

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 1687 of 2023

Mita Koley

Vs.

The Kolkata Municipal Corporation & Ors.

For the petitioner : Mr. Raghunath Chakraborty
: Mr. Supratik Syamal
: Ms. Sonali Sengupta
: Ms. Paromita Barik
: Ms. Pallabi Pal

For the KMC/respondent : Mr. Alak Ghosh
: Mr. Biswajit Mukherjee
: Mr. S. Debnath

For the respondent No. 7 : Ms. Priti Jain

Heard on : **16.06.2026**

Judgment on : **29.07.2026**

Rai Chattopadhyay, J. :-

- 1) The sole legal issue involved in this writ petition is whether the present petitioner would be eligible for being granted with mutation and separation of his property, as requested in statutory Form A-42 dated August 12, 2022, pursuant to the provisions under the Kolkata Municipal Corporation Act, 1988, or not.
- 2) In the instant writ petition, the petitioner has challenged the order of the Assistant Assessor Collector of the Kolkata Municipal Corporation/ respondent No. 4, dated September 13, 2022, rejecting his prayer for mutation and separation in prescribed manner.

- 3) Before entering into the argument advanced by the respective parties, let the factual background of the case be stated in a nutshell as follows: -
- 4) The concerned land is measured about 3033 sq. ft. equivalent to 4 Kathas, 3 Chitaks and 18 sq. ft. and together with a factory shed standing thereon, being Shed No. 13 situated at premises No. 21/1 Radhanath Chowdhury Road formerly Tyangra, Police Station – Entally, Kolkata – 700015, within the limits of Ward No. 56 of the Kolkata Municipal Corporation, District- South 24 Paraganas. The land was owned by Jadavpur University. The petitioner was in occupation of the premises as a tenant.
- 5) The petitioner purchased the said land along with the factory shed standing thereupon vide execution of a Deed of Conveyance with the vendor Jadavpur University, dated April 25, 2011. The register deed number is 03554 of the year 2011. The petitioner has stated that he has duly recorded his name in the books of records maintained by the Kolkata Municipal Corporation. The petitioner has also been acknowledged as a separate assessee than for the mother premises, being granted with a separate assessee number (11-056-12-0397-0) by the Kolkata Municipal Corporation. Rates and taxes for the premises have been paid duly by the petitioner.
- 6) In such circumstances, the petitioner had applied in statutory form A-42 dated August 12, 2022 for mutation and separation in prescribed manner. The petitioner's grievance is due to the fact that his application for mutation in separation in prescribed manner has been rejected by the Assistant Assessor Collector/the respondent No. 4 vide its order dated September 13, 2022 by the respondent No. 4 in the instant writ petition. In the said impugned order dated September 13, 2022, the Assistant Assessor Collector/ respondent No. 4 has intimated the petitioner that the concerned premises is a "factory premises" as per the Kolkata Municipal

Corporation Inspection Book Records. It is further deliberated therein that the said premises does not comply with the statutory criteria of mutation and separation, particularly as per the Kolkata Municipal Corporation Rules and Regulations. In a nutshell, for the reasons as above, the petitioner's prayer for mutation and separation was rejected by the said respondent. Subsequently, the petitioner's representation for redress of grievance dated November 01, 2022 has also not been responded by the Kolkata Municipal Corporation.

- 7) Mr. Raghunath Chakraborty, learned advocate has represented the writ petitioner. According to the writ petitioner, the said impugned notice is vague and has been issued in a very deceptive manner since concerned authorities of the Kolkata Municipal Corporation has failed to disclose any proper reasoning and basis on which the petitioner's plea has been rejected. Mr. Chakraborty has stated further that the said piece and parcel of land she had purchased did not consist of any running factory building and/or any workshop on the said premises. At present no factory exists there at the said premises, in fact, the same was abandoned since long time and keeping the land as uninhabitable and idle for indefinite period just because some factory might have existed once upon a time at the captioned plot of land is not a feasible ground.
- 8) According to Mr. Chakraborty, learned advocate for the petitioner, a factory might have been in existence on the concerned premises at any point of time in the past and, therefore, the same has been recorded in the Books of Record of the Kolkata Municipal Corporation as a "factory premises". He emphasizes that it does not necessarily mean that such plot of land cannot ever be converted for residential purpose. He submits that conversion of the land would depend on the present usage thereof. He specifically indicates that in accordance with the provisions of the statute the respondent authority has power and duty in an

