

(2026) 07 CAL CK 0146

In the Calcutta High Court, Original Side

Case No : IA No: GA/1/2026, GA/2/2026, GA/3/2026 in WPO/751/2025

Amit Basu

APPELLANT

Vs

The Kolkata Municipal Corporation & Ors.

RESPONDENT

Date of Decision : 22-07-2026

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 400, 401
West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001

Citation : (2026) 07 CAL CK 0146

Hon'ble Judges : Raja Basu Chowdhury, J

Bench : Single Bench

Advocate : Mr. Jaydip Kar, Sr. Advocate, Ms. Piyali Sengupta, Advocate, Ms. Jhoti Rauth, Advocate, Ms. Nafisa Yasmin, Advocate for the petitioner; Mr. Srijib Chakaborty, Advocate, Mr. Chhandak Dutta, Advocate for the applicant; Mr. Gopal Chandra Das, Advocate for the KMC; Mr. Biswaroop Bhattacharyya, Advocate, Mr. Bratin Kr. Dey, Advocate, Mr. Anjana Banerjee, Advocate, Mr. Subhankar Banerjee, Advocate for the respondent nos. 11-13

Final Decision : Disposed of

Judgement

1. Challenging the order dated 4th August 2025 passed by the Executive Engineer (Civil), Borough – I, Kolkata Municipal Corporation, the instant writ petition was filed. When the matter was taken for consideration on 11th December 2025 this Court was pleased to pass the following order:

1. Challenging the order dated 4th August, 2025 passed by the Executive Engineer (Civil), Building Department, Borough-1, the instant writ petition has been filed.

2. The matter has a chequered history. The petitioner is the owner of premises nos.16/1A and 16/1B, Nandalal Bose Lane, Kolkata – 700003 (herein referred to as the 'said property') which was originally owned by one Shibendra Nath Basu. According to the petitioner, the said Shibendra Nath Basu had transferred the aforesaid property to a trust by two indentures of trust dated 15th June 1968 and 3rd July 1974. The said Shibendra Nath Basu as settler and his wife Anima Basu were trustees of the said trust. On the death of the settler and his wife, the trust came to an end and the property vested in the petitioner, who is the sole beneficiary under the trust. The said property comprises of 11

cottahs and 4 chittacks 24 sq. ft. and 11 cottahs and 7 chittacks 17 sq. ft. of land pertaining to premises nos.16/1A and 16/1B, Nandalal Bose Lane, Kolkata – 700003 respectively. According to the petitioner, the said property comprised of pucca and kaccha structures which were constructed by the owners.

3. The petitioner claims that the Thika Controller and the respondent no.1 wrongfully by treating the said property to be governed by the provisions of West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as 'Thika Tenancy Act') had mutated the name of Nandalal Bose Lane and the names of Kanhailal Das and Bijay Krishna Roy and also renumbered as B/16/1A/H/2 and B/16/1B/H/2, Kolkata, without notice to the petitioner.

4. The petitioner having come to learn with regard to the aforesaid had challenged such recording. Ultimately, by a judgment and order dated 14th March, 2024 passed by the Division Bench of this court, the order passed by the West Bengal Land Reforms and Tenancy Tribunal, which held that the said property is governed by the provisions of the Thika Tenancy Act was set aside. Though, a special leave to appeal is pending consideration before the Hon'ble Supreme Court, according to the petitioner, there is no interim order subsisting in such matter.

5. The petitioner contends that the private respondents without the notice and consent of the petitioner started illegally constructing on the said property without any sanctioned building plan. Since the construction had commenced without any sanction plan, on the basis of a complaint lodged by the petitioner, the municipality had issued a notice on 10th October, 2013, under Section 401 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as 'the said Act'). Upon receiving such notice, the private respondents had made an application for regularizing the aforesaid construction. Records would reveal that the private respondents, behind the back of the petitioner had moved a writ petition which was registered as WPO No.1344 of 2023 (Surajit Biswas vs. The Kolkata Municipal Corporation), inter alia, in effect, questioning the notice issued under Section 401 of the said Act on the ground that only minor repair work was going on, when the above notice was issued. The coordinate bench of this Court, by an order dated 3rd July, 2023, taking note of the above and in absence of any other disclosure being made by the private respondents, was of the view that the Executive Engineer of the concerned Borough should take consequential steps in the matter after issuance of the notice under Section 401 to deal with the unauthorized construction that had been detected in the subject premises. However, it was also provided that the respondents may initiate proceedings in accordance with law and conclude the same after giving opportunity of hearing to all necessary parties. By such order, it was made clear that if there is no unauthorized construction, in that event the person responsible shall be permitted to conclude the construction that is going on. With the above observations, the writ petition stood disposed of.

6. The petitioner was, however, not put on notice and was completely unaware with regard to the aforesaid until the time hereinafter mentioned.

