

**IN THE HIGH COURT AT CALCUTTA
AN APPEAL FROM IT'S
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Present:

**The Hon'ble Justice Shampa Sarkar
&
The Hon'ble Justice Smita Das De**

**APOT/114/2026
with
I.A G.A/1/2026 & I.A G.A/2/2026**

**BHAGWATDAS JAISWAL
vs.
KOLKATA MUNICIPAL CORPORATION AND ORS.**

For the Appellant	: Mr. Jaydip Kar, Sr. Adv. Mr. Biswajit Mukherjee, Adv. Mr. Rishav Karnani, Adv. Mrs. Sonali Ghosh Basu, Adv.
For the KMC	: Mr. Alak Kumar Ghosh, Adv. Mr. Gopal Chandra Das, Adv.
For the respondent Nos. 7 to 15	: Mr. Sudarsan Roy, Adv. Mr. Deep Narayan Mukherjee, Adv.
For the respondent Nos. 16 & 17	: Mr. Rahul Karmakar, Adv. Mr. S.K. Poddar, Adv.
For the respondent Nos. 18 & 19	: Mr. Soumya Majumdar, Sr. Adv. Mr. Shaunak Mukhopadhyay, Adv. Mr. Kallol Saha, Adv. Mr. Akash Ghosh, Adv.
Heard on	: 09.07.2026, 10.07.2026, 17.07.2026 & 14.08.2026.
Judgment pronounced on	: 14.08.2026.
Judgment uploaded on	: 14.08.2026.

Shampa Sarkar, J. :-

1. The present appeal arises out of a judgment and order dated June 29th, 2026, passed by the learned Single Judge. The writ petition being WPO No. 491 of 2025 was disposed of without granting the reliefs prayed for by the appellant. The dispute relates to use of the premises No. 39 Bentick Street Municipal Ward No. 46, police station – Hare Street, Kolkata- 700069 formerly known as Paradise Cinema Hall as a mega garment store. In the writ petition No. 491 of 2025, the appellant prayed for a declaration that the Certificate of Enlistment dated April 7, 2025, granted to the respondent No. 19 in respect of 39 Bentinck Street, 1st floor Kolkata 700069, was null and void. An order of cancellation of the said Certificate of Enlistment, and/or rectification of the assessment book records in respect of the said premises as a mercantile building were also prayed for.

2. Mr. Jaydip Kar, learned Senior Advocate for the appellant, submitted that the learned Judge had erroneously held that the grant of Certificate of Enlistment under Section 199 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the said Act), was independent of and not contingent upon the use or occupancy of the premises. According to Mr. Kar, Section 416 of the said Act prohibited change of use of a building without the permission of the Municipal Commissioner. Unless the change of user of the building from an assembly building to a mercantile building was permitted by the KMC

authorities under the provisions of the said Act, the respondent Nos. 18 and 19 could not have operated a mega garment business akin to a shopping mall, from the premises which was used as a theatre, namely Paradise Cinema Hall.

3. According to Mr. Kar, the Enlistment Certificate was obtained by fraud and the corporation had acted illegally, by granting such Certificate of Enlistment once again. As the corporation had come to a finding that the change of user of the assembly building to a mercantile building and the running of a garment business from the said premises was prohibited under the law, and had accordingly rejected the prayer of the respondent Nos. 18 and 19 for change of user, the corporation could not have granted the Certificate of Enlistment, thereafter.

4. According to Mr. Kar, certain declarations had to be given by the appellant while applying for the Certificate of Enlistment and one of those was that, the use of the premises in respect of which such Certificate of Enlistment was being applied for, was not prohibited under any law. At the time of filing the application online, the respondent Nos. 18 and 19 had given a false declaration. The order of Special Officer (Building), was in force. The office had categorically held that the change of user was not permissible and the use of the premises as a mercantile building was without any permission. The order of the Special Officer (Building) was challenged by the respondent Nos. 18 and 19 in WPO 1234 of 2024. By an order dated May 1, 2025, the said writ petition was disposed of without any interference and without any relief to the

respondent Nos. 18 and 19. The said respondents were directed to avail of the alternative statutory remedy by filing an appeal before the Municipal Building Tribunal. Having accepted such direction, the respondent Nos. 18 and 19 approached the municipal building tribunal by filing an appeal and the appeal is pending. No interim protection was given to the said respondents by the appellate tribunal. Mr. Kar further submitted that the decision of the Special Officer (Building) was taken pursuant to a direction passed in WPO 414 of 2024. The appellant had filed a writ petition before the High Court, alleging inaction on the part of the corporation in dealing with the repeated representations made by the appellant, complaining of unauthorized construction within the premises, illegal use of the premises by running a mega garment business almost akin to a mall and unlawful blockage of the staircase etc., at the instance of the respondent Nos. 16 to 19.

5. The said writ petition was disposed of by the learned Single Judge and it was directed that either the Commissioner of the Kolkata Municipal Corporation or his delegate must grant an opportunity of hearing to all necessary parties, in order to ascertain whether the business was being run by the respondent Nos. 18 and 19 in accordance with law or not. The learned Judge directed that, in the event the said respondents failed to produce supporting documents which enabled them to run the business from the subject premises, then steps must be taken by the Corporation to stop such business forthwith. Pursuant to the order of the court, the Additional

Municipal Commissioner granted a hearing to the parties and allowed the respondent Nos. 18 and 19 to re-upload the relevant documents with regard to proof of occupancy. They were allowed to re-apply for change of user, as the Certificate of Enlistment which was issued to Metro Retail Private Limited online, appeared to be incomplete in respect of occupancy of the premises. The appellant was constrained to file a contempt application before the learned Single Judge, inter alia, alleging non-compliance of the order of the High Court. In the contempt proceedings the Additional Municipal Commissioner filed an affidavit of compliance dated December 16, 2024. In the said affidavit, it was disclosed that the Special Officer (Building), KMC by an order dated December 14, 2024, had rejected/disallowed the change of use and/or occupancy of the subject premises. Mr. Kar drew our attention to the detailed discussions in the order passed by the Special Officer (Building). The Mayor-in-council affirmed such decision. Consequent upon such decision, the Certificate of Enlistment dated November 30, 2023, was also cancelled by the Deputy License Officer (HQ). By a letter dated December 16, 2024, such decision was communicated to the said respondents. Suddenly, the appellant came to learn that despite the clear findings of the Special Officer (Building) disallowing the conversion and subsequent cancellation of the earlier Certificate of Enlistment, another Certificate of Enlistment had been issued in favour of the respondent Nos. 18 and 19. In the said certificate, the use of the premises was mentioned as a garment departmental store, measuring about 5000 sq. ft. Whereas, the

garment store was akin to a shopping mall, named and styled as M-Bazaar and measured more than 11000 sq. ft.

