

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO(P)/1/2024
IA NO: GA/5/2025, GA/6/2025

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 : 19th June, 2025.

Appearance:

Mr. Ratul Das, Adv.
Ms. Anjushri Mukherjee, Adv.
...for the petitioner.

Mr. Sourav Chopudhuri, Adv.
Mr. Nilratan Banerjee, Adv.
...for addition of party in GA/5/2025 and
GA/6/2025.

Mr. Alak Kumar Ghosh, Adv.
Mr. Arijit Dey, Adv.
...for the KMC.

Mr. Somnath Bose, Adv.
...for the CESC Ltd.

Mr. Ashok Kumar Chakraborty, Ld.
Addl.Solicitor General,
Mr. Sukanta Chakraborty, Adv.
Mr. Tirtha Pathi Acharya, Adv.
...for the Union of India.

Mr. Kamalesh Jha, Adv.
Ms. Nabanita Chatterjee, Adv.
...for the added respondent nos.2 and 3.

Ms. Ipsita Banerjee, Adv.
Mr. Debangshu Dinda, Adv.
...for the State of West Bengal.

Sk. Md. Galib, Adv.
Mr. Siddique Mallik, Adv.
...for the Board of Auqaf.

1. The applicant claims to be a resident of premises no.166/H/79,
Keshab Chandra Sen Street, Kolkata-700009, under Borough-V of

Kolkata Municipal Corporation, where he has been residing since 1976. On 13th June, 2025, men and agents of Kolkata Municipal Corporation affixed a notice dated 12th June, 2025 on the door of the tenanted rooms of the petitioner and his brother wherefrom the petitioner came to know that demolition of the unauthorised building at the above premises will be carried out on and from 17th June, 2025 in terms of the order dated 22nd May, 2025. It is submitted that he has a legal right to oppose the said demolition proceeding as an occupier of the said respondent.

2. That on that basis an application was filed for setting aside of the order dated 12th June, 2025.
3. Learned Counsel for the petitioner submits that persons similarly placed that of the present applicant claiming themselves to be the tenants of the disputed premises preferred an appeal before the Municipal Building Tribunal being B.T. Appeal No.82 of 2023 and the said appeal was dismissed with the following direction:

“That all the structures as mentioned in D-sketch and other statement which has constructed without any sanctioned building plan shall be demolished within 30(Thirty) days from the date of passing of this judgment, in default the Kolkata Municipal Corporation shall demolish the structure by his own and shall realize the demolition charges from the Persons Responsible in accordance with law.

That the Kolkata Municipal Corporation has the liberty to realize the cost so imposed in this judgment upon the Appellants in accordance with law.”

4. Learned Counsel for the Kolkata Municipal Corporation has opposed the prayer for addition of party and stay of the demolition proceeding. It is stated on their behalf that the demolition proceeding has already been commenced. The *locus standi* of a tenant to oppose demolition is no more *res integra* in view of the Division Bench judgment in ***Kumuda Sundari Properties (Private) Ltd. Vs. Namdang Tea Co. Ltd.*** reported in ***AIR 1986 Calcutta 266***, the Hon'ble Division Bench of this Court has held and observed that the tenants have no right to make objection to the sanction of the building plan.

5. The aforesaid decision was affirmed by another Co-ordinate Bench in ***Om Prakash Saxena and Another vs. Dharendra Nath Nag and Others*** reported in ***AIR 1998 Calcutta 210***, in which the Hon'ble Division Bench answered the said issue in paragraphs 18 and 19 in the following words :

“18. The question as to whether the building plan submitted by the appellant should be sanctioned or not is matter which falls exclusively within the domain of Municipal Authorities. While doing so, there cannot be any doubt whatsoever, it is bound to take into consideration the provisions of the said Act as also the question as to whether permission should be granted to change the ‘user’ of the structure for which it was sanctioned. At this juncture, we are of the opinion, that such a question is merely academic and does not fall for our consideration. The power of this Court in such matters is very limited inasmuch as a writ petition would only be maintainable if the threat alleged by the writ petitioners has an immediacy and infringes the legal right of the petitioners.

We also do not find any force in the contention of Mr. Chatterjee that in the instant case this Court following Olga Tellis (AIR 1986 SC 180) (supra) should exercise its jurisdiction inasmuch as the right of the petitioners as a tenant of the appellant can be enforced before an appropriate forum if and when as occasion arises therefor and this Court cannot exercise its jurisdiction under Art. 226 of the Constitution of India only on surmises and conjunctures.

19. *For the reasons aforementioned we have no other alternative but to hold that the writ petition was not maintainable and the impugned judgment is, therefore, liable to be set aside. Before parting with this case, however, we may record that Mr. Kapoor has assured us that his client has no intention to evict the writ petitioners immediately and forcibly.”*
6. Mr. Ghosh has relied upon a decision of a Co-ordinate Bench in ***MAT 2279 of 2023 with IA No.CAN 2 of 2023 (Bijay Biswakarma vs. Rajkumari Devi Singh & Ors.)*** decided on 28th June, 2024, in which the aforesaid principle has been reiterated.
7. If the applicant has been inducted as a tenant or occupier in the said premises, without disclosing such facts it would be open for the applicant to sue the owners of the property both under the criminal law and the civil law. Moreover, surprisingly, the owners of the premises have not approached the Municipal Building Tribunal opposing the demolition proceeding nor has filed any representation challenging the action on the part of the Kolkata Municipal Corporation.
8. However, on the prayer of learned Counsel for the petitioner, four days’ time is granted to the applicant to find out a suitable

accommodation and the demolition proceeding insofar as the portion in the occupation of the present applicant is concerned may not be demolished for four days.

9. In view thereof, the applications being IA No.GA/5/2025 and GA/6/2025 stand dismissed.
10. However, there shall be no order as to costs.

(SOUMEN SEN, J.)

(SMITA DAS DE, J.)