorney in his favour. The developers could receive construction cost from the newly inducted tenants by them. The developers did not have the right to collect monthly rent which remained with the landlords and the Tenancy Agreement would be executed between the landlords and the tenants. The landlords were to be given specific portions of the case building after completing it by the developers. The language of the Development Agreements reveals that the developers named as Md. Wasim and Abdul Rauf Nezami as the case may be did not receive any specific property rights in the case premises. Their rights were restricted to development of the case premises and their remuneration specified as construction cost was to be retrieved by inducting tenants on the strength of Power of Attorney. After being paid the construction cost, the developers had no further right over the case premises. Whereas the landlords retained their status by obtaining specific portions of the case premises and receiving rent for the rest of the portion. In the terms of these agreements decision reported in **2001 (1) Bom CR 48(50)** is very appropriate where it has been held that a Development Agreement is merely an agreement whereby a party agrees to develop certain property for a certain consideration and does not create a transfer of any interest in immovable property and therefore does not require registration. Moreover, Power of Attorney marked **Exhibit-P35** has been notarized and as has not been used to transfer any property rights, the presumption regarding the Power of Attorney as provided u/s 85 of the Indian Evidence Act is also attracted which is noted hereunder:

**Section 85. Presumption as to powers-of-attorney-** The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.

Hence, there is no bar in accepting **Exhibit-P34 to Exhibit-P44** as marked in this case.

**4.12. The representatives of the other essential departments of KMC contacted during investigation along with corresponding reports thereof-**

**4.12.1 Evidence from Fire Department-PW-28** namely Sasanka Sekhar Biswas being posted as Station Officer, Garden Reach Fire Station admitted that the case premises is within his jurisdiction. He received the notice from Investigating Officer marked **Exhibit-P19 collectively/PW-9**. On 29.03.2024 he went for inspection at the case premises and saw the case building in collapsed condition. As such, he could not ascertain as to how many stories the building had. They had issued one letter to Br-XV in order to know if there was any Sanctioned Plan for construction at the case premises and they were intimated that there was no Sanctioned Plan for construction at the case premises. The relevant reply of Executive Engineer, Civil, Building Department was already marked **Exhibit-P16/PW-9**. The report prepared by PW-28 and sent to I.O was already marked as **Exhibit-P19/PW-9 collectively**. He also identified his signature thereon marked as **Exhibit-P19/1/P28**. He had also sent one report to Assistant Commissioner of Police, Homicide Department, Lalbazar also marked **Exhibit-P19 collectively**. He himself had not received any complaint from anywhere before receiving notice from P.S. He could not ascertain any feature of the building as it had already collapsed.

**4.12.2 Evidence from Traffic Department-** PW-29 namely Sergeant Rahul Das deposed that he was associated with Metiabruz Traffic Guard at the

relevant time and they had received one notice u/s 91 Cr.P.C from I.O, already marked **Exhibit-P20/PW9**. He visited the case premises on 17.03.2024 upon direction of O.C Metiabruz Traffic Guard and found that the building at the case premises had collapsed. The approach road to the case premises was very narrow and the emergency service personnel of departments like Fire, NDRF, DMG (Disaster Management Group), QRT (Quick Response Team) were finding it difficult to access the case premises. Later, on communicating with the P.S. they came to know that many people were injured and 12 people had expired due to the collapse of the building at the case premises. On the basis of his inspection, he submitted a report to I.O, already marked as **Exhibit-P20/PW-9**. He identified his signature thereon which was marked as **Exhibit-P20/1/PW29**. During cross-examination, he stated that he had visited the case premises and found that the building therein had collapsed. After that there was a lot of uncertainty within the locality of the case premises. Before receiving notice from I.O, he had not received any complaint about the case premises and he does not have any knowledge about who constructed the structure at the case premises.

PW-30 Inspector, Masood Shawkat was posted as O.C, Metiabruz Traffic Guard. The case premises is within his jurisdiction. They had received the notice from IO, already marked **Exhibit-P20/PW9**. The then O.C namely Pinaki Pramanik endorsed the charge of the investigation to Sergeant Rahul Das who visited the case premises and submitted the report on 28.03.2024. The report has been already marked as **Exhibit-P20**. PW-30 claimed to know the signature of O.C Pinaki Pramanik as he had worked with him. He further deposed that it is evident from the report that due to collapse of the building at the case premises many people were injured and twelve people have died. He again filed compliance report marked **Exhibit-P33/PW30**. From this document it is found that on 18.03.2024 at about 00.10 hrs, G.D.Writer C/8879, Babul Hossain of Metiabruz Traffic Guard

received an information from Dial 100 regarding one five storied building having collapsed at J-506/B & J-506/C Azhar Molla Bagan Lane, Ward No. 134, Borough (XV) KMC. Accordingly, Sgt. Rahul Das and Sgt. Debasis Kumar Das of Metiabruz Traffic Guard were diverted to the spot by the then Officer-In-Charge of Metiabruz Traffic Guard, Shri Pinaki Pramanick and on reaching there they found a huge gathering and noticed a five storied building has collapsed and as per locals, several people were trapped under the debris. Police personnel with the help of local people started rescue operation and later on DMG, NDRF, CESC, Fire Brigade and Ambulance arrived and started rescue operation. Fire Brigade and Ambulance were facilitated to reach the spot and several persons were removed to nearby 'Unipon Hospital' for necessary medical assistance. PW-30 had not visited the case premises and the report has been submitted by him on the basis of what he gathered from the people who were in-charge at the time of the incident.

**4.12.3 Evidence from Water Department-** PW-31 namely Ranjan Kumar Mallick is posted as Executive Engineer, Water Supply Department, Br-XV. The case premises is within his jurisdiction. He had received one notice from Tanmoy Samui, already marked **Exhibit-P18 collectively/PW-9**. Thereafter, they conducted an inspection and submitted report also marked as **Exhibit-P18 collectively**. He identified his signature on such report marked as **Exhibit-P18/1/PW31**. He also identified the signature of AE, Kalyan Parui as he had worked with him which was marked as **Exhibit-P18/2/PW31**. He had visited the case premises on receipt of notice and found that the building therein had collapsed. PW-31 did not have any knowledge about the persons responsible for construction at the case premises. He had not visited the case premises before the building had collapsed there.

**4.12.4 Evidence from CESC-** PW-32 is District Engineer, CESC, Taratala Unit namely Kailash Pandit. The case premises is within his jurisdiction. He

also received notice u/s 91 Cr.P.C, already marked **Exhibit-P17 collectively/PW 9**. Thereafter they had conducted inspection and submitted report also marked **Exhibit-P17 collectively**. He identified signature of the then Manager, South West, Mr. Prasenjit Ghatak as he had worked with him. The relevant signature of said Prasenjit Ghatak has been marked as **Exhibit-P17/1/PW32**. Apart from that he did not have any knowledge about the persons responsible for construction at the case premises.

PW-33 is Manager, South West, CESC, Taratala Unit namely Jaydeep Mukhopadhyay. The case premises is within his jurisdiction. He also received notice u/s 91 Cr.P.C, already marked **Exhibit-P17 collectively**. Thereafter, they had conducted inspection and submitted report also marked **Exhibit-P17 collectively**. He identified signature of the then Manager, South West, Mr. Prasenjit Ghatak as he had worked with him. The relevant signature of said Prasenjit Ghatak has been marked as **Exhibit-P17/1/PW32**. Apart from that he did not have any knowledge about the persons responsible for construction at the case premise.

**4.13** 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 and its consequences;

II)And the involvement of the accused in raising such unauthorized construction being Persons Responsible.

**4.14** At the same time, accused have challenged the instant proceeding mainly on the ground that the necessary pre-requisites for filing the instant case have not been fulfilled. There is lack of any local complaint. The exact nature of the unauthorized construction has not been delineated. The prosecution has not been able to prove the role of the accused in the

alleged unauthorized construction. Hence, accused have prayed for acquittal on such grounds.

**4.15 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 at the case premises which was unauthorized under the KMC Act and rules framed thereunder.

## **5. Analysis and Findings**

**5.1** Kolkata ,one of the oldest metropolitan cities, is a major cultural, economic and administrative center of eastern India. With a long colonial history, high population influx and heterogenous socio-economic structure, the city faces multiple urban challenges. The urban area of Kolkata must be defined as the agglomeration of cells having diversified living environment and diverse life styles all pasted together to form a composite whole. Schedule I of the KMC Act defines the boundary of Kolkata. Initially Kolkata was divided into Ward nos. 1 to 100. Later surrounding areas were added as the city grew. Now there are 144 wards as mentioned in schedule-II. One must wonder as to what is the necessity of going through the divisions of Kolkata. This is for the simple reason to understand the relevant administrative implications and location of the P.O which is situated in Ward No. 134. This Ward is located on the southern bank of river Hooghly and Garden Reach Road to its north. To be specific the P.O is situated on the western part of this ward i.e. on **Azhar Molla Bagan**.

### **5.2 The Authorities woke up to a catastrophe.**

**5.3** In the above backdrop and analyzing the materials available on record brought forward by the prosecution in the form of evidence and the examination of the accused u/s 313 Cr.P.C, it would be appropriate to recapitulate the findings with simultaneous holistic reading of the legal provisions also addressing the corroboration and contradictions in the following manner:-

**5.3.1 Information of the incident to KMC Building Department–** Both Assistant Engineer and Sub-Assistant Engineer of Ward-134 Br-XV i.e. PW-1 and PW-25 respectively claimed to have received information that a five storied building has collapsed at the case premises from LBS Abhijit Lodh at 1:50 am on 18.03.2024 but said LBS examined as PW-26 contradicted the same impliedly deposing that he himself obtained the same information from SAE on 18.03.2024 at 1:00 am and not vice a versa. Even though there is no clarity as to who informed whom among these witnesses, pertinently, their Superior Authority being Executive Engineer examined as PW-22 received information about that collapse at 12:15 am from the control room. Be that as it may AE, SAE including LBS Abhijit Lodh, all had visited the case premises.

