

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/18/2026
IA NO:GA/1/2026
ABHISHEK MISHRA
-VS-

M/S. SHREE SHYAM PROJECTS PRIVATE LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

And

The Hon'ble JUSTICE AJAY KUMAR GUPTA

Date: 09.02.2026.

Mr. Sujit Banerjee, Adv.; Mr. N. Sengupta, Adv.; Ms. S. Samanta, Adv., for appellant.
Mr. Siddhartha Banerjee, Adv.; Mr. S. Ghosh, Adv.; Mr. R. Mullick, Adv.; Ms. A.
Saha, Adv., for private respondent.
Mr. A.K. Ghosh, Adv.; Mr. N. Chatterjee, Adv., for KMC.

1. The Court: The subject appeal is directed against an order dated November 17, 2025, passed by a Single Bench of this Court.
2. The question involved in the subject appeal is whether unauthorized constructions found illegal on June 6, 2022 by the single Bench of this Court, should be allowed to stand for some more time, and the person guilty of such illegal constructions be given one more opportunity of hearing in 2026. Between June 6, 2022, and November 17, 2025, the Kolkata Municipal Corporation carried out demolition of the said unauthorized constructions. The promoter, however, reconstructed the said unauthorized constructions demolished by the KMC.

3. The appellant was the respondent no.7 in the writ petition filed by the respondent-promoter Shree Shyam Projects Pvt. Ltd. This is the third round of proceedings in respect of the subject premises at Shree Digambar Jain Temple Road, Kolkata-700007, Ward No.22, Borough IV. In the first round of litigation which started in 2022, unauthorized construction was noted in the order of the Single Bench dated June 6, 2022, based on the report of the KMC dated May 11th, 2022.
4. The Municipal Corporation was acting on a complaint of the appellant. Since the Corporation was found taking steps in accordance with law with regard to the admitted unauthorized construction on the ground floor and portion of the staircase, the writ petition bearing WPO/2008/2022 was disposed of. The unauthorized construction was conversion of the car parking areas into shop rooms and slope areas used as stairwell. There was also unauthorized construction on the roof.
5. In proceedings that followed thereafter in the second writ petition being WPO/1725/2023, filed by the appellant herein, by order dated October 17, 2023 the Court recorded concern at the inaction of the KMC. The instructions of the engineers of the KMC, addressed to the Advocate, dated May 11, 2022, only recorded a stop-work notice under section 401 of the KMC Act.
6. The single Bench expressed anguish at the failure of the Municipal Corporation to deal with the unauthorized construction. In the same writ petition, on October 18, 2023, while permitting the KMC to act in terms of the appropriate sub-section of section 400 of the KMC Act, the Single Bench directed a demolition sketch plan and infringement statement to be served on the respondent-promoter and the appellant. The proceedings for dealing with

the unauthorized construction were required to be concluded at the earliest by the KMC.

7. By time, on the earlier day and most likely not informed to the learned counsels or the instructing officials of the KMC (as required by procedure and practice), a decision under section 400(8) of the KMC Act was issued by the Mayor-in-Council of the Corporation.
8. Mr. Banerjee, learned counsel appearing for the respondent-promoter, submits that this document was suppressed from the Single Bench.
9. In the meantime, for inaction on the part of the KMC to carry out the demolition of unauthorized construction effected by the respondent-promoter, CC/42/2024 was filed by the appellant against the KMC.
10. By this time, the KMC had already demolished and the promoter had already restored the car parking spaces to what they were after demolishing the shop rooms constructed thereat. The sloping stairwell was also restored.
11. However, something else transpired thereafter. A tin structure was constructed on about 3000 sq.ft. on the roof of the building that was being used for various purposes. The six storied building that was permitted to be constructed for residential use was in its entirety being used for commercial purposes. The same continues as on date. The shop rooms in the car parking are illegally reconstructed again. The promoter therefore is guilty of repeatedly committing illegal constructions.
12. It is evident from the above that the promoter had the gumption and confidence that it can affect constructions without appropriate sanction plan, notwithstanding that the Kolkata Municipal Corporation has carried out demolition upon the clear and direct orders of this Court. The promoter

therefore has no regard for orders of a Court of law let alone having any concern about the municipal Building rules and regulations.

13. The KMC finally came out clear in Court with its intention to invoke the provisions of section 400(8) of the KMC Act. The said sub-section permits the Municipal Corporation to invoke emergency provisions to deal with emergent situations. Such situations, inter alia, include unauthorized constructions that are dangerous enough to cause loss of limb and life.
14. A situation shall be deemed to be emergent for invocation of Section 400(8) of the KMC Act, 1983, when construction is made without a plan and after demolition thereof, the person guilty of illegal construction has again made constructions on the same site without any plan.
15. There is yet another reason to invoke section 400(8) of the Act, i.e. non-compliance of stop-work notice under section 400(1) of the Act. There are contempt proceedings pending before the Single Bench and the writ petition is yet to be disposed of. In ***Nirmal Kumar Das v. Kolkata Municipal Corpn., 2023 SCC OnLine Cal 2425***, a coordinate Bench held as follows:-

31. As the person responsible carried on the relevant construction defying the stop work notice and constructing several floors without giving due regard to the provisions as laid down in Sections 392 and 393, one cannot expect that the KMC authority will remain idle and allow the person responsible to carry on with the unauthorized construction without sanctioned plan merely because a beneficial regulation have been brought into force for regularizing minor erection works. **If the person responsible thinks that whatever be the nature and extent of his erection work, he can raise construction defying the stop work notice and defying the allegations made against him in the FIR only because that there are certain beneficial provisions for regularizing unauthorized constructions, he has committed a grave mistake and the KMC authority certainly has powers to demolish the unauthorized structure even without giving him any opportunity of hearing.**

52. Nowhere in the aforesaid provision of law is it mentioned that only when a building is in a dangerous condition, the powers under that provision can be exercised. **In my considered opinion, if a person, in defiance of stop work notice issued under Section 401 of the KMC**

Act, continues with illegal/unauthorized construction, the same would be ground enough for KMC to take action in terms of section 400(8) of the Act.