6. According to Mr. Kar, the learned Single Judge failed to appreciate the provisions of Section 416 of the said Act, the impact of the decision of another coordinate bench which had relegated the respondents to the appellate tribunal against the order of the Special Officer (Building) as also the locus of the appellant to challenge the grant of the Certificate of Enlistment. When the writ petition was moved challenging the grant of the Certificate of Enlistment dated April 7, 2025, no interim order had been passed. Aggrieved, the appellant filed an appeal which was registered as APO No. 85 of 2025. Upon hearing the parties, the appeal was disposed of by a Co-ordinate Bench, thereby, relegating the matter to the learned Single Judge for final disposal upon exchange of affidavits, but with the direction that operation of the garment departmental store should be stopped. The Corporation was directed to shut down the same forthwith. Accordingly, the corporation once again cancelled the Certificate of Enlistment. Mr. Kar submitted that, irrespective of the orders passed in the suit and in any other proceeding between the respondent Nos. 16 to 19 and other parties, the decision of the Special Officer (Building) would be operative and applicable, until and unless the same was set aside by the appropriate forum. The appellant was neither a party to the suit, nor was the 'lis' involved in those proceedings similar to the subject proceeding. The orders passed in the suit or in the other writ petition with regard to grant/ non-grant of fire

license etc., did not have any bearing on the instant proceedings. The orders passed in those proceedings would not be binding upon the appellant. Mr. Kar submitted that the observations of the learned Single Judge were perverse and contrary to the provisions of the statute. First and foremost, the learned Judge recorded that the parties had admitted that the building was a mercantile building, which it was not. Secondly, it was wrongly held that, at the time of grant of the Certificate of the Enlistment, the corporation need not venture into a roving enquiry with regard to the validity of title and nature of occupancy of the premises by the respondent Nos. 18 and 19. It was urged that the learned Judge further erred in holding that the said respondents could continue the garment business, as change of use was not prohibited by law. The permission only carried with it a monetary involvement of payment of charges. Mr. Kar relied on the following decisions:-

(a) *Dipak Kumar Mukherjee vs Kolkata Municipal Corporation and Ors.* reported in (2013) 5 SCC 336,

(b) *Shadab Jahan Begum & Ors. vs The Kolkata Municipal Corporation and Ors.* reported in 2022:CHC-AS:703

(c) *Jamila Khatoon and Ors. vs State of West Bengal and Ors.* reported in 2022 SCC Online Cal 2478

(d) *Bangbhumi Realbuilders LLP vs Biplab Das and Ors.* reported in 2025 SCC Online Cal 223

(e) *Smt. Banasri Mondal vs State of West Bengal & Ors.* reported in **2021:CHC-AS:540**

7. Mr. Soumya Majumdar, learned Senior Advocate for the respondent Nos. 18 and 19 submitted that the appellant did not have any locus to file the writ petition. The grant of Certificate of Enlistment by the corporation was in discharge of its statutory power and a third party could not have any right to challenge the same. The objection of the appellant with regard to the business of the respondent Nos. 18 and 19, was not with regard to unauthorized construction. The objection was with regard to the use of the premises as a garment shop without any permission for change of user from an assembly building to a mercantile building. The decision of the High Court in WPO 414 of 2024, which had been filed by the appellant, did not decide the locus of the appellant. The learned Single Judge merely directed the Municipal Commissioner to look into the grievance of the appellant with regard to the change of use of premises by the respondent Nos. 18 and 19. According to Mr. Majumdar, being unsuccessful in obtaining any order of restraint in the operation of such business from the premises in question, the developer had set up the appellant to file the writ petition in order to frustrate the order dated December 2, 2024, of a Division Bench in AO-COM/3/2024.

8. According to Mr. Majumdar, the Special Officer (Building) had not directed stoppage of business, but had rejected the prayer for conversion or change of user, which was the subject matter of an appeal before the tribunal.

The appeal was yet to be decided. The order of the Special Officer (Building) was not final. The respondent Nos. 18 and 19 had been enjoying an interim order to carry on the business which was passed on April 3, 2024 in AO-COM/3/2024, and confirmed by a subsequent order dated December 2, 2024. Further interim order permitting such business to operate was passed in APOT/136/2025. Thus, those orders were binding.

9. The business of the respondent Nos. 18 and 19 could not be shut down in view of the interim orders passed by the two Division Benches. Even after the decision of the Special Officer (Building) dated December 4, 2024, the Division Bench in APOT 136 of 2025, passed an order allowing the business to run. The first Certificate of Enlistment might have been cancelled on December 16, 2024, but was again issued on April 7, 2025, upon the respondents on the basis of an online application. The Certificate of Enlistment was granted when an interim order was passed in WPO No. 1234 of 2024, dated January 15, 2024. On the date on which the Certificate of Enlistment was applied for, there was no order of restraint upon the corporation from issuing such Certificate of Enlistment. No order was operating against the respondent Nos. 18 and 19. Thereafter, the respondent Nos. 18 and 19 had paid a sum of Rs. 21,560/- on April 7, 2026 to the Kolkata Municipal Corporation for renewal of trade license. The corporation had demanded tax on account of such change of use, even after the permission for change of use had been denied by the Special Office (Building). Property tax was assessed by

treating the building as a mercantile building. Thus, the Corporation had always considered the said building as a mercantile building for the purpose of assessment of property tax.

10. According to Mr. Majumdar, change of the occupancy was not a relevant consideration for issuance of the Certificate of Enlistment. The guidelines for Enlistment of Profession, Trade and Calling in the Kolkata Municipal Corporation Area dated August 28, 2020, did not require change of occupancy certificate. The change of occupancy could only have an impact on the tax payable and nothing else. Change of occupancy or the nature of use was not synonymous to unauthorized construction. The garment shop did not require any mandatory permission for being operated from the premises in question, inasmuch as, the cinema hall had shut down long ago and the building was already being used as a mercantile building. Even, the appellant was running a food stall from the same premises with a Certificate of Enlistment from the Kolkata Municipal Corporation.

11. It was submitted that, in view of the orders passed by the two Division Benches, one in the appeal arising from an interim order passed in the civil suit and the other in the appeal arising out of a writ petition with regard to the dispute over a fire licence, the respondent Nos. 18 and 19 were entitled to run the garment business from the said premises.

12. Under such circumstances, the said respondents could not be prohibited from running the business from the premises in question, until the proceedings

were disposed of. From the decision of the Division Bench in APOT 136 of 2025, the special leave petition before the Apex Court was pending. With regard to the interim order passed by the Division Bench in the appeal arising out of the suit, although an interim stay had been granted by the Hon'ble Apex Court, the said special leave petition was disposed of directing the Division Bench of the High Court to dispose of the appeal in accordance with the provisions of law, by an order dated November 18, 2025.

