

17.07.2026
Court No. 12
Item No.04
Cp/Gc

MAT 1147of 2026
With
CAN 1 of 2026
With
CAN 2 of 2026

Md. Zarrar Hussain & Ors.
Vs.
Shams Tabrez Khan & Ors.

Mr. Biswaroop Bhattacharya
Mr. Subhrangshu Panda
Mr. Shantanu Chakraborty
...for the Appellants.

Mr. Nilotpal Chatterjee
Ms. Susmita Chatterjee
....for the K. M.C.

Mr. Abdul Hamid Molla
Md. Abdul Halim
Mr. Sahil Hamid
Mr. Biswadeep Dey
Md. Ijaz Ahmed Molla

....for the respondent nos. 8 & 9.

1. CAN 1 of 2026 is an application for leave to prefer an appeal. The appellants submit that they are in occupation of the unauthorized structure as tenants and they have been given a notice by the police to vacate the premises within three days. In such view of the matter, we grant leave to prefer the appeal.
2. CAN 1 of 2026 is allowed. However, we are not inclined to interfere with the order dated July 2, 2026, passed by the learned Single Judge of this

Court. The writ petition being WPA 1127 of 2026 is pending.

3. Mr. Chatterjee, learned advocate appearing for the Kolkata Municipal Corporation, raises the question of locus of the occupiers to challenge the proceeding on the ground that, apart from the person responsible for such illegal construction, no other person is required to be heard. No right had been created in favour of such persons. He relies on certain decisions of the High Court.
4. Mr. Bhattacharya, learned advocate for the appellants, on the other hand, submits that the steps which were taken by invoking the provisions of Section 400(8) of the Kolkata Municipal Corporation Act had lost their force, due to lapse of time. Such provision can be resorted to either stop or remove constructions which were likely to endanger the lives of the public and or if such constructions were hazardous or unsafe.
5. We are of the view that, these issues will have to be decided by the learned Judge before whom the writ petition is pending.
6. We grant liberty to the appellants to be added in that proceeding. All points are left open for decision of His Lordship.

7. The construction is of a G+6 structure, although permission had been granted for G+3. The corporation was of the view that the building was within a narrow passage and there were hutments all around.
8. It is submitted that 6th floor had been demolished. Demolition of the remaining portion is awaited and the occupiers are yet to vacate. It is also submitted that the matter is fixed before His Lordship on July 20, 2026. The person responsible for the construction are not aggrieved by the order of His Lordship.
9. The corporation will cause an inspection and find out the number of occupiers in the building and the mode of user and submit a report before His Lordship on the next date. The issue whether the occupiers have any right to prevent demolition or resist demolition will be decided by the learned court.
10. Accordingly, the appeal and the connected application being CAN 2 of 2026 are disposed of.
11. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)