

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11488 of 2026

Faruk Khan
Versus
Kolkata Municipal Corporation & Ors.

Mr. Sudip Deb, Sr. Advocate
Mr. Subhrangsu Panda
Mr. Anupam Singha
... For the petitioner.

Mr. Nilotpal Chatterjee
Ms. Tanushree Dasgupta
... For Kolkata Municipal Corporation

1. Mr. Deb, learned senior advocate representing the petitioner at the very outset would submit that though the petitioner has caused service of the writ petition on all the respondents and though an affidavit of service to that effect has been prepared, the same is yet to be affirmed. Accordingly, he seeks leave to file the same in course of the day.

2. Considering the submissions and noting from the affidavit so disclosed that service has been effected on the respondents, leave is granted to the petitioner to file the same in course of the day.

3. Challenging the notice dated 13th May, 2026 issued under Section 544 and 546 of the Kolkata Municipal Corporation Act, 1980 (herein after referred to as the "said Act"), the instant writ petition has been filed.

4. The petitioner is aggrieved by the steps taken by the municipal authorities to implement the demolition order dated 5th May, 2026 within the statutory period provided for

preferring the appeal therefrom as provided under Section 400(3) of the said Act.

5. Mr. Deb, learned senior advocate appears in support of the writ petition and would submit that although the statute recognizes the right of the petitioner to prefer an appeal from the aforesaid order within the statutory period provided therefor, and though the petitioner has preferred an appeal, however, before the expiry of the ordinary period for preferring the appeal the municipal authorities are bent upon to execute the said order. According to him, if the order dated 5th May, 2026 is permitted to be implemented on the strength of the notice dated 13th May, 2026, before expiry of the statutory period for preferring the appeal, the appeal filed by the petitioner shall become infructuous. In support of his contention, he has placed reliance on an unreported judgment delivered by the Hon'ble Division Bench of this Court in the case of **Md. Yaqub@Md. Yaqub Ansari v. Abdul Kayum & Ors.** in MAT 1152 of 2023 with CAN 1 of 2023 dated 22nd August, 2023.

6. Mr. Chatterjee, learned advocate appears for the municipality. He would submit that the petitioner in the instant case has already preferred an appeal. Once, the petitioner has preferred an appeal, it is for the petitioner to take appropriate steps. The petitioner cannot be permitted to choose forums and having filed an appeal cannot approach this Court in exercise of extra-ordinary writ jurisdiction.

7. Having heard the learned advocates appearing for the respective parties, I find that admittedly in this case the

order of demolition was passed under the provisions of Section 400(1) of the said Act on 5th May, 2026. Although, in terms of Section 400(3) of the said Act, the petitioner was competent to challenge the said order and has been conferred with a statutory right to prefer an appeal from the said order before the appropriate Tribunal, the municipality appears to have proceeded in hot haste even before the time to prefer the appeal expired. The notice issued under Section 544 and 546 of the said Act appearing at page 53 of the writ petition demonstrates that the municipal authorities would proceed on 19th May, 2026 i.e. today at 11.30 hrs. for the purpose of executing the order dated 5th May, 2026 issued under Section 400(1) of the said Act. The said notice which is dated 13th May, 2026 has been issued prior to the expiry of the statutory period for the petitioner to prefer an appeal therefrom. In this context, I may note that Section 400(4) empowers the Municipal Building Tribunal to stay the enforcement of such order on such terms, if any, and for such period as it may think fit. Ordinarily, therefore, when the statute confers a right to the petitioner to prefer an appeal from the order of demolition, and pray for stay of the order of demolition, having regard to the provisions contained in sub-sections (3) and (4) of Section 400 of the said Act, in my view, the municipality ought not to have proceeded within such statutory period, to render the appeal infructuous. In the given facts, when there has been glaring statutory infraction, the self-imposed restriction in exercising jurisdiction on the ground of alternative remedy

cannot stand in the way of this Court to exercise discretionary jurisdiction.

8. Having regard thereto, and noting the observation made by the Hon'ble Division Bench in the case of ***Md. Yaqub @ Md. Yaqub Ansari*** (supra), this Court is of the view that the aforesaid notice dated 13th May, 2026 issued by the Municipality cannot be sustained and the same is quashed. However, at the same time having regard to the disclosure made by the petitioner that the petitioner has already preferred an appeal from the aforesaid order and the matter is pending consideration before the Building Tribunal and the next date is fixed on 24th June, 2026, it is only expected that if the petitioner makes an appropriate application before the Building Tribunal, in accordance with law for expeditious disposal of its stay application in connection with the appeal having regard to the scope of Section 400(4) of the said Act, the same shall be considered expeditiously on its own merit.

9. This Court makes it abundantly clear that this Court has not considered the prima facie case of the petitioner insofar as right to obtain stay of the demolition proceeding is concerned.

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

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

(Raja Basu Chowdhury, J.)