**5.3.2 Date and Time of the incident –** Executive Engineer having known about the collapse at 12:15 am, it appears that the collapse must have taken place at some time before that. In this respect, the evidence of those victims who were present at the spot at that time is to be noted. PW-6 stated that on 17.03.2024 at around 11:25 pm the building at the case premise collapsed. PW-27 also supported the date of incident as 17.03.2024. Not only the local witnesses, Sergeant Rahul Das being PW-29 claimed to have visited the case premise on 17.03.2024 upon direction of O.C, Metiabruz Traffic Guard and found that the building at the case premises had collapsed. The relevant column of Formal FIR as to time of occurrence has been left vacant and only the entry about the time of having received the information is filled up as 18.03.2024 at 12:30 hrs. It must be mentioned here that the incident clearly took place at night approaching mid-night after which the next date started. Thus, even if the incident took place at 11:25 pm, the corresponding dated would be 17.03.2024, when Sergeant Rahul Das visited the case premises. People kept on gathering at the P.O as they received information when it was past mid night and the corresponding dated was 18.03.2024. Apart from PW-6, none of the

witnesses pin pointed the time of the incident. It must be mentioned that PW-6 himself heard the noise of collapse when he was outside his house and found that the building at the case premise had collapsed over his tile shed residence damaging it. It further appears from his evidence that he was well aware of the unauthorized nature of construction at the case premises from its inception and had forbidden the persons responsible though could not produce any documents in support of the same. But witnesses being PW-4 and PW-5, contradicting the said position, have stated the date of the incident to be 16.03.2024.

**Section 134 of the Indian Evidence Act** states that no particular number of witnesses shall in any case be required for the proof of a fact.

Defence cross examining PW6, never questioned the date and time of the incident. That apart a particular fact has to be judged keeping in mind the entire frame work of evidence produced in that case. The rescue operators being PW-17, PW-19, PW-20 & PW-21, supposed to be the earliest responders, all got the information about the collapse and rushed to the spot for necessary disaster management on 18.03.2024. PW-17 had got the information at 3:00 am to 4:00 am and PW-19 got the information at 2:00 am to 3:00 am on 18.03.2024. PW-30 hailing from the Metiabruz Traffic Guard by filing compliance report marked **Exhibit-P33/PW30** brought before the court that on 18.03.2024 at about 12:10 hrs G.D Writer C/8879, Bablu Hossain of Metiabruz Traffic Guard received an information that a five storied building has collapsed at the case premises. I have already discussed that the building department also got the information on the night of 18.03.2024. Ultimately, such contradictions may be attributed to the memory lapses on efflux of time. What is to be seen is the material contents of the evidences of such witnesses and if that supports the main fact of the case.

### **5.3.3 Identification of the case premise i.e. the place of occurrence –**

The case was initiated referring to premise no. J-509/1, Hari Babu Pally

Lane, Ward-134, Br-XV on the basis of local enquiry. **Exhibit-P1** i.e. the SAE report and **Exhibit-P2** i.e. the written complaint mentioned the said address as the place of occurrence. Executive Engineer (PW-22) stated that it was difficult to ascertain the case premise number after collapse. Thereafter, complainant i.e. PW-1 received a letter for joint inspection from I.O S.I Snehasis Bag i.e. PW-9 for identifying the case premise and the Persons Responsible. Both PW-1 and PW-9 produced the relevant communications between them in this connection and also the final report, all marked as **Exhibit-P3, P4, P5** as produced by PW-1 and **Exhibit P-22, P-23 & P-24** as produced by PW-9. The said inspection was also carried in the presence of Assessor Collector, Assessment Department, GR Unit. The identity of case premises was established as J-506/B, J-506/C, Azhar Molla Bagan Lane, Ward-134, Br-XV and the P.R. as Md. Samim, Md. Safique, Raja, Md. Wassi and others. EE also supported such ascertainment.

**5.3.4 Nature and details of the construction at the case premises** – At the inception of the case, the impugned building had already collapsed. Even though AE and SAE stated that according to the information over telephone a five storied building had collapsed at the case premise, I have already discussed that their informer being PW-26 had denied to have passed on such information. Admittedly, none of the officials of the Building Department, KMC be it AE, SAE, EE ever visited the case premises prior to the incident. AE and SAE confirmed that no Stop Work Notice was issued for construction at the case premises. They did not have any knowledge about any demolition proceeding initiated in this connection. Both these officials have been posted at Br-XV since 2023. EE also never visited the case premises before the incident and finally went there on 18.03.2024. These witnesses did not receive any complaint from other essential departments of KMC and they themselves had never lodged any complaint before P.S or other authorities as far as the case premise is concerned. Consequently, they never saw the construction at the case premises the

way it stood before collapse. For that reason, when the investigating agency vide **Exhibit-13** wanted to know about the nature of the construction and the Building Rule Infringement Statement, Executive Engineer vide **Exhibit-P6** also marked as **Exhibit-P16** could only reply that there was a RCC framed structure at the case premises. They expressed their inability to prepare infringement statement. Further, it is mentioned that they had not found any Sanctioned Plan for construction at the case premises. The Fire Department was also required by I.O to provide their valued opinion regarding the basic and general rules of fire safety measures followed at the case premises and the possibility of fire hazard. But Fire Department reported that on inspection, they had found the case building in collapsed condition as a result of which they could not ascertain the number of stories in that building, total built up area, nature of occupancy and necessary assessment of fire hazard and emergent exigency could not be done as such. Naturally they wrote to the Building Department for these details of the case building as it stood before collapse but had not received any reply till the time, they submitted report to I.O. The relevant documents of Fire Department have already been discussed in **Exhibit-P19**. Later Investigating Officer himself submitted the said reply of Building Department dated 04.04.2024 marked as **Exhibit-P16 collectively** in which Executive Engineer stated that it was not possible to ascertain the total built up area and number of stories accurately for the building which has collapsed at the case premises and it was constructed without any Sanctioned Plan. The representative of Fire Department who had visited the case premises examined as PW-28 could not ascertain the number of stories the case building had. He had prepared the report marked **Exhibit-P19** and his signature thereon have been marked as **Exhibit-P19/1/PW28**. PW-8 being the first Investigating Officer stated that a five storied building previously constructed at the case premise had collapsed and the debris were lying on the ground but he did not state as to how he found that such

building was five storied. PW-30 namely Masood Shawkat posted as O.C Metiabruz Traffic Guard confirmed that the information received regarding collapse at the case premises over dial 100 was regarding a five storied building. Even though he had not visited the case premises himself, the report has been compiled on the basis of what he had gathered from the people who were in charge at the time of the incident. Again, we have to turn to the local witnesses. PW-5 said that the case building was four storied. Evidently, PW-6 stated that there was a G+4 storied building at the case premise. It would also be fruitful to discuss the relevant portions of documents marked as **Exhibit-P34 to Exhibit-P44**. The Development Agreements and Memorandum of Understanding entered by Md. Samim, Md. Sarfaraz, Md. Dilnawaz and Md. Sahanawaz with Md. Wasim and Abdul Rauf Nezami and seized vide seizure list dated 22.03.2024 as have already been discussed in detail refers to construction of G+4 storied building at the case premises. Apart from that Agreements for Booking flats at the case premises were also seized vide seizure lists dated 14.04.2024 and 23.03.2024. Vide these agreements entered with Md. Wasim and Abdul Rauf Nezami as the case may be, tenant Iqbal Raja booked a flat on the fourth floor of G+4 storied building at premise no. J-506/C, Azhar Molla Bagan, Md. Mustaque and Sajad Ali both booked one flat each on first floor of G+4 storied building of the same premise, Md. Safi on second floor of G+2 storied building at premise no. J-506/B, Azhar Molla Bagan, Sabila Begum booked a flat on second floor of G+4 storied building at premise no. J-506/C, Azhar Molla Bagan, Firdous Begum and Salma Begum booked a flat on fourth floor of G+4 storied building at premise no. J-506/B, Azhar Molla Bagan. Thus, accused Md. Wasim had entered into several agreements with the other accused and local people declaring the construction at the case premise ranging from G+2 to G+4 storied structure. Ultimately, the examination of the accused u/s 313 Cr.P.C on this point should conclude the matter. Md. Wasim himself admitted that he was

a contractor for labour for construction at the case premise where a G+4 storied building was raised in the place of tile shed house and he does not have any knowledge about its Sanctioned Plan. All the remaining accused have supported the same. Thus, it can be concluded with finality that there was a five storied building at the case premises. Pertinently, from the inspection report of SAE it is further found that such construction was abutting a 1.5 mtr narrow KMC passage.