appropriate case, to direct for conversion of the land in terms of the usage of the land. As a matter of fact, he says that the current recording of the land with factory shed as a factory premises in the books of respondent is an apparent wrong recording as the property has not been used as a factory premises for a considerable long period of time.

- 9)** Mr. Chakraborty has specifically contended that the concerned landed property fulfills all the necessary criteria under the statute to be completed from the classification as “factory premises”. In such view of the matter, Mr. Chakraborty has submitted that rejection of the petitioner’s prayer by the respondent No. 4 vide the impugned order dated September 13, 2022 stands as de hors the provisions of law.
- 10)** It has further been submitted that in terms of this Court’s order dated November 16, 2022, the Assessor Collector (South) Kolkata Municipal Corporation conducted a hearing on December 12, 2022 and passed a reasoned order dated January 02, 2023, wherein it was held that mutation and separation could be granted to the petitioner only upon fulfillment of the Municipal Commissioner’s Circular No. 42 of 2021-22 dated November 12, 2022. The petitioner was informed that factory land is not separable and as such prior to sanction of mutation and separation, the classification of the land as “factory premises” has to be delisted and deleted from the records.
- 11)** The petitioner is in absolute disagreement with the direction of the respondent authority that the premises being classified in the books of the respondent as a “factory premises”, a permission/’no objection’ would be essential to be obtained from the Factory department. Mr. Chakraborty has submitted that neither the Factories Act nor the Kolkata Municipal Corporation Act and Rules framed thereunder postulates any such provision for obtaining ‘No

Objection Certificate' from the department controlling factories, in order to fructify separation of land, as prayed for by the petitioner. In this regard, Mr. Chakraborty has referred to Rule 4(4) of the KMC Building Rules, 2009 which speaks as follows: -

"4. Notice for erection or alteration of a building

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(4) In the case of a site or plot measuring 500 square metre or more to which, the Urban Land (Ceiling and Regulation) Act, 1976, (33 of 1976) applies, the notice shall be accompanied by a "no objection certificate" from the competent authority, appointed under Clause (d) of Section 2 of the said Act to the effect that there is no objection on in respect of transfer of the site or plot under sub-section (3) of the Section 5 of the said Act:

Provided that the requirement as aforesaid shall be deemed to have been waived on the failure of the competent authority to furnish the certificate within three months from the date of reference to it."

- 12)** Upon reference to the Rule as above, it has been submitted that only in case of a sight or plot measuring 500 square meters or more, a No Objection Certificate would be obligatory from the competent authority to transfer the sight or plot. Mr. Chakraborty has with reference to the Deed of Conveyance stated that the land purchased by the present petitioner is amounting not 500 square feet or more but less than that (4 Kathas 3 Chitaks 18 sq. ft.)
- 13)** Lastly and most importantly, Mr. Chakraborty, learned advocate for the petitioner has referred to the provision under Section 178(2)(i) proviso of the Kolkata Municipal Corporation Act, 1980, to buttress his argument that since the land with the shed purchased by him is capable of being vertically divisible and capable of separately owned totally independently from the principal portion of the land with dedicated provisions for free access thereto; also that separate portion through a common passage can be made without disturbing independent possession

and occupation over the principal portion of the land, the earmarked portion purchased by the petitioner is, therefore, to be assessed separately and is eligible for order of separation by the competent respondent authority. Let the provision of Section 178 of the Kolkata Municipal Corporation Act, 1980 be quoted as hereinbelow: -

“178. Municipal Assessment Code.-

*(1) ** ** **

(2) Under the rules as aforesaid-

(i) every building together with the site and the land appurtenant thereto shall be assessed as a single unit :

