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**(2018) 12 CAL CK 0068**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 608 Of 2018**

Sumita Dutta

APPELLANT

Vs

Kolkata Municipal Corporation & Ors

RESPONDENT

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**Date of Decision :** 17-12-2018

**Acts Referred:**

Kolkata Municipal Corporation Act, 1980 — Section 400

**Citation :** (2018) 12 CAL CK 0068

**Hon'ble Judges :** Debangsu Basak, J

**Bench :** Single Bench

**Advocate :** Arindam Banerjee, Debjyoti Basu, S. Chakraborty, S. Dutta, R.L. Mitra, P. Dhar, S. Debnath, Gopal Chandra Das

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## Judgement

An order dated November 15, 2018 passed by the Special Municipal Commissioner (G&D) is under challenge in the present writ petition.

Learned Advocate appearing for the petitioner submits that, an entity claiming itself to be the owner of a premises, approached the Writ Court, by way of a writ petition being T 12 of 2018. Such writ petition was disposed of by order dated May 23, 2018 by directing the Corporation Authorities to look into the allegation made in the writ petition. The petitioner upon becoming aware of such order dated May 23, 2018 filed a writ petition being T 32 of 2018 which was disposed of by order dated November 1, 2018 requiring the authorities to allow the private parties an opportunity of hearing in the proceeding relating the consideration in terms of the order dated May 23, 2018. He draws attention of the Court to the impugned order and submits that, the authority proceeds to find a structure of the petitioner to be unauthorised and directs the removal of the same failing which the Corporation will demolish it.

Learned Advocate appearing for the Corporation submits that he requires time to take into instructions as to the authority of the person passing the impugned order to return a finding of unauthorised construction and the exercise powers under Section 400 of the Kolkata Municipal Corporation Act, 1980 Prima facie, it

appears that, the impugned order proceeds on the basis of provision of Section 400 of the Act of 1980. There is no material on record to suggest, the authority passing the impugned order was permitted by the Municipal Commissioner to exercise jurisdiction under Section 400 of the Act, 1980. The impugned order, at least prima facie is unlawful and without jurisdiction.

In such circumstances, there will be a stay of the impugned order till March 31, 2019 or until further orders whichever is earlier.

List the writ petition on January 3, 2019 under the same heading when the Corporation will produce records with regard to the authorisation of the Special Municipal Commissioner ( G & D) to exercise power under Section of the 400 of the Act of 1980.