**5.3.5 Sanctioned Plan for the Case Building if any-** The main allegation of the instant case is based on the absence of any Sanctioned Plan for construction at the case premises. During investigation, I.O Snehasis Bag examined several witnesses u/s 161 Cr.P.C including the complainant AE and his associate being SAE who have been duly named as witnesses in the charge-sheet. From their evidence he came to know that the entire building at the case premise was constructed without adhering to guidelines and relevant rules and regulations and no Sanctioned Plan was obtained from KMC as a result of which the building collapsed and resulted in such catastrophe. SAE, AE and EE have admitted on dock that from their official records they came to know that there was no Sanctioned Plan issued from their department for any kind of construction at the case premises. This fact also finds mention in the reply of EE to I.O. marked **Exhibit-P6**. PW-4 stated that there was no display board in front of the building raised at the case premises when it was being built and no safety measures were adopted by the owners prior to starting such construction. PW 6 had confirmed the unauthorized nature of such construction. I.O. Kousik Mukherjee who closed the investigation of this case and filed charge-sheet had not got any Sanctioned Plan from KMC. PW-29 confirmed that the approach road to the premise was very narrow.

Before embarking on further discussion, it is necessary to discuss the provisions related to requirement of sanction before construction as are found suitable and applicable for this case.

The relevant provisions of Kolkata Municipal Corporation Act, 1980 are following:

**Section 390- Definition-**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.

**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, 393A 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 for which the sanction has been withheld.

(2) Where the erection of a building or the execution of a work is sanctioned, the person 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 five 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, 393A 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.

Provided that in case of sanction which requires re-erection or sanction under this Act of any dilapidated or condemned building, commencement of work should be made within one year or within such time as may be specified by the Municipal Commissioner at the time of sanction.

(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.

(5) No notice of commencement for erection of building as specified in sub-section (4) is necessary for erection of building dealt with under

section 393A of this Act. However, notice at the plinth level is mandatory under this sub-section.

**S. 399. Provides for the period for completion of the erection of a building or the execution of a work failing which fresh sanction is to be obtained or the Municipal Commissioner may grant extension of time.**

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.

**The evidence clearly suggests that the building at the case premises was raised upto five storied abutting a 1.5 mtrs wide passage without any Sanctioned Plan or exemption thereof after demolishing tile shed structures. The relevant provisions enumerated above have been violated.**

**5.3.6 Relevant Penal Provision under 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.

**5.3.7** Cumulative result of the afore-ascertained findings are sufficient to hold that prosecution has successfully proved the ingredients of the charge framed under section 392 of the KMC Act. The nature of such construction pertains to the penal provision u/s 392 of KMC Act. **The corpus delicti is thus proved.**

**5.3.8 Construction at the case premise if attracts the ingredients of S.401A of the KMC Act –**

Section 401A of the Act starts with a non obstante 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.

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. The discussion should now be diverted to scan the evidence in order to find out the ingredients of S.401A KMC Act.

The Section 401A KMC Act covers both the kinds of constructions which are likely to endanger life, property and essential services and the kind of construction which actually endangers the same.

**The incident of collapse and chaos and the timeline thereof :-**

A singular incident when is viewed by multiple people, all gather different information and develop multiple perspectives. The people who were present at the spot at the time of collapse and also those who reached later would be able to give a vivid description of the incident and its aftermath which is being discussed under the following heads :-

**a). Locals who are the first line of people suffering the incident -**

PW-2, PW-3, PW-4, PW-5, PW-6, PW-23 & PW-27 are the witnesses who deposed in the capacity of **local residents** of the case premises.

First, PW-6, Syed Mustafa Ali after hearing noise found that the building at the case premises had collapsed over his tin shed residence on 17.03.2024 at 11:24 pm. Not only he suffered loss of residence, his wife Sama Begum, mother-in-law Mariam Bibi and sister-in-law Hasina Begum died on spot due to such collapse. Total sixteen (16) people died due to the catastrophe including his family members.

PW-2 stated that due to the collapse, ten to twelve (10-12) people died on spot. Though his evidence is peculiar for the reason that even after residing by the side of the case premises, he only came to know of the incident of the collapse in the morning.

PW-3 stated that he heard the sound of a building collapsing and the electric connection of the locality went off. The building had collapsed over his house which resulted in the death of his mother Sama Begum, uncle Nasir Ahmed and grandmother Mariam Bibi. Their bodies were brought out from under the debris. His brother Haider Ali also got injured. It appears

that PW-6 and PW-3 are relatives but neither the defence has cross examined them in that line doubting their genuinity for being related witnesses nor their evidence is out of place and matches completely with the entire lot. Thus, there is no way of doubting them and their evidence is relied upon.

PW-4 stated that he saw the building at the case premises had collapsed over his house and people were crying for help. He himself took part in rescuing his family members. Four(4) of his family members died.

PW-5 was present inside the building at the case premises when it collapsed. He was injured. Four of his friends namely Md. Imran, Md. Rizwan, Moniul Haque, Md. Chote and Abdul Rauf died due to the collapse. The only problem with the evidence of PW-4 and PW-5 is that both had stated the date of the incident as 16.03.2024.

Be that as it may PW-23 stated that the building at the case premises had collapsed and on being put up with the photographs marked **Exhibit-P11** supported those to be representing the collapsed structure at the case premises.

PW-27 also stated that the building at the case premises collapsed over her house. At that time, she herself and her parents were sleeping and thus were buried inside the debris. They sustained injuries on their head and chest. She herself sustained bleeding head injury.

**b). The rescue operators being the second group of people reaching the spot -**

PW17 & PW-19 are from the NDRF.

PW-17 reached the premise on 18.03.2024 at about 3:00 am to 4:00 am. They rescued eleven (11) people from under the debris. Eight (8) of them were already dead and three (3) were alive. The rescue operation continued till 19.03.2024.

PW-19 also reached the spot at the same time. He confirmed the presence of local people at the spot who gave inputs for the rescue operation. Till

8:00 pm to 9:00 pm on 18.03.2024, they rescued eight (8) to ten (10) victims from the spot. Three (3) people out of them were unconscious. Another one (1) was rescued on 19.03.2024.

PW-20 & PW-21 belong to the Fire Department and they reached the spot on 18.03.2024. They confirmed the presence of NDRF at the spot and aided them. They removed the debris to clear the road and PW-20 saw people being rescued from the collapsed building at the case premises.

**c). The officials of the Building Department, KMC and other persons -**

AE and SAE found rescue operations going on by Disaster Management Team. They came to know that certain residents of the case building died on spot. Executive Engineer witnessed rescue work being done at the case premises after reaching there on 18.03.2024 at 9:30 am. NDRF was involved in rescue work. They themselves took part in the rescue work and he had asked AE to submit report on rescue work.

LBS Abhijit Lodh stated that he could not reach the spot with SAE entirely by scooty. Finally, on reaching there, he heard that some people had been trapped under the building debris. NDRF and Police Personnel were working there. He saw people being rescued in injured condition.

**d). Evidence from the mouth of Officers of Essential Services -**

PW-29 namely Sergeant Rahul Das from Metiabruz Traffic Guard was one of the first who visited the case premise on 17.03.2024. He deposed that the approached road to the case premises was very narrow and the emergency service personnel like Fire, NDRF, DGM and QRT were finding it difficult to access the case premises. Later, on communicating with PS they came to know that twelve (12) people had died and many were injured. After the collapse there was lot of uncertainty in the locality of case premise. It was difficult to reach the spot using any vehicle let alone the Fire Tender and Ambulance. During rescue operations the movement of

two wheelers, slow moving vehicles and of the pedestrians were severely hampered.

PW-30 i.e. O.C Metiabruz Traffic Guard stated that evidently from report i.e. **Exhibit-P20**, the death of twelve (12) people along with injury sustained by many was caused by the collapse of the building at the case premises. Further in reference to report i.e. **Exhibit-P33**, he stated that on 18.03.2024 at about 00:10 hrs, on receiving information of collapse, Sgt. Rahul Das and Sgt. Debasish Kumar Das of his department were diverted to the spot by the then O.C Pinaki Pramanik and on reaching the spot, they found a huge gathering and noticed a five storied building had collapsed and many were trapped under the debris. Police started rescue work with the help of local people. DGM, NDRF, CESC Officials, Fire Brigade and Ambulance arrived and pushed for rescue. The victims were removed to 'Unipon Hospital'. The report marked **Exhibit-P33** is entirely based on the information gathered from the people who were in charge at the time of incident. Even though Sgt. Debasish Kumar Das has not been examined, but Sgt. Rahul Das had supported the contents of **Exhibit-P33**.

PW-28 is from Garden Reach Fire Station. Even he expressed his inability to state any feature of the case building. Fire Department while submitting report to I.O had stated that any unauthorized construction built without inspection or supervision from fire department creates high probability that such structure may endanger life and safety. Notice related to high-rise and high-risk building being Notification No. 279/DS/FS/O/C-1/F1A-3/96, Dated – 08.07.2023 was attached. This is a state specific provision. In clause (j) of this notification any building or part of a building used for a housing complex having more than eight dwelling units is considered high risk building. PW-13, PW-14, PW-15 and PW-24 have deposed of booking separate flats in the case premises. I.O had seized six agreements for booking flats on rent vide seizure lists dated 14.04.2024 and 23.03.2024 which also suggests the names of Iqbal Raja, Md. Mustak and Sajad Ali as

other intending tenants who have also booked such flats. The report of CESC i.e. **Exhibit-P17** adds the names of Umed Ali and Nagma Khatoon as consumers of the case premises. Thus, the total number of dwelling units as found from evidence suggests that the building at the case premises was a high-risk building.

PW-31 is from Water Supply Department who stated that as per the available records there was no water connection in the case premises.

PW-32 & PW-33 are from CESC. They supported the report submitted by them which goes on to show that after the collapse they had to de-energized the service cables to the case premises and also to premise no. J-506, Azhar Molla Bagan Lane.

**e).The input of the Police Officers-**

The Formal FIR drawn in terms of the written complaint notes that the collapse of the structure at the case premises had affected the lives of the people and essential services.

