

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

BEFORE:-

**THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE**

APOT No. 127 of 2026

With

IA No. GA/1/2026

**Mrs. Urmila Singh & Anr.
Vs.
CESC Limited & Ors.**

For the Appellant : Mr. Aniruddha Chatterjee, Sr. Adv.
Mr. Raja Mantosh, Adv.
Ms. Smruti Rekha Das, Adv.
Mr. Parikhhit Lakhotia, Adv.

For CESC Limited : Mr. Subir Sanyal, Sr. Adv.
Mr. Debanjan Mukherjee, Adv.

For the Respondent No. 6 : Mr. Joydeep Kar, Sr. Adv.
Ms. Amrita Pandey, Adv.

For the Respondent Nos. 4,5,7 & 8 : Mr. Manju Agarwal, Sr. Adv.
Ms. Amrita Pandey, Adv.

Judgment Reserved on : 15.09.2026

Judgment pronounced on : 08.10.2026

Shampa Sarkar, J. :-

1. The appeal arises out of a judgment and order dated July 14, 2026, passed in W.P.O. No. 860 of 2025. By the order impugned, the learned Single Judge dismissed the writ petition, inter alia, holding that, the contention of the appellants that they had been consuming electricity through a sub-meter which was later disconnected, was ex-facie false. His Lordship held that, Hastings chamber was categorized as a high

risk building and domestic connection could not be provided to the said building. The building was being exclusively used for commercial purpose. According to His Lordship, CESC was State under Article 12 of the Constitution of India, insofar as, the function of distribution of electricity was concerned and as such, CESC should act in public interest. His Lordship held that, although Article 21 of the Constitution of India recognized electricity to be essential to the right to life and right to shelter, but welfare and safety of the people had a greater legal perspective than an individual right. The petitioners continued to encroach the rooftop of a high risk building, on account of which the fire safety certificate could not be issued. Thus, it would be inequitable to direct a new domestic connection to be effected at the rooftop. Such order would be contrary to law, unjust, unfair and hazardous to the remaining occupants. Upon balancing the equities, His Lordship held that public interest would supersede private interest in this case. As the appellants did not take remedial measures to cure the defects pointed out by the Fire Department by removing the blockage and access to the roof, the question of granting any discretionary relief by issuing a high prerogative writ, did not arise.

2. Mr. Aniruddha Chatterjee, learned Senior Advocate for the appellants submitted that the appellants have been residing in the premises since long. The predecessor in interest of the appellants was inducted as a tenant. Thereafter, disputes arose and the rent was being regularly deposited before the rent controller. The writ court did not have any authority in law to hold that the appellants were encroachers. In any

event, the nature of occupation was irrelevant for the purpose of grant of electricity. The fact that the appellants were in settled possession of a part of Hastings Chambers was admitted by all the parties. There was no dispute with regard to their occupation of the premises in question. Section 43 of the Electricity Act, 2003 mandated that the distribution licensee must supply electricity to any premise, upon an application being made by the owner or occupier. The owners of the building under whom the appellants were tenants, did not raise any objection. The other occupants who were sub-lessees in the premises, did not have any authority under the law to raise any objection with regard to the connection to be supplied by the CESC authorities. The CESC authorities had filed a feasibility report, indicating that one meter could be installed at the common meter space, for supply of electricity to the appellants.

3. Under such circumstances, the order impugned was perverse and contrary to the settled position of law with regard to grant of electricity to an occupant of a premise. He further submitted that the construction on the rooftop could not be said to be unauthorized, as the construction was regularized by the Kolkata Municipal Corporation by disposing of a demolition proceeding. Although, some of the occupants had challenged such order of regularization, before the Tribunal, the Tribunal did not grant any order of stay.
4. It was urged that, the portion occupied by the appellants on the rooftop should be treated to be authorized and having been constructed in accordance with law. It was further submitted that, although one of the

staircases of the building having access to the rooftop had been blocked by the entrance door to the premises of the appellants, the other staircase leading to the roof was open and there was no obstruction. The sub-lessees or other occupants did not face any obstruction to enter the roof. He placed reliance on the photographs which were filed pursuant to our direction and submitted that the photographs would clearly depict the nature of possession of the appellants.