Provided that where portions of any building together with the site and the land appurtenant thereto are vertically divisible and are separately owned so as to be entirely independent and capable of separate enjoyment notwithstanding the fact that access to such separate portions is made through a common passage or a common staircase, such separately owned portions may be assessed separately :

Provided further that the right of such access is protected by a registered deed of agreement;

(ii) all lands or buildings, to the extent these are contiguous or are within the same cartilage or are on the same foundation and are owned by the same owner or co-owners as an undivided property, shall be treated as one unit for the purpose of assessment under this Act :

Provided that if such land or building is sub-divided into separate shares which are not entirely independent and capable of separate enjoyment, the Municipal Commissioner on application from the owners or co-owners may apportion the valuation and assessment among the co-owners according to the value of their respective shares treating the entire land or building as a single unit;

(iii) each residential unit with its percentage of the undivided interest in the common areas and facilities constructed or purchased and owned by or under the control of any housing co-operative society registered under the West Bengal Co-operative Societies Act, 1973 (West Bengal Act No. 33 of 1973), shall be assessed separately;

(iv) each apartment and its percentage of the undivided interest in the common areas and the facilities in a building within the meaning of the West Bengal Apartment Ownership Act, 1972 (West Bengal Act No. XVI of 1972), a declaration in respect of which has been duly executed and registered under the provisions of that Act, shall be assessed separately;

(v) every land comprised in a thika tenancy with but or building made thereon, either in a bustee or otherwise, shall be assessed separately as a single unit;

(vi) every land, which is not built upon, comprised in a thika tenancy, either in a bustee or otherwise, shall be assessed separately as a single unit."

14) For all the reasons as discussed above, the petitioner seeks that the instant writ petition may be allowed with appropriate direction.

15) A report of the Assistant Director/Inspector of Factories, Director of Factories, West Bengal dated December 18, 2023 is available on record. The report speaks inter alia as follows: -

"1. A spot inspection at the premises having address 21/1 Radhanath Chowdhury Road, Kol-15, Ward 56, was carried out on 14.12.2023 by the Directorate of Factories WB, after giving prior notice to The Municipal Commissioner, Kolkata Municipal Corporation, Assessor collector (S), Kolkata Municipal Corporation; Assistant Assessor collector (S), Kolkata Municipal Corporation, Smt Mita Koley, petitioner in the Hon'ble High Court at Calcutta and Smt. Sonali Sengupta, learned advocate. A copy of the letter 282/EO dtd 8.12.2023 is enclosed herewith for kind consideration of the Hon'ble High Court at Calcutta.

2. Authorized representative from Kolkata Municipal Corporation and the clerk of Smt Sonali Sengupta, learned advocate were present during the aforesaid spot inspection.

3. During the inspection it was found, that 15 no of units (some engaged in manufacturing process, some as go down some locked from outside) were situated in the said premises.

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5. based on the information as regards the earmarked portion purchased by the petitioner the same has been reported to be located at the North-West corner of the premises No. 21/1, Radhanath Chowdhury Road, Kolkata – 700015.

6. Inside the said portion of property, 37 nos of HDPE bags, each approx 200 kg containing small cut pieces of plastic were found along with one burner, isolator, oven and a number of switches including one main switch.

7. The said portion of the premises is basically a property with Asbestos shed lying in a dilapidated condition. No manufacturing process was found to be carried out inside the said property on the day of inspection. The southern and eastern side walls of the property have a common wall with one Indane Gas godown (named JK Gas service) and other property of some other persons

respectively. The main gate of the property is situated in the eastern wall. Beside the northern side wall of the property there was one road which appeared to be an industrial road, which was not confirmed by Kolkata Municipal Corporation personnel. The northern and western side boundary walls of the said portion of the petitioner are the parts of the corresponding boundary walls of the entire premises of 21/1 Radhanath Chowdhury Road, Kol-15.