PW-8 stated that he had examined Md. Aslam and Jahanara Khatoon who were almost buried under the debris of collapsed building at the case premises. Jahanara Khatoon has not been examined in court and the point of Md. Aslam on being himself directly affected by the collapse has not been corroborated by Md. Aslam himself.

PW-9 saw rescue operation undergoing at case premises even when he visited it on 22.03.2024.

PW 10 mentioned in letter marked **Exhibit-P28** that as thirteen people died due to such collapse, another case being Garden Reach PS Case No. 55 dated 18.03.2024 u/s 302/307/288/427/34 IPC was initiated.

All the Investigating Officers on visiting the case premises, found debris.

To sum up, the said incident caused severe loss to life and property and gave the rescue operators tough time in retrieving people from the debris.

They could not access the case premises readily. Moreover, the said incident took place at night fueling further chaos and revealing the dreadful

capacity of such untoward incidents which could have been easily prevented. It can also be inferred that the case premises is located in a crowded area and the officials from CESC had to de-energize the connection of adjacent premise no. J-506 of Azhar Molla Bagan Lane where about ten consumers have live connection.

**f). Statutory Provisions promulgated for ensuring safety and basic standards:-**

Following provisions of KMC Act are relevant in this respect:-

**S.413 Inspection of buildings** – (1) The municipal Commissioner may, at any time during the erection or re-erection of a building or the execution of any work under this Chapter, make an inspection thereof without giving any previous notice of his intention so to do.

(2)The Municipal Commissioner may inspect any existing building at any time by giving seven days' notice in advance.

**Section 414 Engagement of Technical Person** – (1) Every person, who intends to erect, re-erect, add to, or alter, any building, shall, subject to the provisions of this Act, engage such technical person and in such manner as may be prescribed.

**S.342A. Arrangement for fire prevention and fire safety** – On the coming into force of the West Bengal Fire Services Act, 1950 (West Ben. Act XVIII of 1950), in any area within the jurisdiction of the Corporation, the Corporation shall, in consultation with the Director of Fire Services or any officer authorized by him in this behalf by general or special order, require the owner or the occupier of all or any of the premises in such area to make, or to carry, such arrangements as may be necessary for fire prevention and fire safety in such area.

**S.403. Completion certificates** – (1) Every person giving notice under section (393, 393A) or every owner of a building or a work to which such notice relates shall, within one month after the completion of erection of such building or execution of such work, deliver or send or cause to be

delivered or sent to the Municipal Commissioner a notice, in writing, of such completion accompanied by a certificate in the form specified in the rules made in this behalf and shall give to the Municipal Commissioner all necessary facilities for inspection of such building or work.

(2) No person shall occupy or permit to be occupied any such building or use or permit to be used any building or a part thereof affected by any such work until permission has been granted by Municipal Commissioner in this behalf in accordance with the rules and the regulations made under this Act.

Following provisions of KMC Act are relevant in this respect:-

**Rule. 4. Notice for erection or alteration of a building-**

(10) The notice shall be accompanied by a composite declaration of the applicant in the form as specified in Schedule III covering the following:

(a) that the work of erection, re-erection or alteration will be supervised by an Architect or Licensed Building Surveyor, a Structural Engineer and a Geo-Technical Engineer, as the case may be, as may be required under these rules:

(b) that the works relating to water supply, drainage and sewerage shall be supervised by an environmental engineer or licensed plumber, as may be required under these rules;

It must also be mentioned that vide sub rule (2) herein, the key (location) Plan, Site Plan, Building Plan (Architectural and Structural), General Specifications must be submitted. The use of word 'shall' make the provision mandatory.

**Rule 5** states that the key plan drawn must show the boundary of the location of the site with respect to neighbourhood land marks and public streets. This rule emphasizes on marking the location of the site in respect to its neighbourhood.

**Rule 6** provides that the site plan should mention the means of access from and to the building to be erected and the position of the building with

respect to the boundary of the site and other structures within a distance of 12 mtrs of the site including the open spaces provided.

**Rule 7** details the requisites of the Building Plan.

**Rule 14** is equally relevant which speaks about the aesthetic quality of urban environmental design. The architectural expression and visual appearances of the building are to be considered by the appropriate authority.

**Rule 22** requires the applicant to give notice of commencement of work at the case premise to the Municipal Commissioner in the prescribed format.

**Rule 23** requires that from the date of commencement upto the date of issuance of completion certificate, the applicant must keep at the site copies of one set of plans and specifications along with building permit and test reports for inspection by the Municipal Commissioner. This rule also provides for the display board mentioned in the name of the owner, details of the building permit and the technical persons.

**Rule 27** states that within one month after completion of the work, the applicant shall give notice of such completion u/s 403 of the Act along with prescribed documents. Such notice is to be accompanied with the Structural Stability Certificate. In case of apartments a certificate from Architect/LBS that the internal house drainage and water supply network have been completed to the satisfaction of Municipal Commissioner, certificate from Electricity Supply undertaking and Fire Safety Certificate where ever applicable.

**Rule 28** provides for generation of completion cum occupancy certificate.

**Rule 32** prohibits occupation of any building for which completion cum occupancy certificate have not been issued under Rule 28, Rule 29 of Rule 30.

**Rule 47** is the corresponding to section 414 of the KMC Act.

**Rule 59** provides prohibitions concerning means of access.

Chapter 9 is dedicated to open spaces to be provided depending upon the height of the building to be raised.

**Rule 69** speaks about the Floor Area Ratio (FAR).

**Rule 70** is directed toward Ground coverage.

**Rule 74** provides the permissible height of the building which is basically dependent on the means of access. The first category in this respect is the building of height 7mtrs for which the means of access should be above 2.4 mtrs.

**Rule 77** speaks about the minimum parking space.

Chapter 17 is dedicated to fire protection and exist requirement. From this chapter the few relevant rules are being discussed.

**Rule 123** provides that every building for residential uses of fifteen and a half meters and above in height, and buildings of other uses and buildings with basement shall be provided with adequate means of exit and all arrangement for protection in case of fire.

**Rule 128** provides that in respect of matters relating to the fire prevention and fire protection, for which provisions have not been made in this chapter, the provisions of the latest edition of the National Building Code and latest edition of the National Electrical Code and B.I.S. Code shall apply.

**Rule 129** provides that no permission for the erection, addition to or alteration of, any building other than a residential building of less than fifteen and a half meters in height or a building with basement shall be granted unless the Municipal Commissioner in consultation with the Director of Fire Services of the Government of West Bengal or any other specially empowered by the Director for this purpose is satisfied about the provisions of means of exits and about the arrangements for protection against fire proposed for the building in terms of West Bengal Fire Services Act, 1950, read with West Bengal Fire Services (Fire Prevention and Fire Safety) Rules, 1996.

**Chapter 19 makes provisions for structural design.** Few relevant provisions of this chapter are noted hereunder:-

**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.

**g).Evidence of safety procedure adopted at the case premises :**

To start with, there is no Sanctioned Plan for the construction at case premises.

As previously noted, Executive Engineer, Assistant Engineer and Sub-Assistant Engineer of KMC Building Department representing the statutory authorities for dealing with the matter of sanction could not find any official record for any sanction ever granted for construction at the case premises.

They also stated that no supervision report of LBS/ESE was submitted at his department by the persons responsible in respect of the alleged

construction. No report was submitted before his department regarding the safety measures taken by the persons responsible for raising such construction at the case premises. No report was submitted before them regarding testing of building materials by the persons responsible. No document regarding "No Objection" certificate was issued by the Fire Department, Sewerage and Drainage Department and water supply Department as well as other departments of KMC or ever filed before them. There was no document of structural stability. There was no document regarding quality of materials used. Executive Engineer added that they had not received any report from any department about any safety measures taken while construction of the building at the case premise.

LBS, Avijit Lodh also deposed being a Licensed Building Surveyor that sanctioned plan and supervision of LBS/ESE are required for undertaking any construction within the jurisdiction of the Kolkata Municipal Corporation area. No Objection certificate from other departments is also necessary. Notice must be given to KMC before initiating construction.

The building at the case premises has collapsed as stated unequivocally by all the prosecution witnesses.

Due to the absence of any Sanctioned Plan of the impugned building, the building department of KMC could not make any Building Rule Infringement Statement. None of them had ever visited the case premises before the collapse and thus they could not give any picture of the construction as it stood and the particular provisions of the KMC Act and Rules it violated. They could not give any information about the safety measures taken at the case premises. Due to the lack of such inputs regarding number of stories, total built up area, nature of occupancy etc. from the building department of KMC, the Fire Department also could not make any assessment of risk of fire hazard and its emergent exigency.

The only reliable information in this regard came from SAE who mentioned in his initial report marked **Exhibit-P1** that the case premises was abutting a

1.5 mtrs narrow KMC passage. Executive Engineer had reported vide **Exhibit-P16** that there was a RCC frame structure at the case premises.

Moving on to the local witnesses, PW-3 & PW-4 stated that there was no display board at the case premise and PW 4 added that no safety measures were adopted when the construction was going on. It must be observed that if a portion of the evidence of any particular witness is contradictory, that by itself does not mean that the entire evidence of such witness is to be discarded. The maxim, Falsus in uno, falsus in omnibus is a latin legal maxim meaning false in one thing, false in everything has been turned down in Indian Courts and here the Courts are required to separate the chaff from the grain and apply more caution only due to the simple reason that people can err or exaggerate. Thus, only because PW-4 stated the date of the incident wrongly does not mean that his entire evidence is to be thrown away. His evidence otherwise appears to be aligned with the evidentiary framework of the case. In fact, he has given a very crucial information regarding the safety measures taken up at the time of construction and this part of his evidence is relied upon.

