

OD-1

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/756/2025

TALAT AHMED
VERSUS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

Date: 28th August, 2026.

Mr. Rachit Lakhmani, Adv.
Mr. Piyush Kumar, Adv.
Ms. Urvashi Jain, Adv.
...for petitioner
Mr. Nilotpal Chatterjee, Adv.
Mr. Gopal Chandra Das, Adv.
Ms. Ananya Das, Adv.
...for KMC.
Mr. Arkaprava Sen, Adv.
Mr. Akash Munshi, Adv.
Mr. N. G. Khaitan, Adv.
...for respondent nos. 6 & 7
Mr. Biswaroop Bhattacharya, Adv.
Mr. Aditya Mondal, Adv.
..for respondent Nos. 8, 9 and 10
Ms. Reshmi Ghosh, Adv.
Ms. Parna Mukherjee, Adv.
..for the added respondent.

1. This matter pertains to the alleged unauthorized construction at 50, Chowringhee Road, Kolkata-700071 (in short, the "said premises").
2. The petitioner complains that the respondent nos. 8 to 10 are the owners of a resto-pub run under the name and style "Hashtag Kolkata". It is the petitioner's case that the said resto-pub is located on the terrace of the multistoried building standing at premises no. 50, Chowringhee Road, Kolkata-700071.

3. According to the petitioner, the building from where the resto-pub is run is about 50 years old, and the private respondents have carried out the illegal construction on the terrace of the said building by illegally constructing two extra floors thereon. The petitioner claims that approximately 6000 Sq.ft. carpet area has been illegally converted and constructed for the purpose of the resto-pub.
4. When the matter was initially moved, this Court by an order dated 8th January, 2026 had directed the Municipality to file a report. Pursuant to the aforesaid direction, the Municipal authorities have filed a report. From the above report, it would transpire that the Municipal authorities having found that the construction works were going on in the existing eight storied building at the said premises and since, no document could be produced by the person responsible as regards the said construction, a notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as “the said Act”) was issued. Due intimation was also given to the Police authorities with regard to the same. A demolition sketch infringement statement on the basis of the unauthorized construction was prepared and was placed before the authority on 3rd December, 2024. Ultimately, the demolition sketch file of unauthorized construction was approved by the Mayor-in-Council vide resolution dated 8th January, 2025 under Section 400(8) of the said Act. Necessary steps have also been taken for demolition of the unauthorized construction.

5. When the aforesaid fact was brought to the notice of this Court by way of the above report, this Court had also taken into consideration the submissions of the learned Advocate for the private respondents that requisite indemnity and SOP had been submitted by them before the appropriate authority for running the resto-pub on the roof top. However, since no documents to substantiate the same was produced, on the prayer of the private respondents, this Court by order dated 12th February 2026 had adjourned the matter till 17th February 2026, and directed the concerned Officer-in-Charge to file a report as regards the steps taken by the Police authorities in furtherance to the notice issued by the Municipal authorities.
6. On 19th February, 2026 no such report, as directed, was filed. Accordingly, the Officer-in-Charge of the concerned police station was directed to file an affidavit to explain why the report had not been filed.
7. Subsequently, on 20th August 2026 when the matter was taken up for consideration, the lessee, in respect of the impugned portion, who claims to have authorized the respondent nos. 8, 9 and 10 to operate the resto-pub, had intervened. This Court, by an order dated 20th August 2026 had allowed the application by adding the intervener and also directed the petitioner to serve a copy of the amended writ petition.
8. This Court further noting that despite the order directing the Officer-in-Charge of the jurisdictional police station to file the report, no such

report had been filed and the State also not being represented, had directed that a notice should be served on the learned advocate on record for the State in course of the week for the report to be filed.

9. Pursuant to the aforesaid direction, though the Officer-in-Charge of the jurisdictional police station is present in Court, only an un-affirmed affidavit has been tendered. According to the learned advocate for the State, the explanation for not filing the report is available in paragraphs 4 and 5. To morefully appreciate the same, the relevant paragraphs have been extracted hereinbelow:

“4. In this connection, it is pertinent to state that a report dated 10 November 2025 was prepared by me in connection with the present Writ Petition and handed over to the said learned Advocate from the erstwhile panel for placing the same before the Hon'ble Court. A copy of the said report dated 10 November 2025 is annexed hereto and marked with the letter "B".