13. Mr. Majumdar submitted that, the Division Bench of the High Court allowed the respondent Nos. 18 and 19 to continue with the garment business, till the injunction application was decided finally by the suit court. The orders passed prior to the decision of the Special Officer (Building) would prevail. It was further submitted that the Hon'ble Apex Court had directed that the decision of the Special Officer (Building) should be placed before the suit court for approval. Therefore, the decision of the Special Officer (Building), rejecting the prayer for change of user had not attained finality and could not be the foundational basis for cancellation of the Certificate of Enlistment. The said respondents could not be prohibited from carrying on the business.

14. Mr. Rahul Karmakar appeared on behalf of the respondent Nos. 16 and 17, i.e., the original lessees. Mr. Karmakar adopted the submissions of Mr. Majumdar. He submitted that the appellant did not have the locus to challenge the grant of Certificate of Enlistment as the actions of the corporation did not amount to denial of any legal or fundamental right of the appellant. The

appellant was a rank outsider and could not seek enforcement of a non-existing right. He submitted that the respondent Nos. 16 and 17 were the lessees and they had granted a sub-lease in favour of the respondent Nos. 18 and 19. Thus, the respondent Nos. 18 and 19 had a legitimate right to operate their business from the subject premises, on the strength of such sub-lease. According to Mr. Karmakar, the writ petitioner was actually running a food stall, without a FSSAI license, fire safety license and without no objections from the competent authority. The appellant did not have any document of lawful occupation. It was further submitted that the appellant had filed a civil suit against the respondent Nos. 16 and 17 on the self-same cause of action. Thus, the learned Judge rightly rejected the writ petition.

15. Mr. Alok Kumar Ghosh learned Advocate for the Kolkata Municipal Corporation, submitted that the corporation had disallowed change of user by duly applying the law. The earlier Certificate of Enlistment was cancelled on December 16, 2024, in view of the decision of the Special Officer (Building). The Certificate of Enlistment was thereafter issued on April 7, 2025, when an online application was made by the respondent Nos. 18 and 19. At that juncture, an interim order had been passed by the High Court in the WPO No. 1234 of 2024, dated January 15, 2025, staying the operation of the order of the Special Officer (Building), as such, no order of restraint was operating at the relevant point of time. On the basis of such interim order, the decision of the Special Officer (Building) was inoperative. When the Division Bench passed an

interim order in APO 85 of 2025, which arose out of refusal of an interim order in WPO No. 491 of 2025, the Certificate of Enlistment was once again cancelled. Mr. Ghosh submitted that, the Certificate of Enlistment was issued by the KMC on a year-to-year basis, and prior cancellation would not be a bar in granting a further Certificate of Enlistment for the following year/period. Moreover, according to Mr. Ghosh, the Enlistment Certificate itself was not a permission to operate the business.

16. Having heard the learned advocates for the respective parties, and upon tracing the history of the litigation, we find that the genesis of the dispute relates back to the order of a learned Single Judge passed in WPO No. 141 of 2024. With the allegations of illegal conversion of the cinema hall, (assembly building) to a large format garment departmental store (mercantile building) without obtaining requisite permission under Section 416 of the KMC, and without sanctions under Section 390 to 396 of the said Act, the writ petition had been filed. As the Kolkata Municipal Corporation had continuously ignored the complaints and the representations made by the appellant, the appellant approached the writ court. On May 14, 2024, an order was passed by a learned Single Judge, directing the corporation to take instructions as to whether any permission was given for change of use of the premises.

17. On May 22, 2024, the learned judge was pleased to take up the matter and dispose of the writ petition with the following direction:-

“The Court: The Officer-in-Charge, Hare Street Police Station has forwarded a report before this Court signed on 14th May, 2024 which mentions that Fire License under the West Bengal Fire Services Act, 1950 was granted to M/S. Metro Retail Private Limited valid from 19th December, 2023 to 18th December, 2024.

Learned advocate representing the Corporation has relied upon the instruction forwarded by three of its engineers signed on 13th May, 2024 which mentions that recent inspection revealed that ground floor of the premises no. 39, Bentinck Street, has been converted to shopping mall which is running business in the name of "m bazaar".

It was observed that there is a three storied building which was previously identified as "Paradise Cinema" Hall which is in the nature of assembly building. Presently, it is found that the ground floor of the building is converted to mercantile building. Notice under Section 401 of the KMC Act, 1980 has been served upon the person responsible. Infringement statement has been prepared and placed before the concerned authority. No sanction plan has been accorded by the department for change in use of the subject premises.

Learned advocate representing the respondent no. 19 who is running the garment shop/shopping mall submits that his client has all the requisite licenses and permissions for running the said business.

Report of the Corporation suggests that no permission was granted by the Corporation for change in use of the nature of the subject structure.

As it has been insisted that all licenses and permissions have been issued for running the business, accordingly, the Commissioner of the Kolkata Municipal Corporation or his delegate is directed to grant an opportunity of hearing to all the necessary parties to ascertain whether the business is run in accordance with law or not. If the concerned party fails to produce the requisite documents for running the business from the subject premises, then steps shall be taken by the official respondent to stop the business forthwith.”

18. The order recorded the stand of the corporation and the instructions forwarded to its learned Advocate, which was prepared by three engineers upon inspection of the ground floor of the premises. The instructions clearly indicated that a shopping mall was running in the name of M-Bazaar.

19. It was further observed that a three-storeyed building which was previously identified as Paradise Cinema Hall, was an assembly building and had been converted into a mercantile building. Notice under section 401 of the said Act had been served upon the person responsible. Infringement statements had been prepared and placed before the concerned authority. No sanction had been accorded by the department for change of use of the subject premises. Accordingly, on the submissions made by the learned advocate for the respondent No. 19 before Her Lordship that, the business was being run with all requisite licences and permissions, the matter was disposed of, directing the Municipal Commissioner or his delegate to grant an opportunity of hearing to all necessary parties in order to ascertain whether the business was being run in accordance with law or not.

20. It was further clarified that, if the concerned party failed to produce the requisite documents in favour of running the business from the subject premises, then steps should be taken by the Corporation to stop the business forthwith. We find that the Additional Municipal Commissioner conducted the hearing pursuant to the decision of Her Lordship and passed an order on July 18, 2024, inter alia, holding that the online Certificate of Enlistment issued in favour of Metro Retail Private Limited (respondent No. 19) appeared to be incomplete in respect of occupancy of the premises. The respondent No. 19 was given an opportunity to re-upload all relevant documents of proof of occupancy of the premises, and the license department was at liberty to take appropriate

action as per the Rules.

21. Mr. Majumdar learned Senior Advocate for the respondent No. 18 and 19, submitted before this court that, apart from proof of occupancy with regard to the premises in question, there was no shortfall with regard to the papers and documents required to run the garment business as would be evident from the decision of the Additional Municipal Commissioner dated July 24, 2024.