PW-6 stated that he had forbidden the Persons Responsible for construction without adhering to Rules and Regulations but they did not pay any heed to him.

Rescue operators being PW-29 deposed that the approach road to the case premises was very narrow.

PW-9 stated that he examined local witnesses namely Md. Saif Ali, Md. Mehtab Alam, Syed Mustafa Ali, Abhijit Lodh, Murselim Islam, Sahina Khatoon, Md. Sahiluddin Gazi. He also examined the complainant Debabrata Ghosh and SAE. They stated that the entire building at the case premises was constructed without adhering to the guidelines and relevant rules and regulations.

Some points are also drawn from the documentary evidence. The rough sketch map being **Exhibit-P15** shows narrow lane connecting the case

premises. **Exhibit-P18** shows that there was no water connection at the case premises. From **Exhibit-P20** it is gathered that the approach lanes to the location was very narrow and it was difficult to reach the spot using any vehicle. **Exhibit-P33** also supports that the case premises was connected by a narrow lane.

The evidence is clear that a G+4 storied building had been raised at the case premises abutting 1.5 mtr narrow road in a crowded locality.

There is no information about the mandatory open spaces.

There is no information regarding the quality of material used and workmanship.

Consequently, the fact evident is that prosecution has been able to prove that before the collapse of the case building, the Persons Responsible had successfully avoided all the statutory provisions perfectly laid down in the KMC Act and Rules and not only managed to raise a five storied structure over 1.5 mtr road but also notarized legal documents to form mutual understanding among them about the construction, share of profits and initiated business of renting the case premises to unsuspecting citizens. The P.R created life threatening situation with a high-risk building over narrow and almost inaccessible lane where no vehicle could enter. Without proper access, setback, fire safety measures and structural frame work the building was put up for business while all the perfect laws kept laying on pen and paper. Even though there was no water connection in the building, the agreement for booking flats suggested that the P.R intended in taking the same. They agreed upon the setting up of meters in the name of the tenants. P.R avoided the requests of the local people like PW-6 for stopping such construction and created a dreadful recipe which ultimately took the life of multiple people. On the basis of selfsame incident, Garden Reach/DD PS Case No. 55 dated 18.03.2024 had also been initiated and that case along with the instant case were later investigated upon by the Homicide Department.

**h). Reasons of collapse and administrative inertia in recording the same :-**

The construction of a building over a narrow passage in a crowded area if done does not ipso facto would cause the building to collapse. All the statutory provisions discussed so far regarding sanction and mode and manner of construction are directed as preventive measures ensuring due vigilance of the local authorities over such construction. Civic authorities generally in order to prove the nature of any structure as unauthorized focus on the proof of violation of the Rules and Regulations of the KMC Act and Rules along with other provisions if applicable by preparing Building Rule Infringement Statement. In this case even though there is confirmation from the building department, that no sanction was granted for construction at the case premises, they could not prepare any Building Rule Infringement Statement when the investigating authorities demanded the same.

But surprisingly, they did not prepare any structural analysis report to identify the cause underlying such collapse. Among all the relevant departments of KMC attached with the alleged incident, the building department should have understood that Building Rule Infringement Statement is applicable till the structure is standing and after its collapse it should be the structural analysis report prepared by qualified Structural Engineer/ Expert Institution upon which they should have worked. They could have analyzed the load bearing capacity of the structure with respect to the soil condition of the premises. This report could have provided detailed picture of the reason of failure of the building. The building department never mentioned about any endeavor taken by them regarding preparation of such report and failure thereof. They never engaged any Professional or Expert Institution of the state like the Engineering wings of Jadavpur University/ IEST/ IIT Kharagpur to explore the actual cause of the collapse. Also, they did not collect any samples of the materials used in

the collapsed structure at the case premises which could have been beneficial.

On perusal of the photographs marked **Exhibit-P11 collectively** it appears that the foundation, floor slab, rods in the columns and basic reinforcement arrangement of the structural members of the case building are exposed. This could have been significant element for the experts to draw conclusive analytical report regarding the collapse of the structure. Most unfortunately, such photographs could not be used in deciding the case due to lack of necessary certification by the investigating officers though PW-23 namely Rani Begum on being put up with the photographs marked **Exhibit-P11 collectively** identified those photographs to be representing the case premises.

Executive Engineer, Assistant Engineer and Sub-Assistant Engineer have only discharged their duty upon giving oral opinion regarding the cause of failure. They opined that due to raising of such kind of unauthorized construction, there was every possibility of the construction causing damage to the drainage, sewerage system and the water supply. There was possibility of disruption of road traffic and fire hazard and there was every possibility of causing danger to human life and property. But this opinion merely talks about possibility of collapse and does not establish any actual reason for collapse of the case building. Such opinion is not elaborative.

The Fire Department also due to the lack of necessary input from the Building Department could not solidify any particular reason for collapse of the case building.

The local witnesses stated before PW-9 that the building has collapsed as proper guidelines were not followed. The evidence of local witnesses on this point can only be said to be based on assumption being layman and cannot be relied upon in a case of instant nature where a technical appreciation by a structural engineer would have been appropriate.

In the absence of any evidence on this point the only available documents are the Development Agreements which were executed for deciding the terms of construction of G+4 storied building at the case premises among the accused persons and more specifically the scope of work marked **Exhibit-P34 and Exhibit-P38** and seized vide seizure list dated 22.03.2024. Both the Development Agreements executed by Md. Samim for case premise no. J-506B, Azhar Molla Bagan Lane and Md. Sarfaraz, Md. Sahanawaz and Md. Dilnawaz in respect of case premise no. J-506B with Md. Wasim and Abdul Rauf Nezami as the case may be defines the scope of work identically. A discussion on this point is being undertaken with an attempt to compare the scope of work with the statutory provisions to ascertain the cause of collapse of the building at case premises.

Conventionally, any building will fall under two structural systems. First would be RCC Frame structure and the second would be a load bearing structure. In case of the RCC Frame structure the reinforced concrete members (i.e. column, beam) carry the entire load of the building to foundations. Whereas in case of a load bearing structure the masonry walls carry the load of the building to foundations.

Exhibit-P6 states that there was a RCC Frame structure at the case premise. Going by such analysis, it is evident from the Development Agreement that the dimensions of structural elements such as foundations, columns, and beams have been specified in a generalized manner, which indicates absence of any project-specific structural design or technical evaluation. By way of illustration, the column size has been stated as 10" X 12" (approximately 250 mm X 300 mm), without reference to any structural calculations or applicable design criteria.

In this regard, it is relatable to refer to **IS 13920:2016** (Ductile Design and Detailing of Reinforced concrete Structures-Subjected to Seismic Forces-Code of Practice), being the revised and governing code (successor to IS

13920:1993), which is mandatorily applicable for structures located in Seismic Zones III, IV, and V. As per **Clause 7.1.1** of the said code, the minimum dimension of a column shall not be less than the greater of:

- a)  $20d$  where  $d$  is diameter of the largest diameter longitudinal reinforcement in the beam passing through or anchoring into the column at the joint or,
- b) 300 mm

It is a matter of record that the city of Kolkata falls under Seismic Zone IV. The specification of column size as 10" X 12" (250 mm X 300 mm) is, therefore, demonstrably non-compliant with the aforesaid mandatory provisions, particularly where the minimum dimension on any side falls short of 300 mm. Such deviation clearly indicates that the structural system has not been designed in accordance with the prescribed Indian Standard Codes for reinforced concrete frame structures. **The inadequacy in column dimensions strongly suggests that the structure was not conceived or executed to perform as a code-compliant RCC framed structure. In this context, Rule 133 is the supporting provisions in the KMC Building Rules 2009.**

Further, the Development Agreement reveals that the maximum thickness of both peripheral and internal walls has been specified as approximately 5 inches. In light of **IS 1905:1987** (*Code of practice for structural use of unreinforced masonry*), particularly with reference to **Clause 4.6** read with **Table 7**, such wall thickness is structurally inadequate to function as a load-bearing element under normal building conditions, owing to limitations relating to slenderness ratio and stability. The particular clause states "*For a wall, slenderness ratio shall be effective height divided by effective thickness or effective length divided by effective thickness, whichever is less. In case of a load bearing wall, slenderness ratio shall not exceed that is given in Table 7.*" The Table 7 of the clause clearly shows that the **slenderness ratio of a load bearing structure of a building more than 2 floors should be less**

than 27. Whereas, the slenderness ratio of a 5" inches thick masonry outer wall/ external peripheral wall of a 5 storied building will be much higher than 27. Hence, 5 inches masonry peripheral wall is not adequate for a 5 storied building to act as a load bearing structural member. As the height of the building increases the width of the load bearing wall should also increase to maintain the statutory requirement of keeping slenderness ratio below 27. Accordingly, it is evident that the walling system, being limited to only 5-inch and 3-inch thicknesses, could not have been designed or intended to act as a load-bearing structure.

**The combined inadequacies in both column dimensions and wall thickness lead to the inescapable conclusion that the structure, as represented in the Development Agreement, fails to satisfy the fundamental requirements of either a compliant RCC framed structure or a load-bearing masonry structure under the applicable Indian Standard Codes.**

Moreover, no soil investigation report has been produced. The absence of any geotechnical investigation, coupled with the adoption of generalized and non-specific dimensions for critical structural members such as foundations, columns, and beams in the Development Agreement unequivocally indicates that no proper site-specific structural design or analysis was undertaken.