5. Mr. Joydeep Kar and Ms. Manju Agarwal, learned Senior Advocates appeared on behalf of the private respondents (other occupants) and submitted that, the predecessor in interest of the appellants was not a tenant. He was inducted as a caretaker and was allowed to reside in a temporary asbestos shed when the building was being constructed, in order to supervise the construction work. The building plan did not permit residential use by converting a portion of the roof. The appellants actually encroached upon the common roof and had been unlawfully occupying the same. The appellants had also erected a private gate and closed a staircase by blocking one of the two fire exits. Such obstruction had been condemned by the Fire Department and by the Special Commissioner of Police. After the tragedy at Stephen court in 2010, a Joint Inspection had been conducted on March 27, 2010, by the concerned authorities, including CESC limited. It was opined that, as the appellants had caused an unauthorized construction on the rooftop, the fire license could not be renewed.
6. It was submitted that the appeal should be dismissed on the ground of maintainability, as also on merits. The appellants prayed for a writ in

the nature of mandamus, commanding the CESC authorities to provide new electric connection to the premises being 7C Kiran Shankar Roy Road, Top floor, Police Station-Hare Street, Kolkata 700001. CESC authorities filed a report pursuant to the direction of the court of the learned Single Judge indicating that a single phase meter could be accommodated to provide electricity to the premises of the appellants. Such connection should not be provided as the appellants did not approach the writ court with clean hands.

7. Mr. Subir Sanyal, learned Senior Advocate submitted that, if the court directs, electricity supply can be granted by installing a new meter in favour of the appellants.
8. Considered the submissions. Section 43 of the Electricity Act, 2003, casts a mandatory duty on the licensee to supply electricity to any premise, on an application being made either by the owner or the occupier and such supply is to be effected within one month from receipt of the application requiring such supply. Undoubtedly, the right of the appellants to get electricity from the licensee has been statutorily provided. That apart, right to enjoy electricity is a part and parcel of Article 21 of the Constitution of India. An occupier of a premise must be a person in settled possession or occupation. In this case undoubtedly, the appellants have been in possession since long, and it matters little, whether the nature of the possession is legal or illegal. Even a trespasser is entitled to electricity. The fact that the appellants have been in occupation of the premises since long, is not in dispute.

9. However, the issue is whether these appellants, who are in occupation of Hastings Chambers, will be entitled to electric connection in the peculiar facts and circumstances of the present case.
10. First and foremost, it is an admitted position that the building is a high risk building. Thus, a fire license is mandatory under the law. The fire license has expired and has not been renewed. According to the respondents, the fire license will never be granted because one of the fire exits, that is, the door connecting one of the staircases to the rooftop had been permanently blocked by the construction of the appellants. This fact needs to be clarified by the Fire Department. The building is used for commercial purpose, thus domestic connection cannot be granted. In our view, open fire or use of LPG cannot be allowed in the premises. The photographs which have been filed by the appellants during the course of hearing clearly indicate that the construction on the rooftop is being used for residential purpose, and the family of the appellants are residing there.
11. We refer to the minutes of the joint inspection report which was held in respect of the premises in question. The report was supplied by the Special Commissioner of Police, Kolkata and the following shortcomings were detected. Copy of the said notice is quoted below:-

NOTICE

Mr. PAWAN KUMAR JHUNJHUNWALA, SECRETARY OF OWNERS' ASSOCIATION OF 7C KIRAN SANKAR ROY ROAD, 5th FLOOR, KOLKATA- 700001
 Owner/Occupier/Tenant/Manager/Caretaker/Representative of Owners' Tenants' Association/Board of Directors/Receiver

Address: HASTINGS CHAMBERS, 7C KIRAN SNKAR ROY ROAD, KOLKATA-700001

During the joint inspection held in your premises on 27/03/2010 in the presence of caretaker/durwan of the building, the following faults were detected and against each fault the maximum period given for compliance has been noted. You are hereby directed to take necessary remedial measures for these faults.

Faults detected by CESC:

	Service 1	Service 2
Short Term Requirement (to be complied within 15 days)	(i) Dressing of wires inside the meter box catering consumers installation. (ii) To replace all the main switches with MCBs. (iii) To install fire extinguishers/sand bucket adjacent to meter board. (iv) To remove unauthorized load.	(i) To remove all the inflammable goods away from the service position. (ii) Dressing of wires inside the meter box catering consumers' installation. (iii) To replace all the main switches with MCBs. (iv) To install fire extinguishers/sand bucket adjacent to meter board. (v) To repair/renew earthing, measure earth resistance & inform CESC Ltd. (vi) To engage electrical contractor. (vii) To remove unauthorised load.
Long Term Requirement	To maintain cleanliness of wiring inside the consumer's	To maintain cleanliness of wiring inside the
Long Term Requirement (to be complied within 6 months)	To maintain cleanliness of wiring inside the consumer's premises and to check leakage, if any, by licensed electrical contractors periodically.	To maintain cleanliness of wiring inside the consumer's premises and to check leakage, if any, by licensed electrical contractors periodically.

Faults detected by Fire and Emergency Services:

1. All temporary mezzanine floors of wooden ply constructions with wooden CAT ladders should be dismantled within a fortnight.