8. All the 15 units inside the premises of 21/1 Radhanath Chowdhury Road, Kol-15 including the portion of the petitioner is approachable through common industrial road inside the premises.

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10. The Directorate of Factories has no infrastructure and/or instrument to separate the premises of the petitioner from the mother premises. It also doesn't provide N.O.C. to Kolkata Municipal Corporation or any other authority but provides information related to existence of any factory at any particular premises, if asked for.

11. The factory known and registered as "Wrapco (India) Pvt. Ltd." having registration no. 0137/CL/Z/1983 as mentioned in Sl.No.11 was found to run inside the premises of 21/1 Radhanath Chowdhury Road, Kol-15 but at a separate location from the property of the petitioner. However, the statement of the Directorate of Factories regarding existence of any factory at 21/1 Radhanath Chowdhury Road, Kol-15 as stated in letter 20/EO dated 13.02.2023 will remain same unless a separate premises number is allotted at the portion of the premises purchased by the petitioner.

12. As per Rule 91 of the West Bengal Factories Rules, 1958, no notice for lay-off/closure by the said factory management has been received till date by the Directorate of Factories."

16) Mr. Ghosh, learned advocate has represented the respondent/Kolkata Municipal Corporation. Mr. Ghosh has put forth strong objection as to the contentions and prayer of the petitioner for the reason that the premises once classified as a "factory premises" cannot be separated as prayed for by the petitioner, without the classification of the premises being converted to other than factory premises. He further submits that the impugned order hardly bears any such unreasonable or irrational contention to warrant this Court's intervention. He says that the Assessor Collector (South) in the order dated January 02,

2023 has founded his reasons on the basis of department's circulars which still stand in vogue. He indicates that the petitioner has challenged the decision as above of the Assessor Collector (South) in order dated January 02, 2023, which are based on the department circulars without challenging those circulars in this writ petition. Therefore, according to him, such challenge put forth by the petitioner to the impugned order dated January 02, 2023 has no legs to stand.

- 17)** Admittedly, the premises is bearing a structure thereon. Mr. Ghosh has indicated with reference to Section 390(2)(g) of the Kolkata Municipal Corporation Act, 1980 that even a structure or part thereof should constitute an "industrial building" as per the statute. Let the provision under Section 390(2)(g) be quoted as hereinbelow-

"390. Definitions.-

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(2)(g) industrial buildings, that is to say, any buildings or structures or part thereof in which products or materials of all kinds and properties are fabricated, assembled or processed as in assembly plants; such buildings shall include laboratories, power plants, smoke houses, refineries, gas plants, mills, dairies, factories, workshops, automobile repair garages, and printing presses;"

- 18)** Mr. Ghosh has specifically placed reliance on the provision of Section 416 of the Kolkata Municipal Corporation Act, 1980 which provides for prohibition on change of use of building. It is submitted that without permission of the Municipal Commissioner or complying with the statutory conditions, no change as to the usage of the premises has been contemplated in the statute. The provision is as follows: -

"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] [Substituted by section 38 of the Calcutta Municipal Corporation (Second Amendment) Act, 1984 (West Bengal Act 13 of 1984), w.e.f. 15.5.1984, for the words & figures section 416.] of the Calcutta Municipal Act, 1951 (West Bengal Act No. 33 of 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] [Substituted by section 19 of the Calcutta Municipal Corporation (Amendment) Act, 1988 (West Bengal Act No. 21 of 1988), w.e.f. 20.2.1989, for the word prescribed.] 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 he 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 to 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 stay 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 other 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 that sub-section has been confirmed on appeal, whether with or without modification, the person against whom such orders have 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 of the Corporation to seal up such area after evicting all persons therefrom to prevent its further unauthorized use."

- 19)** The other specific provision relied on by Mr. Ghosh is that, under Section 419 which is as follows: -

"419. Factory, etc., not to be established without permission.-

(1) No person shall, without the previous permission in writing of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, of such permission, establish in any premises, or materially alter, enlarge or extend, any factory, workshop or trade premises in which it is intended to employ steam, electricity, water or other mechanical power :

Provided that no such permission shall be granted in contravention of the provisions of Section 425.