22. Thus, according to Mr. Majumdar, the decision of the Additional Municipal Commissioner put to rest the controversy which was raised in WPO 414 of 2024. However, the facts reveal otherwise. We find that, alleging violation of the order of Her Lordship passed in WPO No. 414 of 2024, a contempt application was filed by the appellant and by an order dated August 1, 2024, Her Lordship recorded that the Additional Municipal Commissioner had passed an order dated July 24, 2024, disposing of the representation of the appellant by granting further opportunity to the occupants to re-upload the relevant documents relating to proof of occupancy. The court had directed the authority to ascertain whether the business was being run in accordance with law or not. The order of the Additional Municipal Commissioner dated July 21, 2024 was not clear on such issue. Thus, contempt notice was directed to be served. On 2nd September, 2024, the learned Advocate representing the Additional Municipal Commissioner submitted before the learned court that proceedings under Section 400(1) and 416 of the Kolkata Municipal Corporation Act, 1980 were pending. Hence, the argument of Mr. Majumdar

that, the only deficiency in running the business was lack of proof of occupancy, and that upon such proof being uploaded, there was no further impediment in running the business from the premises in question is contrary to the records. The corporation was of the opinion that the respondent Nos. 18 and 19 had acted in violation of the law, and as such, had initiated proceedings under Section 400(1) of the said Act.

23. The provisions of Section 400(1) and 401 of the KMC Act are quoted below:-

400. Order of demolition and stoppage of buildings and works in certain cases and appeal.

(1)Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 396 or in contravention of any of the provisions of this Act, or the rules and regulation made thereunder, the Municipal Commissioner may in addition to any other action that may be taken under this Act, make an order directing that such erection or work has been commenced or is being carried on or has been completed or within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:

Provided that no order of demolition shall be made unless person has been given, by means of a notice served in such manner as the Municipal Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made :

Provided further that where the erection or the execution has not been completed, the Municipal Commissioner may by the same order or by as separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct such person to stop the erection or the execution until the expiry of the period within an appeal against the order of demolition, if made, may be preferred under subsection (3).

Explanation.- In this chapter, "the person at whose instance" shall mean the owner, occupier or any other person who causes the erection to any building or execution of any work to be done, including alternations or additions if any, or does it by himself.

Provided also that the Municipal Commissioner may by order, on such terms and conditions and on payment of such fee as may be prescribed by regulation, regularize the minor unauthorized erection or execution of any minor work without sanction under this Act, or minor deviation from the sanctioned plan or execution or any minor erection or work in contravention of any sanctioned plan under this Act, or the rules or the regulations thereunder as the case may be.

Explanation.- For the purpose of this section, "minor deviation" shall be such as may be determined by regulations.

(2) The Municipal Commissioner may make an order under sub-section (1) notwithstanding the fact that the assessment of such building has been made for the levy of the [property tax] on the lands and buildings.

401. Order of stoppage of building for works in certain cases.

(1)Where [the demolition of any heritage building or the erection of any building or the execution of any work has been commenced or is being carried on without or contrary to the sanction referred to in section 396 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or the rules or the regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, by order, require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith."

24. Accordingly, the matter was adjourned for further compliance. On September 19, 2024, an affidavit of compliance was filed, which referred to an order dated August 20, 2024, passed by the Additional Municipal Commissioner of Kolkata Municipal Corporation. The order dated September 19, 2024 passed in the contempt proceeding recorded that a prayer for conversion and/or change of use of the subject premises was pending before the authority and until the conversion was allowed, the KMC authorities ought

not to have permitted the use of the premises for any other purpose. This observation was made with reference to the earlier Certificate of Enlistment which was issued in favour of the respondents Nos. 18 and 19, permitting them to run the business. The corporation again submitted before Her Lordship that proceedings under Section 416 of the said Act was pending final decision. The relevant portion of the order dated September 19, 2024 are reproduced:-

“The premises from where the business is being run is classified as cinema hall. Prayer seeking conversion of the change of use of the subject premises is pending consideration before the authority. Till the conversion is allowed, the authority ought not to have permitted to use the same for any other purpose.

It has been submitted by the learned advocates representing both the parties that hearing in connection with Section 416 proceeding under the Kolkata Municipal Corporation Act, 1980 is pending consideration. Final order is yet to be passed.

The contemnors are directed to ensure that the business is run strictly in accordance with law and not otherwise. The same implies that all the necessary permissions/licenses/ permission to change the nature of use of the subject premises has to be in place for the business to run in accordance with law. Merely obtaining fire license or certificate of enlistment is not at all sufficient for running the business.

The contemnors shall verify as to whether or not the fire license relied upon by the private respondent in the writ petition has been issued for running the business in the subject premises. If the fire license has been issued in respect of some other business, the same cannot be used for running the business that is currently being run from the subject premises.”

25. Several orders were passed in the contempt application. Ultimately, an order was passed by the Special Officer (Building) dated December 4, 2024, in the demolition proceeding under Section 400(1) and 416 in respect of premises No. 39 Bentinck Street, Ward No. 46, Police Station- Hare Street, Kolkata-

700069. The order recorded the details of unauthorized construction, ie., conversion of the ground floor of the premises into a garment shop named as M-Bazaar which was previously known as Paradise Cinema.

26. The Order dated January 8, 2025 passed by Her Lordship in the contempt application is quoted below:-

“1.A notice of cancellation of the certificate of enlistment and to stop work issued by the Deputy Licence Officer (H.Q.), Kolkata Municipal Corporation dated 7th January, 2025 has been placed before this Court.

2. It appears therefrom that the person carrying on the subject business under the name and style of M/s. Metro Retail Private Limited (Branch) at premises no. 39, Bentinck Street, Ground Floor, Kolkata -700069 has been intimated to stop the business from the date of receiving the notice.

3. Let further follow-up steps be taken by the Corporation.

4. The matter stands adjourned till 30th January, 2025.”

27. Thereafter, the contempt application was disposed of as a subsequent development had taken place, which gave rise to a further cause of action. The order of the Special Officer (Building) was challenged in WPO 1234 of 2024, and interim order of stay was passed by another learned Single Judge. It is clear that the Additional Municipal commissioner and the Municipal Commissioner had been discharged from the contempt, after taking steps under Section 401 read with 416 of the said Act and after cancelling the Certificate of Enlistment and issuing a stop work notice through the Deputy License Officer (Headquarter) Kolkata Municipal Corporation dated January 7, 2025. Thus, for the corporation to turn around and submit before the court that Certificates of Enlistment are issued on a year to year basis and the earlier

orders passed by the writ court and the actions taken by the corporation in compliance of the orders of the writ court , had become infructuous, is thoroughly misconceived. The corporation has played fraud on the statute.

28. Section 416 of the Kolkata Municipal Corporation Act, 1980 is hereby quoted below:-

“416.Prohibition on change of use of building:- (1) No person shall, without any written permission of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, of such permission,—

(a) use or permit to be used for the purpose of human habitation any part of a building not originally erected or authorized to be used for such purpose;

(b) change or allow the change of the use of any building for any purpose other than that specified in the sanction under Section 396;

(c) change or allow the change of the use of any building erected before the commencement of this Act contrary to the use for which such erection was originally sanctioned;

(d) convert or allow the conversion of a tenement under a particular occupancy or use group to a tenement under another occupancy or use group:

Provided that no such permission shall be given if the new occupancy or use group is otherwise than in conformity with the provisions of this Act or the rules and the regulations, made thereunder or of any other law in force for the time being.