5. In compliance with the said direction, the requisite affidavit was duly prepared and handed over to the then learned Advocate in the erstwhile panel, for taking necessary steps for placing the same before the Hon'ble Court. However, a copy of the same was not handed over to me. It appears that the said affidavit has, till date, not been placed before the Hon'ble Court. The said report was also not handed over to the Hon'ble Court. The undersigned, therefore, most respectfully submits that the non-placement of the aforesaid affidavit before this Hon'ble Court was neither intentional / deliberate nor occasioned by any omission or inaction on the part of the

deponent, and the same may be kindly considered in the aforesaid context.”

10. The maker of the aforesaid un-affirmed affidavit claims that though he had prepared the requisite affidavit and handed over the same to the learned advocate in the erstwhile panel for taking necessary steps for placing the matter before this Court, however, the same was not placed before this Court. Unfortunately, the maker relies on the report dated 10th November 2025, which could not have been prepared pursuant to the order dated 12th February 2026.
11. The above explanation does not appear to be appropriate. Further it appears that the Officer-in-Charge had also tried to shift the responsibility on the advocate without just cause. Be that as it may, since the Officer-in-Charge would through his advocate after the order being dictated withdraws the statements made in paragraphs 4 and 5 of the explanation and seeks leave to file fresh explanation, and also prays for being excused for his omission, the matter is not proceeded further and is put to rest.
12. What, however, emerges that there is a subsisting order passed under Section 400(8) of the said Act. The Municipality, as obliged to, must ensure compliance of the order passed under Section 400(8) of the said Act.
13. In so far as the claim made by the private respondents that the petitioner is also running an identical business, the Municipal

authorities are required to take note of the allegations made in the affidavit affirmed by Mr. Ankit Tibrewal on 24th February, 2026. Noting the peculiar facts, the Director General, West Bengal Fire and Emergency Services, having its office at 13D, Mirza Galib Street, Kolkata-700016 is added as a party respondent in the present writ petition. The department is directed to carry out the aforesaid order and amend the writ petition.

14. The learned advocate representing the State is directed to appear on behalf of the added respondent. The added respondent is directed to carry out an inspection at both the locales i.e., at premises no.50, Chowringee Road where the business of resto-pub is run under the name and style 'Hashtag Kolkata' as also at premises no.11/1, Sarat Bose Road, Kolkata. The Director General, West Bengal Fire and Emergency Services is directed to ensure that the business run at the respective locales complies with the provisions of West Bengal Fire Services Act, 1950.
15. Personal appearance of the Officer-In-Charge of the jurisdictional police station is dispensed with on his undertaking that he shall always carry out orders passed by this Court as directed.
16. After the order is passed, Mr. Bhattacharyya learned advocate representing the respondent nos.8 to 10, would submit that the direction for implementation of the order passed under Section 400(8) of the said Act ought not to be passed without hearing the

respondents. I am of the view that ordinarily, an order under Section 400(8) of the said Act is passed ex parte and does not require any hearing. Further, there appears to be no challenge to such order as well.

17. It is made clear that this Court has not interfered with the order passed by the Municipal authorities under Section 400(8) of the said Act and the Municipal authorities are obliged and to enforce the same, especially when there is no challenge to the same.
18. Mr. Bhattacharyya, learned advocate appearing for the respondent nos.8 to 10 also prays for stay of the order passed under Section 400(8) of the said Act. However, considering the fact that there is no challenge to the said order, this Court is not inclined to pass any order of stay. The above order shall not stand in the way of the respondent nos. 5 to 10 to take recourse to such order in accordance with law, if so advised.
19. Let a copy of the report filed by the Officer-In-Charge of the jurisdictional police station be circulated to the contesting parties.
20. Since the demolition order has already been passed, no fruitful purpose shall be served to keep the writ petition pending. As such, the same is disposed of without any further order.

(RAJA BASU CHOWDHURY, J.)