Such omission is contrary to established engineering practice and the requirements of KMC Building Rules 2009, National Building Code of India 2016 and Indian Standard Codes which mandates that foundation & structural design shall be based on the soil characteristics as determined through appropriate investigation. The failure to conduct or disclose a soil test report, generalized dimensions of structural members strongly suggest lack of involvement of qualified technical personnel in the planning and execution of the project.

As a necessary culmination of this discussion, it is clear that the building at the case premises was poorly constructed which played a prominent role in the collapse of the said building.

**i). Peculiar pre-disposition of the case premises and the general topography of Kolkata:-**

Prosecution had produced the evidence from BL and LRO, Kolkata, South 24-Parganas. PW-18 deposed on his behalf. The case premises has also been identified as J-506/B & J-506/C, Azhar Molla Bagan Lane by Assessment Collection Department, Garden Reach Unit, KMC. In this context it is necessary to discuss **Exhibit-P32 series** to understand the nature and character of the case premises. BL & LRO Kolkata vide this exhibit reported that they do not have any premise wise record and premise wise plot number can only be ascertained by suitable technical personnel. But, on physical inspection they found that premises no. J506/B & J-506/C, Azhar Molla Bagan Lane is situated in four plots which are 196, 199, 202 & 164. Premise J-506 was not ascertainable exactly vis-a-vis plot numbers on enquiry. The first three plots being 196, 199 & 202 pertain to Garden Reach Sheet No. 114, JL No. 714 and have been classified as "*Bastu*". The other plot no. 164 pertains to Garden Reach Sheet No. 115, JL No. 715 and this plot has been classified as "*Pukur*" in RS stage. Furthermore, the schedule in the Development Agreement on non-judicial stamp paper no. 64AB749487 describes case premise no. J-506/B, Azhar Molla Bagan appertaining to plot no. 196, Khatian No. 238, Sheet No. 114, Mouza Garden Reach District, South 24-Parganas. But the schedule in Development Agreement on non-judicial stamp paper no. 64AB999264 is incomplete as it does give the necessary details to relate case premise no. J-506/C, Azhar Molla Bagan with the corresponding plot number and khatian number. Thus, relying upon the only available evidence of PW-18 in this respect it can be concluded that a part of the case premise was previously recorded as "*Pukur*" (water body). It is also concluded from the

evidence of PW-7 that the entire case premise has not been amalgamated in their records.

Thus, it is clear that the case premise was part water body. Pertinently, the change of classification of any land from a water body to '*Bastu*' only relates to conversion on paper on fulfillment of prescribed legal provisions prevalent at the time. That by itself does not guarantee a simultaneous change in the nature and character of the land and soil therein to support multistoried building. There is also no guarantee that the Soil capacity of the plots mentioned as "*Bastu*" adjoining plot no.164 would be more suitable for bearing a poorly constructed five storied structure as the case building. Such cases are coped with proper soil test and following the recommendations thereof. Hardly any step has been taken in this regard.

In this respect the **topography of Kolkata** must also be referred. The city is situated on **Gangetic plain** having soft alluvial soil, which has low bearing capacity, high compressibility and a high ground water table, making structures vulnerable to excessive settlement and foundation failure if not properly designed. Moreover, Kolkata falls under Seismic Zone IV, where earthquake forces are significant and the presence of soft soil further amplifies ground motion, increasing the risk of structural damage and soil liquefaction. A large part of the city has also been developed on filled up or reclaimed land consisting of heterogeneous and poorly compacted materials which makes the ground unstable and prone to differential settlement.

At the inception I have observed that ward no. 134 is located to the Southern bank of river Hooghly.

It is but necessary for this condition that Scientific Soil Investigation, appropriate foundation design and earthquake resistance structural detailing becomes essential. Technical personnel are required to ensure safe, efficient and climate responsive design in a densely built environment ensuring structural stability, drainage safety and compliance with building

and seismic codes. Soil bearing capacity must be assessed before initiating construction. Without involvement of trained technical professionals, construction in Kolkata would pose serious risks to life, property and long-term urban safety. Persons Responsible neither appointed any technical person nor obtained sanction with appropriate plan and structural design. Moreover, it has been observed that 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**).

**j) Judicial Precedents-** 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. 7356 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 unauthorized constructions collapsing without prior warning.

In all the above judgements the tendency of violation of the laws to undergo construction in unauthorized manner and to preserve the same has been recognized by the Apex Court. The harrowing consequences of such nature of construction is also recognized. The instant case is again a live example of such consequences. **In Priyanka Estates International Pvt. Ltd. v. State of Assam : (2010) 2 SCC 27, the Hon'ble Supreme Court has been pleased to lay down that** 'It is a matter of common knowledge that illegal and unauthorized constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. . . . Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storied buildings.'

On the basis of the systemic analysis as undertaken so far it is established that the construction at the case premises is covered under the provisions of Section 401A KMC Act.

**5.4** The second consideration is the relation of the accused persons with the unauthorized construction at the case premises. It is the duty of the prosecution to prove them as persons responsible for undertaking 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.

**5.5** In this respect the KMC authority concerned through its Assistant Engineer and Sub Assistant Engineer revealed that they had initially found Md. Nasim, Raja, Md. Wassi and others to be the persons responsible as mentioned in **Exhibit-P1** and **Exhibit-P2**. Formal FIR marked **Exhibit-P10** was prepared accordingly. Eventually, on joint inspection with the assessment department and second, I.O of the case that is PW 9, they ascertained the P.R as Md. Samim, Md. Safique, Raja, Md. Wassi and others. Executive Engineer intimated the same to O.C Garden Reach P.S vide **Exhibit-P5**.

**5.6** During investigation first I.O being PW 8 received the assessment details marked **Exhibit-P 12** collectively. Relying on the basis of books of record, Assessment Department, Garden Reach Unit, revealed Md. Samim as the recorded owner of case premise no. J-506/B and Md. Safique as the recorded owner of case premise no. J-506/C both situated at Azhar Molla Bagan Lane, Ward-134.

**5.7** PW 7 and PW 18 deposed on behalf of the Assessment Department. PW 7 being the Assistant Assessor Collector, Assessment Collection Department, Garden Reach Unit, KMC produced computerized Demand Details for the case premises marked **Exhibit-P8** and certified copy of relevant Inspection Book of second quarter 2006-2007 and first quarter 2010-2011 marked **Exhibit-P9** collectively. As already discussed, these documents also revealed Md. Samim as the recorded owner of case premise no. J-506/B and Md. Safique as the recorded owner of case premise no. J-506/C both situated at Azhar Molla Bagan Lane, Ward-134. Pertinently, for premise no. J-506/B, tax has been paid till the year 2022 even though irregularly. The Inspection Book revealed that premise no. J-506/C has been transferred from one Shanawaz Akhtar to Md. Safique.

**5.8** PW 18 represented BL & LRO, Kolkata, South 24-Parganas. On the basis of her evidence replies from her department to S.I Samik Daw of Homicide Squad were marked as **Exhibit-P32 series**. As already discussed, this is a very important piece of Exhibit and relates two separate typologies of identification of the case premises thereby adding to the relevancy of documents marked **Exhibit-P34** to **Exhibit-P44**. PW 18 admitted that after joint enquiry with police personnel a comprehensive report was filed. She identified the case plots pertain to Garden Reach Sheet Nos. 114 of J.L No. 714 and 115 of J.L No. 715. The report exhibited as **P 32 series** mentions that their office does not have any premise wise record and hence premise wise plot numbers can only be ascertained by suitable technical person. However, on physical inspection the case premise numbers being J-506/B, J-506/C were found to be situated approximately in the noted four plots, the relevant annexed report mentions the plot numbers as 196, 199, 202 and 164. Premises no. J-506 was not ascertainable exactly vis-a-vis plot numbers on enquiry. The attached report mentions records pertaining to R.S/L.R map sheets. Garden Reach Sheet

No. 114, J.L No. 114 covers plot no. 196, 199 and 202. Garden Reach Sheet No. 115, J.L No. 715 covers one plot that is 164.

From **Exhibit-P34 and Exhibit-P35** it appears that Md. Samim admitted to be the owner of premise no. J-506, Azhar Molla Bagan. But the relevant schedule mentions the premise as J-506/B, Azhar Molla Bagan, Kolkata-700024 appertaining to plot no. 196, Khatian no. 238, Sheet no. 114, Mouza Garden Reach, Ward no. 134, District-South 24-Pargana having assessee no. 51-134-0300810. The Demand Details marked **Exhibit-P8**, reaffirms the said assessee number to be of case premise no. J-506/B and to be recorded in the name of Md. Samim. Md. Wasim was appointed as the developer for raising G+IV storied new building at the said premise for which Power of Attorney was also executed in his favour.

**5.9** From **Exhibit-P36 to Exhibit-P38** it appears that Md. Sarfaraz, Md. Shahnawaz and Md. Dilnawaz are the sons of Md. Safique. They admitted to be the joint-owners of case premise no. J-506/C, Azhar Molla Bagan. From the schedule portion of **Exhibit-P36** it appears that premise no. J-506/C, Azhar Molla Bagan, Kolkata-700024 appertains to plot no. 196, R.S Khatian no. 108, R.S Sheet no. 114, Mouza Garden Reach, Ward no. 134, District-South 24-Pargana having assessee no. 51-134-0300870. The Demand Details marked **Exhibit-P8**, reaffirms the said assessee number to be of case premise no. J-506/C and to be in the name of Md. Safique. Md. Wasim and another were appointed as the developers for raising G+IV storied new building at the said premise for which Power of Attorney was executed in their favour.