(2) If, in any case, such permission is given, no change of occupancy or use group shall be allowed before any necessary alterations or provisions have been made to the satisfaction of the Municipal Commissioner and in accordance with the provisions of this Act or the rules and the regulations made thereunder or of any other law in force for the time being.

(3) Any change of use made before the commencement of this Act, except in so far as such use is permitted under section 385 of the Kolkata Municipal Act, 1951, shall be deemed to be an authorized change and shall be dealt with under the provisions of this Act.

(4) Notwithstanding any other action that may be taken against any person, whether owner or occupier or both, contravening any provision of this section, the Municipal Commissioner may levy on such person in accordance with such scale as may be [determined by

regulations] a fine not exceeding in each case rupees one hundred per square metre per month for the area under unauthorized use throughout the period during which such contravention continues.

(5) The Municipal Commissioner may, if lie deems fit, order that the unauthorized use be stopped forthwith:

Provided that before making any such order, the Municipal Commissioner shall give a reasonable opportunity to the person affected lo show cause why such order should not be made.

(6) Any person aggrieved by an order of the Municipal Commissioner under sub-section (5) may, within thirty days, from the date of the order, prefer an appeal against, the order to the Municipal Building Tribunal appointed under section 415.

(7) Where an appeal is preferred under sub-section (6), the Municipal Building Tribunal may slay the enforcement of the order on such terms, if any, and for such period as it may think fit:

Provided that the fine levied under sub-section (4) shall not be waived.

(8) Save as otherwise provided in this section, no court shall entertain any suit, application or oilier proceeding for injunction or other relief against the Municipal Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

(9) Every order made by the Municipal Building Tribunal on appeal and subject to such order, the order of the Municipal Commissioner under sub-section (5) shall be final and conclusive.

(10) Where no appeal has been preferred against an order made under sub-section (5) or where an order under sub-section has been confirmed in appeal, whether with or without modification, the person against whom such order has been made shall comply with the same within the period .specified therein, or, as the case may be, within the period, if any, fixed by the Municipal Building Tribunal on appeal, and on the failure of such person to comply with such order within such period, the Municipal Commissioner may require any police officer or any employee o the Corporation to seal up such area after evicting all persons therefrom to prevent its further unauthorized use."

29. Coming to the order of the Special Officer (Building), we find that the relevant records, information available in the file and the demolition sketch map were perused by the Special Officer (Building) along with the precise

infringement statement from the bureau office. The infringement statement of the Building Rules of 2009 recorded in the order were as follows:-

Rules	Description	Required	Provided	Remarks
64	Front Open Space	3.0m	Nil (but existing)	Infringes
64	Rear Open Space	4.0 m	1.50 m (but existing)	Infringes
64	Side-1 Open Space	3.5 m	1.40 m (but existing)	Infringes
64	Side-2 Open Space	4.0 m	3.00 m (but existing)	Infringes
70	Ground Coverage	40%	73.84%	Infringes
123	Fire Fighting	Not Known		
133	Structural Design	Unknown		
134	Quality of materials & workmanship	Unknown		

30. The order reflects that on April 12, 2024, the respondent No. 18 had applied for change of use of the ground floor which had been earlier used as a cinema hall and had been shut from 2016, to a ready-made garment shop for the livelihood of the employees. The concerned executive engineer had issued a letter to the person responsible to produce relevant documents in support of the change of use on April 4, 2024 and the department had issued a notice under Section 416(5) of the KMC Act, that is, prior to the application for

change of use. The person responsible once again prayed for conversion of the assembly building to mercantile building on June 20, 2024. The person responsible also agreed to book space for parking which was necessary in respect of a mercantile building. The person responsible relied on the deed of sub-lease dated November 10, 2023 by which the demised premises were leased out for distribution, exhibition and exploitation of feature films and for cinema and allied business.

31. The Special Officer (Building) came to the conclusion that, as per the deed of sub-lease, the sub-lessee was entitled to use the premises only for cinema business and allied purposes, meaning thereby, the allied purposes should be directly involved with the cinema business and not for any other kind of business. It appears that the Special Officer (Building) had taken into consideration the civil suit being CS 1 of 2024 and the appeal being APOT 297 of 2024 by which the Division Bench had directed that till disposal of the injunction application, the lessee would be able to carry on their business in the usual course without making any long-term changes in the structure, that is, without making any capital expenditure. Aggrieved by the aforementioned direction, an appeal was preferred before the Hon'ble Apex Court, and the direction that the lessee would be able to carry on business in its usual course was stayed. This aspect weighed on the Special Officer (Building).

32. Relying on the provisions of Section 416 (1) (d) of the said Act and 416(2), the Special Officer (Building) concluded that the change of use was done by the

person responsible without appropriate permission from the KMC which would tantamount to violation of the terms and conditions of the sub-lease and the head lease, as also the law. Accordingly, the change of use was disallowed. The relevant portions of the order of the Special Officer (Building) are quoted below:-

“It is to be noted that the existing order of Hon'ble Supreme Court dated 06.09.2024 in respect of Special Leave to Appeal (C) No. 20297/2024 wherein previous order of the Hon'ble Division Bench dated 21 August, 2024 being stayed in respect of carried out of the P/R's business in the usual course and the matter has been referred to the Single Judge in respect of interim reliefs as prayed by the complainant in this case.

Whereas as per section 416(4)(d) of the K.M.C Act, 1980 implements that No person, shall. without any written permission of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, of such permission convert or allow the conversion of a treatment under a particular occupancy or use group to a tenement under another occupancy or use group.

For such change as per section 416(2) of the K.M.C Act, 1980 unless necessary alterations have been made to the satisfaction of the Municipal Commissioner and in accordance with the provisions of this Act or the rules and the regulations made thereunder or of any other law in force for the time being. For which it may be noted that already notice under section 416(5) of the said Act has been issued in respect of the said premises by the Building Department.

That as per prevailing system of K.M.C change of use of any nature of a building if done by any person/occupier/owner to apply before the Building Department with relevant documents for such change of use along with appropriate plan of such change with other statutory certificate for permissilife for such changes. Thereafter, Building Department will examine and inspect the site with all documents and will give their appropriate decision of such change of use.

In this respect the application made by the applicant for change of use on the ground floor of the premises on 12.04.2024. for conversion Cinema Hall into Garment Shop for running livelihood of

the employees. Prior to that application, concerned Executive Engineer already issue notice under section 416(5) of the K.M.C Act, 1980 on 04.04.2024 which indicates stop forthwith of such unauthorized use of such change.

