

OD-08

WPO/639/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

Surajit Roy
Versus
The State of West Bengal & Ors.

Before:
The Hon'ble Justice RAJA BASU CHOWDHURY
Date: 29th January 2026

Appearance:
Mr. Jishnu Chowdjury, Sr. Adv.
Ms. Pratiti Das, Adv.
Ms. Arifa Sultana, Adv.
....for the petitioner
Mr. Debjit Mukherjee, Adv.
Ms. Priyanka Jana, Adv.
...for the State
Mr. Gopal Chandra Das, Adv.
Ms. Susmita Chatterjee, Adv.
....for the KMC
Mr. Arindam Banerjee, Sr. Adv.
Ms. Mahashree Ghosh, Adv.
Ms. Anamika Bari, Adv.
....for the respondent nos.11, 12 & 13

Later

The Court: 1. This matter has a chequered history. The petitioner in the instant writ petition had previously approached this Court in WPO/563/2024 complaining illegal construction at premises no. 1, Beadon Street, Kolkata – 700 006 whereupon a coordinate Bench of this Court by order dated 30th July 2024 appointed a Special Officer having regard to the submission made by the Corporation that the unauthorised construction carried out by the private respondents had already been demolished. Accordingly the Special Officer was directed to visit the premises upon notice to the parties and to file a report

indicating whether the private respondents were carrying out any unauthorised construction at the said premises.

2. Pursuant to the aforesaid order, the Special Officer had visited the premises in question on 8th August 2024 and had filed a report indicating that the building in question is a G+three storeyed building, ground and first floor are more or less according to the sanctioned plan. On the second and third floor broken pillars were noticed. On enquiry from Mr. Siddhartha Agarwal it appered that the pillars in the second and third floor had been demolished in terms of the order passed by the municipality. A copy of the above report has been placed before this Court by the learned advocate representing the municipality, which is taken on record. It is a matter of record that upon the aforesaid report being filed, on 5th November 2024 the coordinate Bench of this Court, noting that the construction had been undertaken as per the sanctioned plan and that the unauthorised portion had been demolished, was of the view that no further order need be passed and accordingly disposed of the writ petition.

3. Subsequently, when it came to the notice of the petitioner that despite demolition of the unauthorised construction, the private respondents were once again attempting to carry out unauthorised construction by reconstructing the pillars and columns through the open spaces by covering the courtyard area, a complaint was lodged on 26th June 2025 and following the above, complaining failure on the part of the municipal authorities to take appropriate action, the instant writ petition was filed.

4. When the above writ petition was moved on 25th September 2025, the learned Advocate for the Corporation sought for time to file a report by 2 weeks. Accordingly, the matter was adjourned by granting liberty to the Corporation to file the report in the form of affidavit. Since the private respondents also sought leave to file affidavit, two weeks time was granted to file the affidavit-in-opposition. Despite such direction, neither did the Corporation file any report until this day, nor did the private respondents file any affidavit, though extension has been sought for today.

5. Today in the first half, the Corporation had however, filed a report wherefrom it would transpire that a proceeding under section 400(1) of the Kolkata Municipal Corporation Act 1980 (hearing after referred to as 'the said Act) is under process for the unauthorised construction. The report noted that though previously the unauthorised construction was demolished, however, the structural engineer engaged in the construction work had submitted a structural stability certificate wherein it was stated that RCC columns were required to strengthen the structure for proper stability. The person responsible had applied for regularisation. Since, there had been illegal construction, matter was placed before the higher authority for proceeding under section 400 of the said Act. However, since the learned advocate for the municipality had orally submitted that notwithstanding the above, the illegally constructed portion has already been regularised, this Court had called for the records. Pursuant to the aforesaid, records have been produced.

6. From the records, it would transpire that on 18th September 2025, the private respondents had applied before the municipal authorities seeking regularisation of the unauthorised construction. Incidentally, such fact was suppressed before this Court when the order dated 25th September, 2025 was passed. Keeping this Hon'ble Court completely in the dark as regards the application for regularisation, the municipality had sought for time to file affidavit. Subsequently, without notifying either this Hon'ble Court or the writ petitioner, the decision to regularise the unauthorised construction had been taken on 22nd December 2025. It is elementary that when a contested petition of this nature is pending and when the Court is in seisin of the matter, the authorities ought not to have proceeded to regularise the unauthorised construction, especially when previously, on the basis of disclosure made in Court that the unauthorised construction had been demolished the writ petition stood disposed of.

7. Having regard thereto, I am of the view that the order passed by the Special Officer (Building) which was subsequently purported to be ratified by the Mayor-in-Council of KMC on 22nd December 2025 cannot be acted upon at this stage. This court is also of the view that having regard to the peculiar state of affairs prevailing, a Special Officer is required to be appointed who shall visit the premises in question and file a detailed report. The respondent no.7 must accompany him for the inspection.

8. Accordingly, I appoint Mr. Sarbajit Mukherjee, Advocate of Bar Library Club as Special Officer who shall visit the premises in

question upon notice to the advocates of the parties before the matter is taken up next and file a detailed report before this Court when the matter is taken up next. The Special Officer shall note down the details of the illegal construction which has been regularised, in his report and carry out an inventory and shall ascertain the occupants and the extent of their occupation.

9. The petitioner shall bear the remuneration of the Special Officer at the first instance which is fixed at 2000 GMs.

10. In response to a query from the Court, since Mr. Banerjee, learned senior Advocate representing the private respondents would submit that the building in question is yet to be occupied, I am of the view that the municipality will ensure that the building is not occupied till further orders of this Court. The municipality shall also ensure that no further construction shall take place until further order of this Court.

11. The records placed by the municipal authorities be retained in a sealed cover. As prayed for, parties shall be at liberty to inspect the original records of the Corporation upon prior notice, in the presence of the Court Assistant attached to this Court and the learned advocate for the Corporation.

12. Since learned senior advocate for the private respondents prays that he may be heard after he goes through the records, let this matter appear under the same heading on 5th February, 2026 at 12:30 P.M.

13. After the aforesaid order is passed, Mr. Banerjee, learned senior advocate would submit that the ground floor is occupied by the

tenants, the first floor and the second floor are also partly occupied though the occupation is only limited to carry out fitouts.

14. Accordingly, having regard to the disclosure made by Mr. Banerjee, the Special Officer shall inventorise the entire building and enclose photographs of each floor in his report.

(RAJA BASU CHOWDHURY, J.)

R. Bose/akg