(2) The Municipal Commissioner may refuse to give such permission if he is of the opinion that the establishment, alteration, enlargement or extension of such factory, workshop or trade premises in the proposed position-

(a) would be objectionable by reason of density of population in the neighbourhood thereof, or

(b) would be a nuisance to the inhabitants of the neighbourhood, or

(c) would be in contravention of any land use control under this Act or any other law for the time being in force.”

20) Mr. Ghosh, upon reliance of provision of the statute under Section 178, has submitted that the entire property being a single unit and having not complied with the criteria prescribed under the statute, shall continue to be considered as a single unit and would not be eligible for any order of separation. He says that as a matter of argument, if the respondent accepts that the property be separated at once, its classification as a “factory premises” would remain unaltered, even in that event. The building department of the respondent/Corporation is not empowered or eligible for change of category of the property as prayed for by the petitioner. In this regard, Mr. Ghosh has referred to the provisions of the Act of 1980 under Sections 392(A) and 393. According to the respondent authority, the petitioner, by purchase of the concerned property has only become owner of the undivided share of property and is, therefore, a co-sharer of the principal land and appurtenant.

21) In the impugned order dated September 13, 2022, the respondent authority has inter alia stated the reasons for rejection of the petitioner’s prayer, which are as follows: -

- A property can generally be separated only if it is vertically divisible, has a separate entrance, and can be independently enjoyed.

- In this case, the property is officially recorded as a factory, and factory land is not considered separable.
- Municipal Commissioner's Circular No. 48 of 2014-15 (05.08.2014) provides guidelines for mutation and assessment of properties.
- The 2014 Circular states that for conversion of a factory/workshop/godown into land, bastu or residential property (where the area exceeds 500 sq. m.), clearance from the Directorate of Factories or the Labour Directorate is mandatory.
- Municipal Commissioner's Circular No. 42 of 2021-22 introduced the Revised Citizen's Charter governing mutation and separation of properties.
- Under the Citizen's Charter, if a property is recorded as a factory but no factory exists, its character must first be converted from factory to non-factory before separation.
- If a factory or workshop is still operating, separation is not permitted.
- For factory properties measuring 500 sq. m. or more, clearance from the Chief Inspector of Factories or the Directorate of Labour is compulsory before conversion to non-factory use.
- The property in question measures 2 Bigha 10 Cottah 15 Chittak and 29 sq. ft., which is well above 500 sq. m.
- Therefore, the property cannot be separated unless its character is first converted from factory to non-factory after obtaining the required statutory clearance from the competent authority.

22) Two circulars have been relied on by the respondent authority to reject the petitioner's prayer for separation of land, that is,

Municipal Commissioner's Circular No. 48 of 2014-15 (05.08.2014) and Municipal Commissioner's Circular No. 42 of 2021-22 introduced the Revised Citizen's Charter. None of these Circulars do themselves create a substantive statutory prohibition. Legal status of the said Circulars relied on by the competent respondent authority in the impugned order is only that of an administrative instruction issued by the Municipal Commissioner. These merely regulates the procedure consistent with the KMC Act. But if it imposes an additional substantive condition not contemplated by the KMC Act or the Rules, such a stipulation may be vulnerable to challenge as being ultra vires the Act. The Commissioner cannot, by administrative circular, add conditions that the statute itself does not authorise. Therefore, making a Factory Department NOC an absolute precondition in every case, cannot be substantiated with support of a substantive legal provision in the statute itself.