That while going through the documents in respect of sub-lease deed dated 10.11.2023 and main Jease deed dated 11.10.2012 it indicates that the said premises only use for Cinema business and other allied purposes by the lessee and also by his associate and subsidiary companies wherein the Lessee is directly involved. Wherein sub-lease deed dated 10.11.2023 indicates that the said demised premises only use for distribution, exhibition and exploitation of feature films and for cinema business and other allied business as permitted under the Head Leases after procuring necessary permissions.

Hence from the above, it can be observed that the Hon'ble Supreme Court order dated 06/09/2024 has stayed the portion of the order dated 21/08/2024 passed by Hon'ble High Court Division Bench, wherein allowing the P.R. for carrying out their business at the said premises. Simultaneously, documents submitted by the parties which reflects that there is a violation or misuse of the said premises in respect of running of the business as granted by the Lessor/Owner in the main Lease Deed dated 11.10.2012.

In view of above observation, it can be concluded that change of use as done by the P/R without appropriate permission from the KMC authority tantamounts to violation followed by the usage of the said permission as mentioned in the lease deeds dated 11/10/2012 and 10/11/2023 as stated above, for which said change of use is disallowed.”

33. Consequent to passing of the said order, the Certificate of Enlistment was cancelled by the Deputy License Officer on December 16, 2024. The order of the Special Officer (Building) was challenged by filing WPO 1234 of 2024. Prayer was made for setting aside the order of the Special Officer (Building) as also the letter cancelling the Certificate of Enlistment. An interim stay was granted when the second Enlistment Certificate was issued by the Kolkata Municipal Corporation dated April 7, 2025.

34. Such grant of the Certificate of Enlistment was under challenge in the writ petition from which this appeal arises. One of the declarations which had to be made by the appellant respondent Nos. 18 and 19 while making the online application for grant of Certificate of Enlistment is set out below:-

“I/We hereby solemnly affirm and state that the business which I/ We have started is not restrained or banned or prohibited by any Act, Rules, Law or Order of any Court of Law or any competent authority and the premises where I am/We are conducting the said profession, trade & calling is free from violation of any Act, Rules, Order of any Court of Law or any competent Authority.”

35. The first of many declarations is that, there is no ban or restraint or prohibition under the law or by orders of court from conducting the said profession, trade or calling. At the relevant point of time, the Special Officer (Building) had already disallowed the conversion and the order of the Special Officer (Building) read as a whole would clearly indicate that the authority had recorded that the change of user had taken place contrary to the covenants in the sub-lease, the head-lease, and was contrary to law. This issue was not taken into consideration by the Kolkata Municipal Corporation when the online application for Enlistment Certificate was accepted on the basis of the declaration made by the respondent Nos. 18 and 19 who were silent about the proceedings. The learned Single Judge also overlooked these aspects. The writ petition being WPO No. 1234 of 2024, was disposed of without any interference with the order passed by the Special Officer (Building) and it was held as follows:-

“It is well-settled in law that the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is not to be invoked where an alternative statutory remedy exists, save and except in cases where such remedy is shown to be illusory or inefficacious, or where there is a gross violation of the principles of natural justice, or where the impugned action suffers from a patent lack of jurisdiction. In the present case, no such exceptional circumstance has been demonstrated so as to warrant interference under Article 226.

Consequently, this Court is not inclined to exercise its discretionary jurisdiction under Article 226 of the Constitution. The petitioner is granted liberty to avail of the appellate remedy provided under Section 415 of the Kolkata Municipal Corporation Act, 1980, before the Learned Municipal Building Tribunal. Accordingly, without expressing any opinion on the merits of the case, and in view of the above direction, the present writ petition stands disposed of.”

36. WPO No. 491 was filed by the appellant for declaration that the Certificate of Enlistment dated April 7 2025, which was granted in favour of the respondent No. 19 was bad in law, null and void, with a further prayer that the same should be set aside, cancelled and quashed. Further prayer was for a direction upon the corporation to correct and rectify the assessment. No interim order was passed in favour of the appellant on the first day when the matter was moved and APO 85 of 2025 was filed by the appellant. The appeal was disposed of by a co-ordinate bench of this court by passing the following orders:-

“10. While it is true that the livelihood of some persons may be affected, compliance of provisions of the statute, is paramount and mandatory pre-condition. Running a garment shop in the backdrop of an order of the Special Officer (Building), confirmed by the Mayor-in-Council, disallowing change of user of the building, is ex facie illegal and cannot be permitted.

11. Having regard to the above, this Court is of the view that the garment shop at the said premises cannot be allowed to run. It shall be shut

down by the KMC forthwith. The respondent-M/s. Metro Retail shall not run the garment shop, and must shut it down.

12. The aforesaid are only interim orders. The same shall abide by the final result of the writ petition, where the parties are at liberty to canvass all arguments available to them in law, including maintainability of the writ petition.

13. The Single Bench is requested to take up the matter on the day already fixed after affidavits and hear and dispose of the writ petition without granting any unnecessary adjournments to any of the parties.

14. It is made clear that the aforesaid views expressed by this Court are prima facie and the Single Bench for reasons that it may feel, may take any view in the matter, permitted in law and in the facts of the case.”

37. Pursuant to the said decision, the corporation once again cancelled the Certificate of Enlistment. Thereafter, the learned Single Judge passed the order impugned. With regard to the locus of the appellant, we find that, the orders that were passed as discussed hereinabove, were in proceedings initiated at the instance of the appellant either before the corporation or before the High Court. Secondly, the appellant runs a food stall from the said premises since long and running a food stall from an assembly building is permissible in law. Section 390(2)(d) and 390(2)(f) of the said Act are quoted below:-

“390(2)(d) assembly buildings, that is to say, any buildings or part thereof where groups of people congregate or gather for amusement or recreation or for social, religious, patriotic, civil travel, sports, and similar other purposes; such buildings shall include theatres, motion picture houses, drive-in-theatres, city halls, town halls, auditoria, exhibition halls, museums, skating rinks, gymnasium, restaurants, eating houses, hotels, boarding houses, -[lodging or rooming houses, guest houses, dormitories,] places of worship, dance halls, club rooms, gymkhana, passenger stations and terminals of air, surface and other public transportation services, recreation piers, and stadia;

390(2)(f) mercantile buildings, that is to say, any buildings or part thereof used as shops, stores or markets For display or sale of merchandise, either wholesale or retail, or for office, storage or service facilities incidental to the sale or merchandise and located in the same building; such building shall include establishments, wholly or partly engaged in wholesale trade, manufacturer's wholesale outlets (including related storage facilities), warehouses, and establishments engaged in truck transport (including truck transport booking agencies);

38. However, a garment business from an assembly building is not permissible in law, until and unless requisite permissions are granted by the corporation for change of use under Section 416 of the said Act.