7. In the interregnum, since an illegal construction was going on at the aforesaid property, the petitioner had moved a writ petition which was registered as WPO 247 of 2025. By an order dated 26th June 2025, a Coordinate Bench of this Court, taking note of the case made out by the petitioner that a multi-storeyed building has been constructed unauthorizedly, directed the municipality to decide on the petitioner's representation/complaint dated 5th February, 2025 in accordance with law. Pursuant to the aforesaid, the Executive Engineer (Civil), Building Department Borough 1, upon giving opportunity of hearing to the parties including the petitioner and the private respondents, had

observed, inter alia, as follows:-

"Whereas from the record in respect of the premises no 16/1B, Nandalal Bose Lane, renumbered as 8/16/18/H/2, Nandalal Bose Lane, Kolkatu-700003, Ward No: 007, Borough-I of KMC, it is noted that, this is a case of unauthorized construction without any sanction plan from KMC. Inspected the aforesaid premises by this department on 10.05.2023 & found that construction of R.C.C. column at ground floor is going on without taking sanctioned/permission from KMC. To stop progress of unauthorized construction, Notice U/S 401 of KMC Act 1980 was issued upon P/R and Police Intimation was sent to the Shyampukur PS on 10.05.2023

Subsequently the matter was placed before higher authority of KMC and accordingly it was ordered to demolish the entire unauthorized construction U/S 400(8) of KMC Act 1980.

But during attempting of demolition program on 30.06.2023 someone produce a letter from Amit Gupta, Advocate along with order passed by Ld. Judge, Bench X, City Civil Court, Calcutta dated 10.11 2022 vide TS No. 2325 of 2022 where it ordered that "therefore, considering the urgency, there will be nothing impediment in allowing the interim relief as sought for on behalf of the Plaintiff Petitioner for passing an order of status quo in respect of the suit property as described in the schedule of the plaint as well in the Schedule of Application for injunction under order 39 rule 1 & 2 of the CPC as filled by the Plaintiff Petitioner, so far nature, character and possession are concerned, as on this date

Accordingly, same is allowed in favour of the Plaintiff Petitioner and such relief remains effective till the next date.

The said ad interim order dated 10.11.2022 has extended till 14.08.2023 by order of Ld. Judge, Bench X, City Civil Court, Calcutta dated 15.03.2023. Accordingly as per the said order vide T.S No. 2325 of 2022 the demolition programme at above mentioned premises was postponed and the matter was been kept in abeyance.

Also in the meantime P/R Sri Surajit Biswas filed a writ before Hon'ble High Court at Calcutta vide WPO No. 1344 of 2023 and accordingly the Hon'ble Court pleased to pass an order on 03.07.2023 directing "...the Executive Engineer of the concerned Borough is directed to take further consequential steps in the matter after issuance of the notice under Section 401 to deal with any unauthorized construction that has been detected at the subject premises

The aforesaid respondent may initiate proceedings on accordance with law and conclude the same after giving a reasonable opportunity of hearing to all the necessary parties....."

As per said order passed by Hon'ble High Court at Calcutta dated 03.07.2023 a hearing was taken on 15.07.2023 by the Executive Engineer(C) with prior intimation to all the parties. During hearing Sri Surajit Biswas (petitioner) was present and submitted a prayer letter regarding regularization of unauthorized construction with necessary fees & Charges. Accordingly in the line of order passed by Hon'ble High Court at Calcutta dated 03.07.2023 and subsequently considering the prayer letter of Sri Surajit Biswas (petitioner) dated 15.07.2023 the Executive Engineer (C) ordered to process the matter U/S 400(1) of KMC Act 1980 read with office circular no. 16 of 2021-2022 of Director General (Building) dated 02.03.2022.

During further inspection on 26.07.2023 in the aforesaid premises it is found that the P/ R(s) have resumed the construction work defying the Stop Work Notice U/S 401 of KMC Act 1980 dated 10.05.2023 by construction of R.C.C. slab at ground, 1 & 2nd floor roof level supported by R.C.C. column along with brick wall. To stop further progress of

unauthorized construction FIR u/s 401A of KMC Act 1980 was lodged against P/R on 26.07.2023.

As per order of Executive Engineer(C)/Building/Br-1 notice U/S 400(1) of KMC Act 1980 along with Preci and demand notice for 50% security deposit as per circular 16 of 2021-22 of DG (B) dated 02.03.2022 has issued upon P/R and accordingly the P/R has deposited the same.

The matter is in the process for hearing before Special Officer (Building), u/s 400(1) of KMC Act 1980.

ORDER

Considering the above submission and the fact arising out during hearing, it is ordered that, as the matter is pending for hearing before Special Officer (Building), u/s 400(1) of KMC Act 1980 for conclusion. We may abide by the decision of the order of Special Officer (Building).

With this order the matter stands disposed of.

Let this order be communicated to all the parties."

8. It is from the aforesaid proceeding and the order that the petitioner has come to learn with regard to the factum of the previous writ petition being moved by the private respondents, as also with regard to the factum of the private respondents being called upon to deposit certain sums towards security deposit for regularization of the unauthorized construction.