- 23)** It is a settled principle that a statutory authority must exercise its powers strictly within the four corners of the statute and cannot, by executive instruction, circular or administrative practice, impose substantive conditions or documentary requirements which the legislature has consciously omitted. The maxim *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of another), together with the rule laid down in ***Taylor v. Taylor (1876) 1 Ch D 426***, approved by the Privy Council in ***Nazir Ahmad v. King Emperor (1936)*** and consistently followed by the Supreme Court in decisions such as ***State of U.P. v. Singhara Singh (AIR 1964 SC 358)*** and ***Babu Verghese v. Bar Council of Kerala ((1999) 3 SCC 422)***, mandates that where a statute prescribes the manner in which a power is to be exercised, it must be exercised in that manner alone or not at all. Consequently, if the KMC Act merely empowers the Commissioner to satisfy himself that the proposed separation

conforms to municipal law, sanctioned building plans, land-use restrictions and other applicable statutes, he must undertake such satisfaction independently on the basis of relevant materials and cannot abdicate his statutory duty by mechanically insisting upon a Factory Department NOC as an absolute prerequisite unless such requirement is traceable to a statutory provision or is demonstrably necessary to ascertain compliance with another binding law. While the Commissioner is undoubtedly entitled to seek information or consult the competent industrial authority where the facts disclose that the proposed separation may affect the legality or continued operation of the factory, such consultation is evidentiary and facilitative in nature and cannot be elevated into a jurisdictional condition precedent by executive fiat. To hold otherwise would permit an administrative circular or departmental practice to supplement the statute by adding an extra-statutory qualification upon the exercise of a statutory right, which would offend the doctrine of legality, the principle against fettering statutory discretion, and the constitutional mandate under Article 14 that executive action must be authorised by law rather than by administrative convenience.

- 24)** On the other hand, provision under section 178 of the Kolkata Municipal Corporation Act, 1980 may be noted, which has provided for as to when a building together with the site and the land appurtenant thereto should be assessed as a single unit and under what condition the portion of the building together with the site and the land appurtenant thereto may be considered as a separately owned portion and therefore assessed separately. The statutorily prescribed criteria for separation of the building together with the site and the land appurtenant thereto speak about independent and separately enjoyable characteristic of the portion, being divisible vertically and accessible through a common passage or staircase. According to the petitioner the

portion of land and premises purchased by him duly conforms to such statutory criteria as prescribed. According to the respondent however, the entire property including the premises with the site and land appurtenant thereto is a single unit, entered into the books as a 'factory premises'; that without change of classification of land, the same cannot be separated in a way as prayed for by the writ petitioner; also, that even if the prayer of the petitioner is allowed, the property shall remain and continue to be classified as a factory premises. The respondent says that the Building Department under the same is not authorized or empowered for change of classification of the property. Hence, the petitioner's application before the said department is not maintainable at all.

- 25)** It is a fact that the purchaser does not acquire an automatic right to obtain separation (mutation by separation) under the Kolkata Municipal Corporation Act, 1980 if the land continues to retain its character as a factory premises. The proposed separation requires alteration of that character. There is no express provision in the KMC Act saying that every separation of factory land requires a Factory Department NOC. The Municipal Commissioner would not be proper in legally separating part of a factory premises if such separation would render the factory or the remaining land inconsistent with industrial laws, planning laws or municipal regulations. Section 419 of the KMC Act specifically regulates establishment, alteration or extension of factory premises. Once a property is recorded as a factory, its physical identity, access, safety requirements, industrial layout and land use become relevant considerations. In that event the municipal powers cannot be exercised in isolation. Instead the KMC Act must then be read harmoniously with the legislation relating to factories, to occupational safety, land use regulations, building rules, fire safety laws and/or environmental laws. An objective consideration

to ensure that municipal action does not facilitate violation of another statute, would be required to be made.