39. The contention of Mr. Majumdar that the Special Officer (Building) did not disallow the business, but only disallowed the conversion is fallacious, inasmuch as, the order of the Special Officer (Building) clearly indicates the nature of violations, infringement of the building rules and wrongful conversion without permission. The terms and conditions of the sub-lease under which the respondent Nos. 18 and 19 were staking their claim did not permit such use. The fact that Mr. Rahul Karmakar's clients (original lessee) was supporting the respondent Nos. 18 and 19 did not change either the terms and conditions of the sub-lease or those of the head-lease under which Mr. Rahul Karmakar's clients had come in possession of the demised premises. Secondly, the Special Officer (Building) also took note of the decision of the Hon'ble Apex Court in Special Leave to Appeal No. 20297 of 2024, in which the direction of the Division Bench in APOT 297 of 2024 permitting the lessee to carry on their

business in the usual course without any long-term changes to the structure and without making any capital investment, had been stayed. The said Special Leave Petition is still pending and the stay subsists. By an order dated August 21, 2024. APOT 297 of 2024 had been disposed of with the following directions:-

“The Court: Order in terms of prayer (a) of the stay petition.

Having heard learned counsel for parties, we are in a position to dispose of this appeal, dispensing with all formalities.

We modify the impugned judgment and order dated 6th August, 2024 to the following effect:

The owner/sub-lessee shall be at liberty to make the required application before the municipal authority for conversion of the use of the subject premises. The authority shall be at liberty to process the said application and propose a decision. By the time the decision is made, we are hopeful that the interim application will be ready to be considered after exchange of affidavits and the court will have an overall view of the prima facie case of the parties.

The proposed decision of the municipal authority shall be placed before the court for approval.

Till disposal of the interim application, the lessee will be able to carry out their business in the usual course without making any long term changes to the structure i.e. without making any capital expenditure.

The appeal (APOT/297/2024) and the connected application (IA No.GA-COM/1/2024) are disposed of.”

40. The order passed in SLP 20297 of 2024 from the aforementioned decision is quoted below :-

“Date: 06-09-2024 These matters were called on for hearing today.

Delay condoned in Diary No(s). 39787/2024.

Issue notice, returnable on 21st October, 2024

In the meanwhile, the following portion of the impugned order shall remain stayed:

“Till disposal of the interim application, the lessee will be able to carry out their business in the usual course without making any

long term changes to the structure i.e., without making any capital investment”

We make it clear that the pending application for interim relief before the learned single Judge must proceed in accordance with law notwithstanding the pendency of these Special Leave Petitions.”

“Date: 21-10-2024 These matters were called on for hearing today.
SLP© No. 20297/2024

Leave granted.

The interim relief granted vide order dated 6th September, 2024 shall continue to operate till further orders. However, this order will not prevent the learned single Judge from deciding the prayer for interim relief which is pending before him.

We make it clear that the proposed decision referred in the impugned order shall be placed before the learned Single Judge.

SLP(C) No. 20894-20896/2024

De-tagged.

List on 18th November, 2024.”

41. The said appeal was detagged from the Special Leave Petition (Civil No. 20894-20896 of 2024.

42. SLP Nos. 20894-20896 of 2024 were disposed of by the Hon’ble Apex Court vide order dated November 18th, 2024, with the following direction, but without noting the pendency of SLP(C) No. 20297 of 2024:-

“4. We, therefore, set aside that part of the impugned order by which the High Court directed that Application (GA (Com) No.1/2024) will be decided by the Division Bench.

5. Therefore, we direct that the Division Bench will deal only with the merits of the appeal against ad-interim order and learned Single Judge before whom the suit is pending will be free to decide the GA The said application being (CON) No.1/2024 in accordance with law. application shall be decided notwithstanding the pendency of appeal before the Division Bench.

6. The last part of the order dated 3rd April, 2024 is obviously an interim order passed by the Division Bench. The appellant can always apply for vacation/modification of the said interim order.

7. Accordingly, we dispose of the appeal by directing that the application being G.A. (Com) No.1/2024 shall be decided by the learned Single Judge in accordance with law on its own merits.

8. The Division Bench of the High Court will proceed to decide AO (Com) No.3/2024 which is against an ad-interim order passed in the said application. We make it clear that the learned Single Judge can proceed to decide the application even during the pendency of the appeal before the Division Bench without being influenced by the interim order passed by the Division Bench.”

43. Thus, the contention of Mr. Majumdar that the said order of stay passed by the Hon’ble Apex Court in SLP 20297 of 2024 had become infructuous in view of the disposal of the Special Leave Petition by order dated November 18th, 2024 and consequent disposal of the appeal AP-COM 3 of 2024, vide order dated December 2, 2024, is incorrect. By order dated November 18, 2024, the Division Bench was directed to dispose of AO-COM 3 of 2024. Such direction was passed in SLP 20894- 20896 of 2024. The order of the Hon’ble Apex Court was not taken into consideration by the learned writ court. The order impugned suffers from erroneous appreciation of fact and law.

44. A person who runs a food stall from the said premises which was always an assembly building, can always raise an objection with regard to the conversion of the building to a mall as his right to carry on the business may be affected. Moreover, a citizen can always approach the court for directions upon the corporation to follow the statutory provisions. The distinction drawn by Mr. Majumdar with regard to the issue of locus as decided in matter of

Dipak Mukherjee (*supra*), in order to assert that the locus of a public spirited person in drawing the attention of the Court to violation of the law and rampant illegal construction could not be imported in the facts of this case, cannot be accepted. The violations of the law were being pointed out by the appellant.

45. We are of the view that the appellant had the locus to file the writ petition atleast on the ground that the grant of the Certificate of Enlistment would permit unauthorized use of the premises as a big format garment shop allegedly akin to a mall, when such use was illegal and contrary to law, and contrary to the order passed by the corporation. The findings of the learned Single Judge that the appellant did not have any locus is not justified in the facts stated hereinabove. Secondly, the allegation of the appellant was not only unauthorized use, but also unauthorized constructions and the Special Officer (Building) recorded the extent of infringement of the building rules. The appellant was also operating a food stall from the premises in which an illegal business was going on. The appellant had the right to protest and approach the court for vindication of the grievances, as the appellant was also using the said premises. Upon failure of the corporation to take adequate steps and upon the Corporation acting contrary to the decision of the Special Officer (Building), the appellant rightfully approached the writ court. Moreover, the learned Judge erroneously arrived at the conclusion that the building was a mercantile building, as the building was being used for non-residential/commercial

purpose. Assembly building and mercantile building have separate connotations in law and the definition clauses have been referred to earlier. The learned court held that change of use was not impermissible, but permissible subject to payment of money. However, the law mandates a permission which cannot be deemed to be granted by judicial interpretation. Moreover, as per the Kolkata Municipal Corporation Building Rules, 2009 a mercantile building will have to comply with certain requirements. Those were not fulfilled in this case. Some of those are stated hereunder:-