2. Compartmentalization made of wooden ply construction should be converted to brick walling after evaluating the structural stability of the building within thirty days.
3. One of the staircases of this building has been encroached on the 5th floor by construction of a room for residential purpose due to which the staircase could not reach the terrace level. In a fire situation the occupiers will be trapped inside the building. The encroachment has to be removed within thirty days such that free access to the terrace can be secured.
4. Earthing provisions should be checked and certified by competent authority within fifteen days.
5. Underground Water Reservoir exclusively for fire fighting should be provided in building, with replenishing arrangement @1000 liters/min. from two dedicated source of supply within ninety days. In case, Underground Water Reservoir is not feasible, Overhead Water Reservoir of capacity 10,000 liters exclusively for fire fighting need to be provided at terrace level within thirty days.
6. 6. In case of Underground Water Reservoir, it shall be provided with wet riser of 150mm internal diameter pipe line with provision of landing valves at the staircase landings / half landings at the rate of one such riser for every staircase. The system shall be so designed that shall be kept charged with water all the time under pressure and capable to discharge 2850 liters/min at the ground level outlet and minimum 900 liters/min at the top most outlets. In cases, the running pressure shall not be less than 3.5 Kg/cm². All other requirements shall conform to L.S. 3844-1989 within ninety days.
7. Provision of the fire pump shall have to be made to supply water at the rate designed pressure and discharge into the water based system, which shall be installed in the building. One such pump shall always be kept on stand-by mode preferably of diesel driven type.
8. Provision of Jockey pump shall also have to be made to keep the water based system under pressurized condition at all the time. All the pumps shall be incorporated with both manual and auto starting facilities within ninety days.
9. MCP (Manual call Points) incorporating with hooters shall be installed in all floors. Multi-grade detector system should be provided in all the floors of the business occupancies within thirty
10. No open flame or use of LPG will be allowed in the business occupancy building whether it is a eatery house or restaurant with immediate effect.
11. 'Exit' signage to be provided in each for floor level of all buildings in conspicuous place by fluroscnt paint/UPS with floor numbers within fifteen days.
12. The automatic sprinkler installation shall be provided in basement of the building as per I. S. 9972. Alarm gong needs to be incorporated along, with the sprinkler system within ninety days.

Faults detected by K.M.C:

1. Owner/occupier should furnish structural stability report by an Empanelled Structural Engineer for ensuring the structural safety and stability of the building within 30 days from the date of receipt of notice from Kolkata Police. If any action is to be taken as per the recommendation of Structural Engineer, it has to be taken forthwith, but not later than sixty days from the date of receipt of the report of Structural engineer.
2. Owner/occupier is directed to remove all types of obstruction on Exit and Entry including passage and corridors.

It is noted for the information of all concerned that if such faults are not rectified within the time limit prescribed, the concerned agencies will launch proceedings as per law against the defaulters without any further reference to the parties concerned.

S/d
(B B Basu)

Spl. Commissioner of Police
Kolkata

12. It also appears that a proceeding was initiated in respect of the construction on the allegation that the same was unauthorized. Demolition Case No. 19-D/V/18-19 had been initiated by the Kolkata Municipal Corporation. The High Court directed proceedings to be initiated in terms of the provisions of the Kolkata Municipal Corporation Act, 1980 is quoted below:-

“In such situation, since the Corporation is of the prima facie view that there exist unauthorized construction it will invoke provision of Section 400(1) of the Kolkata Municipal Corporation Act, 1980 within a period of fortnight from date. It will be endeavour to conclude such proceedings within a period of 12 weeks thereafter. The issue as to the nature and extent of the unauthorized construction is kept open to be decided in such proceeding. The authority will afford reasonable opportunity of hearing to the private parties.”

13. The Owners Association of Hastings Chambers contested the proceeding. Ultimately, the Special Officer (Building), Kolkata Municipal Corporation, passed an order. The relevant portion thereof is quoted below:-

“Considered the submissions of the person responsible as well as the complainant. Also considered the inspection report dated 6.8.2019 submitted by the Deputy Chief Engineer (B). From the inspection report it is evident that the persons responsible have not removed the wooden door which is hampering access of the 2nd stair case to the roof. The persons responsible cannot obstruct the access to the roof through the 2nd stair case, by installing a door and keep it under lock and key. Hence it is order that-

2) The unauthorized constructions on the roof of the 6th floor being quite old and having an area of 893.0 Sq. ft. which is being used as residence by the persons responsible can be treated as ‘minor unauthorized erection or work’ as Defined in Rule 3(1) of the KMC (Regularization of Building) Regulation 2015 and these unauthorized constructions are regularized and retained under Rule 4 of the Regulations 2015 of the KMC Act 1980 subject to the following preconditions:

(a) That the persons responsible must furnish a certificate from a KMC empanelled structural engineer certifying that the stability and the foundation of the impugned constructions are safe and sound and the materials used as well as workmanship are as per the latest edition of NBC of India, within 30 days of receipt of this order.