**5.10** Now coming to the remaining exhibits that is from **Exhibit-P39 to Exhibit-P44**, all these documents are Agreements for Booking Flat.

**5.11** In pursuance to the terms of the Development Agreements and on the strength of Power of Attorney, Md. Wasim entered into agreements with multiple people namely Iqbal Raja, Md. Mustaque, Sajad Ali, Md. Safi, Sabila Begum, Firdous Begum and Salma Begum and inducted them as

tenants. Among them, Firdous Begum, Salma Begum, Md. Safi and Sabila Begum have been examined. The relevant portions of their evidence are being discussed one after another.

**5.12 Firdous Begum** deposing as PW 13 identified Md. Samim as the owner of the case premises and Md. Wasi as the promoter. Further that she had executed an agreement for purchasing a flat and identified her LTI over the relevant agreement and seizure lists initially marked as **Exhibit-P29** (collectively) and **Exhibit-P30** (collectively) respectively.

**5.13 Salma Begum** being PW-14 identified the case premises and stated that she herself along with her sister-in-law had executed an agreement for booking a flat with Md. Wasi who is the promoter. The witness identified Md. Wasi. She also identified her signature over the relevant certified copies of seizure list and agreement marked initially. She also identified Md. Samim as the owner of the case premise.

**5.14 Md. Safi** being PW-15 also identified the case premises and stated that he had executed an agreement for booking a flat with Md. Wasi who is the promoter. The witness identified Md. Wasi. He identified his signature on the relevant seizure list and agreement marked **Exhibit-P29** (collectively) and **Exhibit-P30** (collectively) respectively. He also stated that the documents were seized in his presence. The relevant seizure list dated 23.03.2024 notes that **Exhibit-P39** which is the relevant agreement executed in the name of Md. Safi was produced by him in the presence of other witness. He too identified accused Md. Samim as the owner of the case premise.

**5.15 Sabila Begum** examined as PW-24 is acquainted with the case premises and deposed to have entered into an agreement with Wasim (pointed towards accused Md. Wasim @ Wasi identifying him). She claimed to have paid money for purchasing of flat at the case premises. Police had seized the original documents from her in connection to the money she paid to Wasim and that document had signature of Wasim and her LTI.

Seizure list dated 23.03.2024 was shown to the witness and she claimed to have put her LTI therein. Apart from Md. Wasim she could not identify any other accused.

**5.16** The local witnesses have also delivered relevant evidence to prove the relation of the accused with the case premises. PW 2 identified the accused as the owners of the case premises. Further that Md. Wasi is the person responsible for construction at the case premises but could not say any further details regarding it. PW 3 identified the accused persons and stated that Md. Wasi, Raja and Md. Samim being the owners constructed the case building with the aid of promoters. PW 4 identified the accused as the persons who had raised the construction at the case premises being its owners and promoters. PW 5 could only identified Md. Wasim but had no knowledge as to who had constructed the building at the case premises. PW 6 confirmed that Md. Samim, Md. Sarfaraz and Md. Wasim are the owners and promoters who had raised the construction at the case premises. PW 16 stated that Md. Safi had executed an agreement for booking a flat with the promoter who is accused Md. Wasi. He identified Md. Wasi. He identified his signature on the relevant seizure list and agreement marked **Exhibit-P29 and Exhibit-P30** respectively and that the documents were seized in his presence. He reassured that Md. Samim is the owner of the case premise and identified him. PW 23 identified her signature on relevant seizure list marked **Exhibit-P29/1**. She identified accused Dilnawaz as Raja. But during cross-examination, she could not say the contents of the seizure list. PW 27 confirmed that the building which collapsed at the case premises was developed by Wasim and the owners are Pappu, Sanjay, Raza and Samim.

**It must be noted here that in the charge-sheet accused have been named as Md. Wasim @ Wasi, Md. Sarfaraz @ Pappu, Md. Dilnawaz @ Raza and Md. Samim @ Shamimpuriwala. They have not disputed**

**such names during examination u/s 313 Cr.P.C. Many of the local witnesses have identified the accused as Wasi, Pappu and Raja/Raza.**

**5.17** During examination u/s 313 Cr.P.C, all of accused admitted that there was a G+IV storied building at the case premises but they could not say about the presence of any Sanctioned Plan for the same. Md. Samim admitted to be the owner of case premise no. J-506/B Azhar Mollah Lane, Ward-134 and Br- XV. Similarly, Md. Sarfaraz and Md. Dilnawaz admitted to be the owners of case premise no. J-506/C Azhar Mollah Lane, Ward-134 and Br- XV. Md. Wasim only stated that he was a contractor of labour for construction at the said premises. But prosecution has provided both ocular and documentary evidence in ample quantity to prove his status to be more than that. Md. Wasim entered into Development Agreements with the other accused for constructing the G+ IV storied building at the case premises which ultimately collapsed. The other accused being the owners actively participated in ensuring that the developer being Md. Wasim is provided with the legal power to proceed with the construction by executing power of Attorney and they themselves retained their property rights in the case premises completely. Even though the accused have admitted to be related to the case premises or with the construction therein in one capacity or the other but all of them have denied their role in construction of the case building.

**5.18** I had already initiated the discussion with the concept of burden of proof and onus of proof. The burden of proof always lies on the prosecution and never shifts. The prosecution has to stand on its own legs and cannot take advantage or undue advantage of the defence put forth by the accused even if the same was found to be false or improbable. Accused cannot be held responsible for proving his non-involvement in the offences for which he has been charged. It is the prosecution who must incorporate the evidence with sufficient incriminating material against the accused person proving his guilt. This is for the reason that the onus to prove the

guilt of an accused lies on the prosecution and no onus is cast on the accused under law to prove his innocence by producing cogent evidence. He can prove his defence plea by preponderance of probability. **[Mahinder Singh Dhaiya v. State, 2003 CrLJ 1908 (Delhi)]**. There are however exceptions to the general rule as to the burden of proof. The onus of proof however, shifts constantly as evidence is introduced by one side or the other.

**5.19** On the basis of the above analysis, it is found that the prosecution has successfully proved the relation of the accused with the case premises and with the unauthorized construction therein which ultimately gave rise to an untoward incident claiming innocent lives. Now the onus has shifted upon the accused.

**5.20 Grounds of Defence raised during trial and validity thereof-**

Affirming the principles of Audi Alteram Partum, the defence has been given sufficient scope of approaching the court for keeping their defence during trial. Such defence may be taken while cross-examining the prosecution witnesses or after completion of the evidence for the prosecution while examination u/s 313 Cr.P.C. or preferring Defence Witness (DW). Accused did not choose to produce any DW and failed to bring in any specific detail during examination under section 313 Cr.P.C. which would demean or dismantle the evidence produced by the prosecution. Md. Wasim did not produce a single iota of evidence to prove his status to be anything other than the Developer. At this stage section 106 of The Evidence Act must be referred.

**Section 106. Burden of proving fact especially within knowledge-**

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

The claim of Md. Wasim to be a labour contractor in within his special knowledge, but he has failed to prove the same. Significantly, the other accused admittedly being the owners of the case premises even after

having knowledge of construction of a G+IV storied building at the case premises did not try to know about its legality or inform the authorities.

At the stage of arguments Ld. Defence Advocate raised several issues. Even though some of those have already been delivered upon, the remaining are now being taken up for discussion as hereunder:

**a). The case is not maintainable in the present form due to the lack of Stop Work Notice and Police Intimation.**

The trend of the evidence discussed so far clearly suggests that none of the departments of KMC had any knowledge about the unauthorized construction at the case premises. SAE, AE and EE of the building department of KMC agreed during cross examination that they had not visited the case premises before the collapse of the building therein. No Stop Work Notice was ever issued. No demolition proceedings were undertaken. And no complaint was ever lodged regarding any unauthorized construction at the case premises either before the building department or any other department of KMC.

Issuance of Stop Work Notice has been provided in section 401 of the KMC Act. The language of the said provision indicates that where any construction work has been commenced or is being carried out without sanction or in deviation of the same, the said notice may be issued. The Police Intimation is simultaneously issued with the Stop Work Notice requesting follow up action to prevent the progress of the unauthorized construction. In this case the accused have admitted that a G+IV storied building had already been constructed at the case premises. The authorities obtained knowledge of such construction only after it collapsed. Thus, there was no scope of issuing any Stop Work Notice or Police Intimation.

Issuance of the Stop Work Notice and lodging of Written complaint are mutually exclusive processes under the KMC Act. Violation of the former is punished u/s 618 of the said Act and that of the later under the specific

section for which the complaint has been filed or the Final Report has been filed. Moreover, in Circular No.173 of 2019-2020 dated 04.03.2020 whereby Municipal Commissioner of Kolkata delegated his power under the KMC Act for taking steps under various sections of the said Act, the issuance of Stop Work Notice u/s 401 of KMC Act and notice u/s 401A of the same Act have been mentioned separately and the manner of delegation of power does not suggest the issuance of Stop Work Notice to be a condition precedent on which the issuance of notice u/s 401A of the KMC Act depends. In reality any action against construction of building in contravention of the provisions of the said Act and Rule hereunder attracting Section 401A of the said Act is taken by Assistant Engineer upon obtaining report from Sub-Assistant Engineer of his Borough. In this case the Assistant Engineer deposing as PW1 stated that he filed the complaint u/s 401A of the Act upon receiving Inspection Report from SAE examined as PW 25. Thus, the contention of Ld. Defence Advocate that the instant case is not maintainable in the present form does not hold any ground.

