

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO(P)/1/2024
IA NO: GA/2/2024, GA/3/2024, GA/4/2025.

SK MAHBUB HOSSAIN
VS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE SMITA DAS DE

Date : 22nd May, 2025.

Appearance:

Mr. Mainak Bose, Sr.Adv.

Mr. Ratul Das, Adv.

Ms. Anjusri Mukherjee, Adv.

...for the petitioner.

Mr. Kamalesh Jha, Adv.

...for the applicant in GA/2/2024 and

GA/3/2024.

Mr. Anshunath Chakraborty, Adv.

Mr. S.N. Chakraborty, Adv.

...for the applicant in GA/4/2025.

Mr. Alak Kumar Ghosh, Adv.

Mr. Arijit Dey, Adv.

...for the KMC.

Mr. Sirsanya Bandopadhyay, Adv.

Mr. Debangshu Dinda, Adv.

...for the State.

Mr. Ashoke Kumar Chakraborty, Ld. A.S.G.I.

Mr. Sukanta Chakraborty, Adv.

Mr. Tirtha Pati Acharyya, Adv.

...for the Union of India/respondent no.2.

Mr. Somnath Bose, Adv.

...for the CESC Ltd.

Sk. Md. Galib, Adv.

Abu Siddique Mallik, Adv.

...for the Board of Waqf/respondent no.14 & 15.

1. Before the matters are taken up for consideration, Ms. Shaila Afrin appears in the capacity of Committee Member of the Bar Association and submits that she is an Executive Committee

Member of the Bar Association and the Secretary of the Bar Association has received a communication from one Sk. Mahbub Hossain, who apparently is the present petitioner, that he has been impersonated and he has not filed any public interest litigation. Strangely this particular person has not filed any petition or affidavit stating that he has been impersonated.

2. However, the photocopy of the communication received by the Secretary, Bar Association, Calcutta produced by Ms. Afrin is kept on record.
3. The said communication appears to be in contradiction to the diary lodged by the petitioner with the Commissioner of Police, a copy whereof is produced before this Court and placed with the record.

Re.: GA/2/2024 & GA/3/2024

4. We have considered the case report in respect of premises no.7, Raja Raj Narayan Street, Ward no.28, Borough-IV, Kolkata-700009 Street, in which it is stated that the sanction plan was for G+3 whereas process of construction was up to the 5th floor and the process of initiation for demolition has been challenged and the matter is pending before the Municipal Building Tribunal in B. T. Appeal No. 99 of 2024.
5. Mr. Alak Kumar Ghosh, learned Counsel appearing for the Kolkata Municipal Corporation submitted that the Special Officer (Building) in exercise of power under Section 400(1) of the Kolkata Municipal Corporation Act had passed an order on 20.04.2024 for demolition of the additional two floors and the order was duly served upon the

present applicants. However, they have not complied with such order till date. On instructions, it is submitted that the present applicants have filed appeal against the order of the Special Officer (Building) before the Municipal Building Tribunal. A written instruction to that effect has been placed.

6. In view thereof, we dispose of the applications being IA No. GA/2/2024 and GA/3/2024 by directing the Municipal Building Tribunal to dispose of the appeal within six months from the date of communication of this order.
7. The Municipal Authorities are directed to communicate this order to the Municipal Building Tribunal forthwith and shall file a compliance report in WPO(P)/1/2024 on the returnable date.

Re.: GA/4/2025

8. The Corporation has filed a report stating that no unauthorised construction found in the premises. It is an 'old single storey structure'. Accordingly, this property shall be left out from the list of properties. CESC is directed to restore the connection within one week from date.
9. The detailed status report of all the buildings filed by Mr. Alak Kumar Ghosh, learned advocate appearing on behalf of the corporation is kept with the record.
10. The application [GA/4/2025] stands disposed of.

Re.: WPO(P)/1/2024

11. The report filed by the Office of the Custodian of the Enemy Property for India, Kolkata Branch, the report filed by the

respondent no.4, the Officer in-Charge, Amherst Street Police Station, the report filed by the Additional Officer in-Charge Narkeldanga Police Station, the communication of the CESC Limited to the Supervisor Office of the Custodian of Enemy Property for India, Kolkata Branch enclosed to the communication dated 28.04.2025 from the Ministry of Home Affairs, Office of the Custodian of Enemy Property for India, Kolkata Branch to the General Manager are taken on record.

12. It is submitted on behalf of the CESC Limited that during inspection carried out in terms of order dated 23rd April, 2025, on identification of the premises by the Kolkata Municipal Corporation authorities, it was observed that there is no electricity connection in the building. No unauthorized connections were also found on the said premises with wire portions outside the building was disconnected on 12th February, 2025 and at the time of inspection they were found to be of the same status as observed during the joint inspection earlier. The report filed by Dr. Bappaditya Dutta, Deputy Secretary to the Government of India, however, points out several anomalies regarding disconnection of electricity and water supply connection apart from highlighting incomplete compliance with demolition direction. The report records that the Kolkata Municipal Corporation has admitted its failure to carry out demolition of unauthorized construction at the premises in question citing lack of police support and coordination with other departments. The said report has been annexed to the joint

inspection report. The said committee unanimously has arrived at the following conclusion:

“The order to disconnect electricity and water supply to the disputed and illegally constructed unauthorized building was passed by the Honourable Court with a view to force the illegal occupants to vacate the building so that it could be safely demolished. However, physical inspection of the disputed building reveals that the illegal occupants of the building are leading a normal life and are in possession of all types of gadgets and amenities which cannot be operated without uninterrupted electricity and water supply. This is despite the fact that CESC claims that the power supply to the disputed building has been disconnected and the KMC claiming that the water supply has been severed.”

13. The possibility of abstraction of electricity and pilferage cannot be ruled out. The fact remains that the unauthorized construction has not been demolished till this date. The Kolkata Municipal Corporation would justify its inaction by reason of lack of support from the police authorities. Lack of adequate number of police force was submitted to be the reason for not being able to carry out the eviction.
14. Learned Additional Solicitor General of India, Eastern Zone in referring to the report filed by the Custodian of Enemy Property for India has submitted that there is a complete failure on the part of the Kolkata Municipal Corporation and the administration in carrying out the demolition work and has also doubted the genuinity of the steps taken by the CESC Limited. However, it

appears that the CESC authorities have disconnected the line, the wire portion outside the building on 12th February, 2025.

15. Be that as it may, the fact remains that the unauthorized portion of the building has not been demolished. The Hon'ble Division Bench presided over by the Hon'ble the Chief Justice has expressed anguish in the order dated 23rd April, 2025, in which it was, *inter alia*, observed as follows:

“This Court can take judicial notice of the fact that on several earlier occasions despite directions to the state police to render assistance to the Corporation, Municipalities, neither such applications have been considered nor adequate number of police force are deployed. Let the respondent/police bear in mind this observation while filing the report and they should be prompt enough to render assistance to another wing of the Government which sticks to enforce law.”

16. The matter is adjourned for eight weeks in order to enable the Kolkata Municipal Corporation to demolish the unauthorized construction with the help of the Special Task Force, failing which we may be constrained to direct the Commissioner of Police, Kolkata and the Commissioner of Kolkata Municipal Corporation to be personally present for not complying with the several orders passed for demolition by the Hon'ble Division Bench presided over by the Hon'ble The Chief Justice.

(SOUMEN SEN, J.)

(SMITA DAS DE, J.)