9. Mr. Kar, learned Senior Advocate representing the petitioner would submit that private respondent by practicing fraud on Court as also on the petitioner including the municipality at the first instance, had moved the writ petition behind the petitioner's back and obtained the order dated 3rd July, 2023.

10. This court was never made aware that the entire construction was illegal and that there was a subsisting order under section 400(8) of the said Act when the order dated 3rd July, 2023 was passed. According to Mr. Kar, the municipality has permitted the illegal construction to continue and today, five storied structure is standing on the said property.

11. Mr. Banerjee, learned advocate appears for the municipality. He is, however, unable to enlighten this Court as to whether any order regularizing the aforesaid illegal construction has been passed.

12. The private respondents are represented. In response to a query from the Court, the learned advocate representing the private respondents would submit that the private respondents have acquired interest in respect of the structure which was in existence by virtue of a deed of gift dated 21st April 1989. He has also placed before this Court the receipt issued by the Kolkata Municipal Corporation to demonstrate that in compliance of the directions passed by the municipal authority, the private respondents had already put in the security deposit and other charges for regularization of the unauthorized construction. Let copies of the above documents be taken on record.

13. Heard the learned advocates appearing for the respective parties. Prima facie, I find that the private respondents are not the owner of the property in question, however, the claim of the private respondents is in relation to a particular structure which admittedly even on the own saying of the private respondents is no longer in existence since, a new structure has come up. It is also an admitted position that the new construction that has come up at the said property is illegal as does not have the sanction of the municipal authorities and has been constructed on the teeth of a notice issued under section 401 as also of an order passed under section 400(8) of the said Act. I find from the order passed

by the co-ordinate Bench dated 3rd July, 2023 that the co-ordinate Bench had only permitted continuation of construction provided there was no unauthorized construction in the said premises. Thus, the said order read with the observations made by the Executive Engineer as appearing at internal page 4 of the order dated 4th August, 2025 would in no uncertain terms indicate that at the time of inspection by the department on 10th May, 2023, the construction that was noted, was of on RCC column at the ground floor of the said property. Obviously, even at that stage, the municipal authorities were certain that there was no sanction plan and, as such, in terms of the directive issued by the co-ordinate Bench dated 3rd July, 2023, the municipal authorities ought not to have permitted the person responsible to continue with further construction. The construction that has come up is on the teeth of the order restraining further illegal construction at least the same is apparent from the orders passed by this Court and the order dated 4th August, 2025.

14. Having regard thereto, and noting from the parties that the building is yet to be completed and only super structure is complete, I am of the view that at this stage, the municipal authorities should not permit any further construction in the said premises and that none should occupy the said property without express leave of this Court. The concerned Executive Engineer, Borough-1 is directed to inspect the said property. The municipal authority shall carry out inspection upon prior notice to the learned Advocates-on-record of the respective parties who shall also be entitled to accompany the Executive Engineer.

15. The executive engineer shall take photographs of the building from all corners and prepare a detailed inventory. Let such report be filed before this Court on or before the matter is taken up next.

16. If a requisition is made by the municipal authorities for police assistance, the officer-in-charge of the local police station shall provide necessary adequate assistance.

17. It is, however, made clear that pending disposal of the writ petition, no decision should be taken by the authority to regularize the illegal construction.

18. The interim order shall continue till the end of January, 2026 or until further orders whichever is earlier.

19. List this matter in the month list of January, 2026.

2. Pursuant to the aforesaid order, the municipality had carried out inspection at premises no.B/16/IB/H/2, Nandalal Bose Lane, Ward – 7, Kolkata, Borough – I, incidentally the inventory report filed by the municipality showed that the building had been completed and 24 flats had been constructed. Out of the aforesaid flats, save and except four flats being flat nos.A3, A4, A6 and D2, all other flats are shown to be occupied.

3. Noting from the submissions made by the learned advocate representing the municipality that no occupancy certificate had been issued as yet, this Court had directed the municipality to take appropriate steps by issuing notices on the persons who are occupying the flats, as detailed in the inspection/inventory report, disclosing their authority to occupy the flats without the occupancy certificate.

4. Since then, there has been further development in the matter. Not only some occupiers in the premises in question have approached this Court by filing

intervention application, the municipality has also proceeded in the matter in terms of the order passed by the coordinate Bench on 3rd July 2023 in WPO/1344/2023 and upon hearing the occupants had passed an order on 11th March 2026. The petitioner has brought the aforesaid fact to the notice of this Court by filing a supplementary affidavit.

5. Having regard to the disclosure made and noting from the submissions of some of the occupiers who are applicants that an appeal has been filed before the municipality Building Tribunal from the order passed by the Special Officer (Building) dated 11th March 2026 in demolition case no.016-B/I/23-24 in respect of the premises no. B/16/IB/H/2, Nandalal Bose Lane, Ward – 7, Kolkata, Borough – I and that such appeal is yet to be admitted, having regard to the delay involved, I am of the view that nothing survives in the writ petition.

6. The writ petition is accordingly disposed of.

7. The applications being IA No.GA/1/2026, IA No.GA/2/2026 IA No.GA/3/2026 are also disposed of.