“Rule 2 (40) Explanation (f) “Mercantile building” means, any building or part thereof used as shops, stores or markets for display or sale of merchandise, either wholesale or retail, or for office, storage and located in the same building; such building shall include establishments wholly or partly engaged in wholesale trade, manufacturer’s wholesale outlets (including related storage facilities), warehouses and establishments engaged in truck transport (including truck transport booking agency);

70. Ground coverage in respect of building. – (1) For any building the area of the plot to be covered by such building shall be as given in the Table 4 below:-

Table 4
Ground coverage for building

Occupancy or Use Group	Maximum Percentage of Ground Coverage	
	Plot Size up to 200 sq.m.	Plot Size up to 500 sq.m. or more
Residential	60%	50%
Educational	50%	45%
Institutional	40%	40%
Assembly	40%	40%
Mercantile (Retail)	40%	40%
Industrial	40%	40%
Storage	40%	40%
Business	40%	40%

78. Parking Space requirements for motor cars. – (1) The Space requirements for motor cars in respect of different categories of buildings are given in Table 6 below:-

Table
Off-street Car Parking Space

Sl. No.	Occupancy	Car Parking Space Requirement
VI.	Mercantile (Retail)	(a) For carpet area up to 25 sq. m. – no car parking space, (b) For carpet area above 25 sq. m. – one car parking space for every 35 sq. m.

46. In our view, the decision of the Special Officer (Building) was rendered pursuant to direction of the writ court. The learned Single Judge had directed that, if necessary permission, license requirement etc., were not available, the business could not be allowed. The Special Officer (Building) disallowed the conversion. Thus, change of user from a cinema hall which in an assembly building, to a big format shopping arcade in the name of M-Bazaar was without permission. Such permission is not available in law even upon payment of money alone. There has to a proper order by the appropriate authority. Such order is subject to the decision by the tribunal. The writ petition challenging the order of the Special Officer (Building) was not entertained. Till date, the tribunal has not passed any interim protection in favour of the respondent Nos. 18 and 19. The contention of Mr. Majumdar that the assessment was made as a mercantile building leading to a presumption of grant of permission for

change of use, is incorrect. Only because municipal tax was being assessed by treating the premises as a mercantile building, the same would not exonerate the person who has paid the property tax in respect of such premises, for violating the law. The report of the engineers before the learned writ court in WPO 414 of 2024, also indicated that the ground floor was converted into a market under the name of M-Bazaar.

47. We are of the view that, the business cannot be run from the said premises. For the aforementioned reasons and also because of the operation of the order of the Hon'ble Apex Court passed in SLP 20297 of 2024 arising out of APOT 297 of 2024, the business must be stopped. The contentions of Mr. Rahul Karmakar that a civil suit is pending before the City Civil Court on the self-same cause of action is not correct. We have perused the plaint and we disagree. Even if the parameters for grant of the Certificate of Enlistment have been met as per the contentions of the Corporation, the mega garment business cannot run from the said premises as of now. The sub-lease under which the respondent Nos. 18 and 19 were allowed to run a business from the premises was for running a cinema hall and allied activities and not a garment store.

48. With regard to the order passed in APOT 136 of 2025 from an order dated May 7, 2025 passed in WPO 284 of 2025, we find that, the subject matter of challenge in the writ petition was the Fire Safety Certificate that had been issued in respect of the said premises by the Director General, West

Bengal Fire and Emergency Services on April 11, 2025. As the Special Officer (Building) had disallowed the prayer for change of user of the said premises and the subsequent Certificate of Enlistment issued in favour of M/s. Retro Retail Private Limited stood cancelled, the learned court was of the view that, the Director General, West Bengal Fire and Emergency Services should file a report before the court indicating whether all documents with regard to the subject premises was duly considered prior to issuance of the Fire Safety Certificate. Further, the court directed that, whether infringement in the side open spaces of the said structure and the roof covering the terrace were noticed at the time of issuance of the Fire Safety Certificate must be ascertained. Her Lordship directed that the said premises shall not be used for commercial purpose till 19th May, 2025 or until further order whichever is earlier.

49. The Division Bench recorded the rival contentions of the parties and held that, without arriving at any finding with regard to the validity of the Fire Safety Certificate, the business should not have been stopped. The order of the learned Single Judge was set aside, as no reasons as to why the commercial activity from the said premises could not continue pending a challenge with regard to the validity of Fire Safety Licence, had been assigned. The Division Bench did not take note of the earlier orders and the decision of the Hon'ble Apex Court.

50. However, the issue is that, even prior to the direction of Her Lordship in WPO 284 of 2025, the Corporation had itself disallowed the change of use of

the premises as a mercantile building for commercial business (garment shop) and had cancelled the Certificate of Enlistment. Those orders were not obliterated by the observation of the Division Bench in APOT 136 of 2025. The relevant portion of which is quoted below :-

“In our opinion, prima facie, the appellant ought not to have been restrained from operating its business in the said premises before arriving at any finding that the FSC, as issued, is not sustainable in law. The vacation of the interim order shall not cause a greater loss and prejudice to the respondent no.1 than the loss and prejudice, the absence thereof, is likely to be caused to the appellant.

Accordingly, the interim order passed by the learned single Judge on 7th May, 2025 is set aside.

The respondents herein shall file the affidavits-in-opposition to the writ petition within a week after the vacation. Reply thereto, if any shall be filed within a week thereafter. The period specified for exchange of the affidavits shall be mandatory and the parties would be at liberty to pray for expeditious disposal of the writ petition.

With the above observations and directions the appeal and the connection application are disposed of.”

51. Under such circumstances, we direct the corporation to ensure that the garment business from the shopping arcade/shopping format M-Bazaar should be immediately stopped, until the permission to run the same is granted in accordance with the law. The order of the Special Officer (Building) continues to operate. The order of the Division Bench in APOT 136 of 2025 with regard to the grant of fire licence is also not binding in view of the decision of the Hon’ble Apex Court staying the order by which the lessee was allowed to continue the business from the premises in question. The order of the Hon’ble Apex Court will prevail. The order dated December 2, 2024, passed by the Division Bench in AP-COM 3 of 2024, did not take into consideration the order passed by the

Hon'ble Apex Court in SLP 20297 of 2024. Thus, the order impugned is set aside. Corporation shall ensure compliance of this order. The appeal and the connected application, being G.A 1 of 2026 are disposed of.

52. The Municipal Building Tribunal is requested to dispose of the pending appeal of the respondents, within a period of two months from the date of the communication of this order.

53. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties, upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)

I agree.

(Smita Das De, J.)

Later,

54. The learned Advocate for the respondent Nos. 18 and 19 prays for stay of operation of the judgment and order passed by us. The prayer has been considered and refused.

55. G.A 2 of 2026 is an application filed by the appellant after the matter was substantially heard. Hence, we are not inclined to entertain the application and

the same is dismissed.

(Shampa Sarkar, J.)

I agree.

(Smita Das De, J.)