(b) That they must pay the fees for retention of the regularized construction within 30 days of receipt of the calculation sheet to be prepared by the respective department of the KMC.

(c) That they must furnish an affidavit declaring on oath that they will not make any construction whatsoever in the impugned premises without prior sanction from the KMC authority.

Non-compliance of any of the conditions stated above will invite demolition of the unauthorized constructions by the KMC authority at the cost and at the risk of the person responsible.

Let a copy of this order be served on the concerned parties for information and necessary action.

Sd./
Munshi Md. Faruque
Special Officer (Building) K.M.C.”

14. The order was passed on August 26, 2019, by the Special Officer (Building). The appellants prayed for regularization of the unauthorized construction on the roof of the sixth floor of the premises. It was submitted that the construction was very old and had been existing for

a long time. The objectors who had drawn the attention of the KMC to the alleged illegal construction submitted before the Special Officer (Building) that, the appellants and or their predecessors had illegally and wrongfully obstructed the passage leading to the second staircase of the said premises, by obstructing free ingress and egress.

15. They further alleged that due to construction of rooms as well as privy and toilet, the passage to the staircase was blocked up to the roof. The appellants had raised further constructions by encroaching an area on the roof measuring more than 400 square feet. They had also encroached upon the passage. The door was a private door, giving access only to the appellants to reach their unauthorized construction.
16. According to the report, the area of unauthorized construction was about 893.0 square feet. The order recorded that the persons responsible for the construction had not removed the wooden door. The said door obstructed access to the second staircase to the roof. The persons responsible could not obstruct the access to the roof through the second staircase, by installing a door and keeping it under lock and key.
17. However, the Special Officer Building held that, as the unauthorized construction on the roof was quite old, the same shall be regularized. The unauthorized construction should be treated as minor erection and the same should be retained in terms of Rule 4 of Regulations of 2015 of the KMC Act. However, such regularization was made subject to fulfilment of certain conditions. The persons responsible were directed to furnish a certificate from an empanelled structural engineer of the

KMC, certifying the stability and foundation of the construction within 30 days from receipt of the order. They were to pay fees for retention and they were directed to furnish an affidavit declaring on oath that they would not make any further construction. The order also provided that, non-compliance of any of the conditions would invite demolition of the unauthorized construction.

18. The Hon'ble Apex Court in the matter of Rajendra Kumar Barjatya & Anr. Vs. U.P. Avas Evam Vikas Parishad & Ors. reported in 2024 INSC 990, held as follows:-

“(iii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate should be deferred, unless and until the deviations pointed out are completely rectified.

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider / Board to the buildings only after the production of the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation / violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder / owner / occupant; and the official, who is responsible for issuance of wrongful completion / occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission / licence to conduct any business/trade must be given by any authorities including local bodies of States/Union Territories in any unauthorized building irrespective of it being residential or commercial building. (vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.”

19. The Hon'ble Apex Court had directed that electricity connection or any other essential services should not be provided to constructions which were unauthorized. We are not clear as to whether the compliances as directed by the Special Officer (Building) which were conditions precedent to regularization, had been fulfilled or not. Secondly, we find from the documents before us that the Fire Department had raised objection with regard to closure of one of the doors leading to the roof sometime in 2010. It appears from a communication dated February 3, 2025 made by the owners association to the Director, West Bengal Fire and Emergency Services that one of the grounds for rejection of the application for renewal of the fire license was occupation over a portion of the roof.
20. Under such circumstances, we are neither sure of the legality of the construction nor about the safety of the building and its vulnerability in case of fire hazards. However, we cannot ignore the appellants' right to enjoy electricity and we hold that the appellants will be entitled to electric connection from CESC Limited which shall not be domestic but commercial, provided CESC is satisfied that the conditions as per the order of regularization had been actually fulfilled or not and to ascertain such issue, CESC will obtain a report from the KMC as to whether the records of KMC depict such compliance. The Executive Engineer, KMC of the concerned bureau shall inform CESC whether, the construction stood regularized upon the appellants fulfilling those conditions. In the event supply is granted, operation of the kitchen or

use of LPG or any other equipment giving rise to open flame, shall not be permitted. The connection cannot be used for residential purpose. CESC will also obtain a report from the Fire Department as the said department had objected to blockage of one of the entrances to the roof and did not grant renewal of licence in view of such closed door.

21. With the above direction, the order impugned is modified.
22. The appeal and connected applications are disposed of.
23. 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.

(Arjun Ray Mukherjee, J.)