

23.08.2026
Ct. 3
Item No.
AD 1
Saswata

WPA 22679 of 2026
Anita Das.
VS
Kolkata Municipal Corporation & Ors.

Mr. Zohaib Rauf
Mr. Barnamoy Basak
Mr. Zubeen pandey
Mr. Ajitesh Pandey

...For the Petitioner

Mr. Sourav Halder

...For the State (virtually)

Ms. Piyali Sengupta

...For the KMC (virtually)

1. Pursuant to the leave granted by the Hon'ble the Acting Chief Justice to file this writ petition and to move the same before this Court today at the earliest, the instant writ petition has been filed on the undertaking by the Learned advocate on record for the petitioner that the petitioner shall make payment of the court fees within 24 hours or immediately upon restoration of the online portal for payment of court fees whichever is earlier.

2. Accordingly, the matter has been listed today and is taken up for consideration.

3. Learned advocate appearing for the petitioner has placed before this Court a copy of an email communication dated 22nd August 2026 and would submit that the petitioner had caused service of the instant writ petition on the respondents. He submits that the affidavit of service in the matter is yet to be affirmed and undertakes to file the same in course of this day.

4. At the time of call, the respondents were initially not represented, however, the learned advocate appearing for

the petitioner could establish contact with Mr. Sourav Halder, learned advocate who usually appears on behalf of the State. Mr. Halder has since joined the proceeding virtually. Similarly, the learned advocate appearing for the petitioner could also establish contact with Ms. Sengupta, learned advocate who usually appears for the Kolkata Municipal Corporation. She has also since joined the proceeding virtually. Let their appointments be regularized.

5. The instant writ petition has been filed, inter alia, challenging a demolition order dated 19th August 2026 passed by the Special Officer (Building), KMC in demolition case no. 90-D/VIII/26-27 and the notice dated 21st August 2026. The petitioner claim to be permanently residing at premises no. 51/1A, Satish Mukherjee Road, Ward no. – 84, Borough – VIII, Tollygunge, Kolkata – 700026.

6. Mr. Rauf, learned advocate appearing for the petitioner submits that the petitioner had previously, challenging a show cause notice issued by the municipal authorities in relation to eviction and demolition of premises no. 51/1A and 51/1B, filed a writ petition before this Court which is registered as WPA no. 21950 of 2026. The same is pending. The petitioner claims that during pendency of the said proceeding on 22nd August 2026 the officers of the respondent no. 1 abruptly visited the premises and purportedly pasted a notice under Sections 544 and 546, of the Kolkata Municipal Corporation Act 1980 (hereinafter referred to as the said Act) dated 21st August 2026, on the outer wall of the petitioner's premises under the signature of Executive Engineer (C)/BR-VIII.

7. As per the said notice, the petitioner was informed that the municipal officer along with police force will enter the petitioner's premises on 23rd August 2026 between 11.00 A.M and 5.00 P.M. to carry out the demolition work. Learned advocate appearing for the petitioner submits that along with a copy of the above notice, the demolition order dated 18/19th August 2026 has been pasted on the outer wall of the petitioner's premises. He submits that though, in terms of the above order, the petitioner as an aggrieved person is entitled to prefer an appeal from the order passed under Section 400(1) of the said Act before the Municipal Building Tribunal, before the petitioner could take steps the respondents have sought to implement the same. According to him the order, if implemented, would render the provisions of the statutory appeal as provided under Section 400 (3) of the said Act, for preferring an appeal from an order passed under Section 400 (1) of the said Act, otiose.

8. Mr. Halder, learned advocate appearing for the State would submit that the State was carrying out the requisition issued by the municipal authorities.

9. According to Ms. Sengupta, learned advocate appearing for the KMC, the municipal authorities had previously notified the petitioner with regard to the illegal construction. Despite being notified with regard to the same, the petitioner did not stop and had continued to retain possession of the illegally constructed portion. As such, the step has been taken.

10. Having heard the learned advocates appearing for the respective parties and considering the materials on

record, it would transpire that an order in the demolition case as aforesaid has been passed on 18th August 2026 under Sections 400 (1) and 416 of the said Act in respect of 51/1A and 51/1B, Satish Mukherjee Road, Ward no. – 84, Borough – VIII, Tollygunge, Kolkata – 700026. As per the aforesaid order, it would transpire that the area of unauthorized construction is 1500 sq. meters and the order records as stated by the CEO in charge of the Board of WAQF that both the premises no. 51/1A and 51/1B, Satish Mukherjee Road are duly registered before the Board of WAQF. The said order also records that premises no. 51/1A and 51/1B are Grade – I heritage site where heritage mosque, mansard and tombs of Tipu Sultan exists. There are several illegal constructions and 500 families have encroached since long. One, two storied structure is newly constructed near the entrance of the site. It is under lock and key and has been recently painted. The WAQF Board which has its right to preserve the Grade-I heritage site and has sought for removal and clearance of the illegal structures present at the heritage site and that it has been observed that the WAQF Board shall be at liberty to demolish the structures at the site. If applied for, the KMC will provide all necessary help for demolition work.

11. Though, the learned advocate appearing for the petitioner by placing before this Court the above order, has attempted to make out a case that the aforesaid order is strictly not an order passed under Section 400 (1) of the said Act, rather the same is an eviction order seeking to evict the petitioner, I am not inclined to enter into the such dispute at this stage, especially in view of the fact that the

above order provides for an opportunity to the petitioner to prefer an appeal as provided under Section 400 (3) of the said Act.

12. It is well settled that an order passed under Section 400(1) of the said Act is an appealable order in terms of Section 400 (3) of the said Act. Any person aggrieved by an order of the Municipal Commissioner made under sub-Section (1) of Section 400 of the said Act, may within 30 days from the date of the order, prefer an appeal against the order of the Municipal Building Tribunal appointed under Section 415 of the said Act.

13. On this score, I find that the petitioner has not been given any appropriate and meaningful opportunity to prefer an appeal under Section 400 (3) of the said Act. The order impugned appears to have been passed on 18/19th August 2026 and the same was sought to be implemented on 23rd August 2026 by a notice issued by the municipal authorities on 21st August 2026, i.e., within two days from the date of passing of the order. The petitioner also claims to have known of the order only when the same was pasted on the outer wall of the premises.

14. Having regard to the aforesaid, I am of the view that the municipal authorities should not proceed and implement the order of demolition dated 18/19th August 2026, for a period of 30 days from the date of passing of the order. Since the petitioner is now aware of the order, the petitioner shall be at liberty to take such steps as available to the petitioner in law. It is made clear that this Court has not entered into the merits of the order passed by the Special Officer (Building), KMC and it shall be open to the

appropriate authority to consider the scope and effect thereof, as and when the same is tested.

15. As a sequel thereto, the notice issued by the Executive Engineer (C)/BR-VIII dated 21st August 2026 stands quashed.

16. The writ petition is accordingly disposed of.

17. Since, no affidavit in opposition has been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

18. All parties shall act on the basis of server copy of this order duly downloaded from this Court's official website.

19. Since, all the petitioners in WPA 21950 of 2026 are not represented, place WPA 21950 of 2026 as "to be mentioned" in supplementary list on **24.08.2026**.

(Raja Basu Chowdhury, J.)