Emphasis applied

16. In the backdrop of the above, this Court notices without hesitation that the respondent-promoter is completely recalcitrant, refractory and defiant and has been committing one deviation after the other apart from gross illegality.
17. Invocation of section 400(8) of the Act by the Municipal Commissioner was warranted in the facts of the case. Section 400(8) of the Act does not contemplate any prior hearing or prior notice. It is within the exclusive domain of the Mayor in Council. It is invoked not only to address the danger to life and limb but also the recalcitrant, headstrong and dishonest builders like the private respondent Sree Shyam Projectxs Pvt. Ltd. who appears to have no respect or regard for the law and the rules of the KMC.
18. In the backdrop of the above, there is force in the argument of Mr. Alope Ghosh, learned counsel for the KMC, that once notice and hearing is ordered in a proceeding under sub-section (8) of section 400, the same defeats and dilutes the provision and seriously compromises, if not totally defeats the object and purpose of invoking emergent provisions.
19. The conduct of the private respondent-promoter discussed hereinabove, in the opinion of this Court, is sufficient to invoke the emergency provisions and the question of any hearing after issuance of a notice under section 400(8) is not and cannot be contemplated in law.
20. It, however, appears from the submissions of Mr. Ghosh that the order of the Single Bench directing hearing of the private respondent-promoter has been complied with by the KMC. It is submitted that the Special Officer (Building) has indeed found gross illegality in construction and user of the building in question by the private respondent-promoter.

21. Affording an opportunity of hearing before carrying out demolition must be informed by the realities of the day. In ***'Re : Directions in the matter of demolition of structures' reported in 2024 SCC OnLine SC 3291***, it was held that the opportunity of hearing need not be given when demolition is ordered on the orders of the Court. The reason is that the parties may have been heard by the Court itself.
22. In the present case, the single Judge and this Court have heard the parties on the point of unauthorized construction. The single Bench has ordered the KMC to invoke its powers of demolition under the KMC, 1983 upon the latter stating that the construction is question in illegal. of the con Para no. no. 91 of ***Directions in the matter of demolition of structures(supra)*** is set out below:-

91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies **and also to cases where there is an order for demolition made by a Court of law.**

Emphasize Applied

23. Opportunity of hearing is provided under the first proviso to sub-section 1 of section 400 of the KMC Act, 1983. It is afforded to a person who is *alleged* to have committed illegal construction. In the present case, it is clearly *proven* that the promoter has committed illegal construction. The promoter has converted the said residential premises for commercial purposes.
24. Further, the said hearing is afforded to ascertain the extent of violation of the Municipal rules. The same stands already ascertained by the KMC. The third proviso to Section 400 enables the Municipal Commissioner to condone minor deviation from sanction plan and regularize it.

25. In the present case, the violation is not minor. The unauthorized constructions were effected and re-effected sans any building plan or even intimation to the KMC. Thus, there is no scope for hearing the promoter once again by the KMC.

26. In **RAJENDRA KUMAR BARJATYA v. U.P. AVAS EVAM VIKAS PARISHAD & ORS reported in 2024 INSC 990**, it was held that regularization should be adopted as a matter of exception. Immediate demolition of unauthorized construction is the rule. One of main purposes of the giving a hearing is to see whether the deviation is minor and thus regularization may be considered.

Para nos. 19 and 20 of **RAJENDRA KUMAR(supra)** is set out below:-

19. In a catena of decisions, this Court has categorically held that illegally of unauthorized construction ***cannot be perpetuated***. If the construction is made in contravention of the Acts / Rules, it would be construed as illegal and unauthorized construction, which has to be ***necessarily*** demolished.

20. In the event of any violation being brought to the notice of the Courts, ***it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy***. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, ***cannot be used as a shield to defend action taken against the illegal/unauthorized constructions***. Hence, regularization schemes must be brought out only in ***exceptional circumstances*** and as a onetime measure for residential houses...Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, ***also have an effect on resources like electricity, ground water and access to roads***,

Emphasis applied

27. Any further opportunity of hearing to the promoter, thus, will perpetuate the existence of illegal construction. Any such order from this Court will amount to an abuse of the process of this Court. The same will delay the actual demolition of unauthorized construction.

Directions and Conclusions:-

28. The KMC is hereby directed to proceed with the demolition of all and every inch of unauthorized construction in the said building forthwith. Any charges in any form whatsoever, inter alia for any unauthorized use of the building and for demolition or for any other purpose may be levied by the KMC on the private respondent-promoter and may be realized in terms of the provisions of the KMC Act and the rules framed thereunder.
29. The KMC shall put up a notice on the building in question not permitting any use whatsoever given the gross illegality in conduct of the private respondent-promoter Shree Shyam Projects Pvt. Ltd.
30. The KMC shall file an affidavit of compliance as regards the full and complete demolition of the unauthorized construction within one month from the date before the Single Bench in the pending writ proceedings. The learned single Judge is requested to ensure that the demolition of the unauthorized construction is carried out to the T.
31. With the aforesaid observations, APOT/18/2026 shall stand disposed of along with the connected application.

(RAJASEKHAR MANTHA, J.)

I agree

(AJAY KUMAR GUPTA, J.)

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