- 26)** The Kolkata Municipal Corporation Act, 1980 does not contain any express provision making production of a No Objection Certificate from the Factory Department a mandatory precondition for separation of a portion of factory land. Nevertheless, where the premises is recorded and functions as a factory, the Municipal Commissioner is entitled—and in appropriate cases obliged—to examine whether the proposed separation would contravene the KMC Act, the sanctioned building plan, land-use controls, or any other applicable statutory regime governing factories. If such examination reasonably requires confirmation from the competent Factory authority that the proposed fragmentation will not violate statutory requirements governing the factory, then only the respondent can dwell upon the exception to the principle that inconsistent executive direction should give way to the statutory provision. In that case insistence upon such clearance cannot be said to be arbitrary or without jurisdiction, even though the requirement is not expressly stated in the Act or the Rules.
- 27)** As discussed above, if neither the Act nor the Rules expressly prescribe production of a Factory Department NOC as a condition precedent for considering an application for separation, the Commissioner cannot convert such a document into an indispensable jurisdictional requirement merely by issuing an administrative circular. This does not, however, denude the Commissioner of the power or duty to ascertain whether the proposed separation would violate any law governing factory premises. On the contrary, he must independently evaluate the application on the basis of the materials produced, the municipal records, sanctioned plans, inspection reports, and the applicable statutory framework. If, in a given case, the factual issues

concerning the legality of the proposed separation cannot reasonably be determined without technical information from the Factory Department, the Commissioner may call for such information, seek a report, or consult the competent authority as part of his fact-finding process. Such consultation is merely an aid to the exercise of statutory discretion and cannot be elevated into an inflexible or universal precondition for the exercise of that discretion. To insist that no application can even be considered unless the applicant first produces a Factory Department NOC would amount to substituting an executive requirement for a statutory one, thereby fettering the Commissioner's own discretion and effectively amending the legislative scheme through administrative fiat. An independent examination of compliance under the KMC Act, informed where necessary by expert inputs from the Factory Department, would preserve both the statutory purpose and the constitutional limits upon administrative action.

- 28)** The other question is with regard to the competence of the Building Department of the respondent Corporation, before which the petitioner has made his prayer for separation, to grant such relief. If the writ petitioner has inadvertently submitted an application for separation before a department of the Kolkata Municipal Corporation that lacks jurisdiction to entertain or decide it, such a procedural error ought not, by itself, to result in rejection of the claim on merits. It is a settled principle of administrative law that procedural rules are intended to facilitate, and not frustrate, the exercise of substantive rights. Unless the governing statute expressly provides that presentation before the competent authority is a condition affecting the very maintainability of the application, the appropriate course for the Corporation would be either to transmit the application to the competent department or to return it to the applicant with liberty to present the same before the proper authority, preserving, where

permissible, the original date of presentation for the purpose of limitation or priority. The writ court, in exercise of its jurisdiction under Article 226 of the Constitution, ordinarily would not adjudicate the merits of the request for separation in the first instance, but may issue a direction permitting the petitioner to submit or re-submit the application before the competent authority within a specified time, with a corresponding direction to that authority to entertain and dispose of the application in accordance with law, uninfluenced by the fact that it had earlier been presented before an incompetent department. Such a course would advance the principles of fairness, good administration and access to justice, while ensuring that the statutory authority alone exercises the discretion vested in it under the Kolkata Municipal Corporation Act, 1980, without allowing a bona fide procedural lapse to defeat an otherwise maintainable claim.

29) On the premise as discussed above, the impugned order of the respondent No.4/Assistant Assessor Collector of KMC, dated September 13, 2022, cannot be sustained in the eye of law and the same is liable to be set aside. The impugned order appears to have merely reproduced departmental circulars. The same severely lacks factual considerations and exercise of discretion vested in the authority. In this way the authority has abdicated the statutory duty and a decision has been taken only mechanically. Therefore, let this writ petition being No. WPO 1687 of 2023 be disposed of with the following directions:

- a. The impugned order of the respondent No.4/Assistant Assessor Collector of KMC, dated September 13, 2022, be quashed and set aside;
- b. Let the appropriate department of the respondent Kolkata Municipal Corporation immediately take up the petitioner's application for separation dated August 12,

2022, in statutory Form-A 42, for consideration and passing appropriate order;

- c. In doing so the concerned respondent authority shall grant the writ petitioner a reasonable opportunity of hearing and consider and pass a reasoned order, unless prayer of the petitioner is allowed by the same in accordance with law;
- d. The entire exercise as above should be concluded by the respondent/KMC, within a period of 16 weeks from the date of communication of this judgment.

30) Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)