**b). Written Complaint does not specify the nature of the unauthorized construction or the number of stories therein.**

There are ample number of judicial precedents in this respect delivering upon and concluding that Written Complaint cannot be the encyclopedia of all facts and circumstances of the case. As already discussed, the Written Complaint noted the main allegation of collapse of unauthorized construction and the names of the PR along with the premise number as ascertained by them at that initial stage. The consequences of the said incident have also been mentioned. Moreover, photocopy of SAE report had been annexed therein. Thus, the complaint provides a composite picture of the incident at its inception. From **Exhibit-P6** it would be relevant to note that, the Building Department of KMC could not detail out the number of stories in the case building and prepare Building Rule Infringement Statement. This is because the case building had already

collapsed when it was first detected. Hence, this ground of argument is also not found correct.

**c). No complaint has been lodged against the construction at the case premises by any local person or other departments of KMC.**

An unauthorized construction cannot be validated by efflux of time. The KMC Act though provides for regularization adhering to compliance of relevant sections of the Acts and Rules framed thereunder. Only because no local people came forward to lodge a complaint and the construction succeeded in evading the eyes of the relevant departments of KMC cannot be considered to prove that the construction at the case premises was not unauthorized.

### **6.Concluding Decision**

**6.1** 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 premises which eventually collapsed causing the death of multiple people. Several people were also injured. Prosecution has been able to relate the accused with the case premises being the Owners/Developer who undertook the construction at the case premises without any Sanctioned Plan and are held to be the Persons Responsible for the catastrophe.

**6.2** 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 persons namely Md. Wasim @ Wasi, Md. Sarfaraz @ Pappu, Md. Dilnawaz @ Raza and Md. Samim @ Shamimpuriwala beyond reasonable doubt.

**6.3** The accused person is 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.”

The penalty under this section would get attracted if the prosecution successfully proves issuance of notice upon the accused. Admittedly, no such Notice was issued. No other order or requisition was issued. No evidence is found to establish the charge framed under this section.

**So, at this stage, it would be safe to hold that the prosecution has failed in proving the specific charge framed against the accused persons u/s 618 of the KMC Act, 1980.**

**6.4 No case has been made out for application of section 584 of the KMC Act, 1980.**

7. Accordingly, it is.

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

that the accused persons namely **Md. Wasim @ Wasi, Md. Sarfaraz @ Pappu, Md. Dilnawaz @ Raza and Md. Samim @ Shamimpuriwala** are found guilty in respect of the charges framed against them for having committed offences punishable under section **401A/392** of the Kolkata Municipal Corporation Act, 1980 and they are accordingly convicted in accordance with the provisions of Section 248 (2) of the Code of Criminal Procedure, 1973.

Bail bond of the accused persons/ convicts is cancelled.

The convicts are taken into custody.

The sureties are discharged from their respective bail bonds.

**7.1** Now the question is whether it would be expedient to release the convicts 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.

**7.2** It has already been established that the convicts had undertaken the work of unauthorized/ illegal construction at the case premises being its Owners/Developer. No Sanctioned Plan was obtained for construction at the said premises. They did not attempt any regularization. The evidence further suggests that there was a five storied building at the said premises which was also being occupied by people. But during trial no Occupancy Certificate has been produced by the convicts. The said building collapsed at night damaging further constructions around it. Many people were buried under the debris. PW5 was present in the building when it collapsed and he was injured. He stated that Md. Imran, Md. Rizwan, Maniul Haque, Md. Chhotey and Abdul Rauf died due to the collapse as they were severely injured. PW2 stated that 10-12 people died on spot. PW3 stated that Marium Bibi, Sama Begum and Nasir Ahmed died on spot and their bodies were brought out from under the debris. Md. Haider Ali was also injured. Four family members of PW4 died due to the said incident. PW6 added that one Hasina Begum also died on spot. Even though the rescue authorities made best of their efforts to minimize human casualty but it is clear that they could not succeed completely. Few people were brought out of the debris in unconscious condition. The location of the P.O as abused by the convicts added fuel to the catastrophe. The convicts had raised the said building abutting in narrow lane 1.5 mtr wide. Consequently, the rescue operators have voiced the difficulties which they faced in reaching the spot. The rescue vehicles being Fire Tender, Ambulance etc. faced hardship in reaching the ill- affected P.O. which delayed relief work.

**7.3** Section 401A of the KMC Act has been worded to cover within its purview mostly unauthorized constructions of such nature and extent where there is likelihood of human life and property being endangered. Such constructions which may cause huge damage and loss to life and property.

But in this case, all such apprehensions have come true taking the shape of an unprecedented disaster at the heart of City Kolkata. The convicts did not show any kind of responsibility towards the society and violated the law deliberately. They did not care to obtain any kind of technical assistance whether within the frame work of prescribed sanction procedure or in private manner. They have amalgamated two separate premises without due intimation to the authorities which made it difficult to pin point the case premise number. Such desperate attitude of the offenders cannot be treated leniently. Having regard to all circumstances, it seems that releasing the offenders on probation shall not be sufficient to meet the ends of the justice. The offenders should be punished to prevent miscarriage of justice.

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

**7.5** 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 convicts and an opportunity is given to them 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 convicts as well as their Ld. Counsel are also given liberty to express their views with regard to the sentence for the particular offences.

**7.6** The convicts pleaded innocence and prayed for mercy of the court. Ld. Advocate on behalf of the convicts stated that they have been in custody for long and prayed for taking a lenient view in awarding sentence.

**7.7** Considered respective prayers. Also considered the age of the convicts and their social status. The offence in respect of which sentence is being passed is grave in nature as already discussed and has got huge social impact. Pertinently, convicts have deliberately avoided all statutory authorities to raise the construction without following even the basic and conventional norms of Civil Engineering. They have avoided payment of

every statutory fee and raised a multi storied building in a congested locality solely for the purpose of personal gain. They have risked the life of several unsuspecting people. The local Civic Body had no notice of such construction and additional load on their infrastructure. It needs no further discussion and is crystal clear that if such 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. The convicts have all along been on court bail in connection to this case.

### **8. Decision on Quantum of Sentence**

**8.1.** Now the question that remains to be answered is what sentence should be passed upon the convicts. 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 offence under section 392 of the Kolkata Municipal Corporation Act of which the convicts have been held guilty is punishable with imprisonment which may extend up to six months and also with fine or both. In this case the intention of the convicts must be taken into consideration. The convicts have shown desperation in raising unauthorized building at the case premises. They have not produced any cogent evidence on their behalf so as to mitigate their role and involvement in the unauthorized construction at the case premises and consequences thereof. They ran a parallel process of legal documentation most of which were not even notarized let alone being registered to initiate the process of construction of the building at the case premises by appointing developer on mutual arrangement of shares and benefits, constructed a five storied building and inducted tenants all under the nose of the statutory authorities. The entire process had no touch of technical or legal surveillance. 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 pertinently in this case caused multiple deaths, public

nuisance, affected the infrastructure of basic amenities of the locality and damaged 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. While deciding the quantum of punishment, all these aspects have been considered.

**8.2** At this stage I am constrained to observe that the Kolkata Municipal Corporation Act pertains to Act 59 of 1980. The relevant provision u/s 401A provides for a punishment of imprisonment of either description which may extend to five years and also with fine which may extend to Fifty Thousand Rupees. On joint reading of Section 392 and Schedule VI the punishment under this section is fine upto Two Thousand and Five Hundred Rupees or six months imprisonment or both.

**8.3** It can be said without any doubt that the quantum of fine as prescribed in the above sections is not sufficient in the present time and serves little to no purpose even if the maximum amount of fine as prescribed is levied. The monetary gain which one can receive from a five storied functional building by inducting tenants would outnumber the fine amount quickly and thus neither serves as a deterrent for the convicts nor compensate the Civil Authorities in coping with the aftermath of such collapse. But the instant incident and its consequences thereof call for a stringent punishment for the convicts which may both act as retribution and deterrent. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an **appropriate sentence.**

**8.4** Considering all such aspects, this Court is of the considered view that the convicts deliberately abused established rules and laws and were well aware of the consequences of the alleged construction. Their intention is quite clear from their activities. So, at this stage it appears to this Court that having considered the entire circumstances, this Court is of the

considered view that passing of simple imprisonment upon the convicts for a period of Five years along with fine shall be just and reasonable.

9. Hence, at this stage, having considered the entire circumstances, it is ,

ORDERED.

that the convicts namely **Md. Wasim @ Wasi, Md. Sarfaraz @ Pappu, Md. Dilnawaz @ Raza and Md. Samim @ Shamimpuriwala** are hereby sentenced to suffer simple imprisonment of five years each and also to pay a fine of Rs. 50,000/- (Fifty Thousand only) each, 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 each.

AND

the convicts are hereby sentenced to suffer simple imprisonment of six months each and also to pay a fine of Rs. 2,500/- (Two thousand Five Hundred only), each and in default of payment of said fine to suffer Simple imprisonment for a term of one month each for having committed offence punishable under section 392 of the Kolkata Municipal Corporation Act, 1980.

In case of imprisonment the sentences shall run concurrently.

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

**9.2** The convicts are informed in the language understandable by them about their right to prefer appeal against this judgment including their right to avail of legal aid/ assistance in this regard. The convicts have refused to avail legal aid.

10. Let a copy of this judgment be sent to the Municipal Commissioner, Kolkata Municipal Corporation for information.
11. Let a copy of this judgment be supplied to the convicts free of cost.
12. 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,