



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

**BEFORE:  
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

**WPO/491/2025**

**IA NO: GA/1/2026**

**Bhagwatdas Jaiswal**

**Versus**

**Kolkata Municipal Corporation & Ors.**

For the petitioner : Mr. Jaydeep Kar, Sr. Adv.  
Mr. Biswajit Mukherjee, Adv.  
Mr. Rishav Karnani, Adv.  
Ms. Sonali Ghosh Basu, Adv

For the KMC : Mr. Alak Kumar Ghosh, Adv.  
Mr. Gopal Chandra Das, Adv.

For the respondent : Mr. Arif Hussain, Adv.  
Nos. 7 to 15. Mr. Sudarshan Roy, Adv.  
Mr. D. Majumdar, Adv.  
Mr. Niladri Mukherjee, Adv.

For the respondent : Mr. Biswaroop Bhattacharya, Adv.  
Nos. 16 & 17. Mr. S. K. Poddar, Adv.

For the respondent : Mr. Soumya Majumdar, Sr. Adv.  
Nos. 18 & 19. Mr. Shounak Mukhopadhyay, Adv.  
Mr. Akash Ghosh, Adv.  
Ms. Nabanita Chakraborty, Adv

Heard on : 18.05.2026, 19.05.2026, 20.05.2026 &  
21.05.2026.

**Judgment on : 29<sup>th</sup> June, 2026.**

**RAJA BASU CHOWDHURY, J. :**

1. The present writ petition has been filed, *inter alia*, praying for a direction upon the respondent authorities to declare the certificate of enlistment



dated 7<sup>th</sup> April, 2025 granted to the respondent no.19 at 39, Bentinck Street, Ground Floor, Kolkata 700069, as null and void and bad in law.

2. The petitioner claims to be a stall owner at 39, Bentinck Street, Municipal Ward No. 46, P.S. Hare Street, Kolkata 700069 (hereinafter referred to as the “said premises”). According to the petitioner, the said premises was previously used as Paradise Cinema. The petitioner claims that it used to run four (4) stalls, selling various kinds of food items at the Paradise Cinema Hall. Presently, the petitioner runs a food stall selling soft drinks and snack items at the entrance of the large format garment departmental store/mall operated by the respondent no.18 and 19.
3. According to the petitioner, the respondent nos. 7 to 15 are the owner of the said premises. Sometimes in the year 2012, the respondent nos. 7 to 15 had let out their respective portions in the said premises to the respondent nos. 16 and 17. The respondent no.18 had taken the said premises for the purpose of running the cinema hall and distribution, exhibition and exploitation of feature films at the said premises and started managing and running the Paradise Cinema Hall from the said premises. The respondent no.19 is the sister concern of respondent no.18, while the respondent no.20 is a developer holding registered agreements for the said premises from the respondent nos. 7 to 15.
4. According to the petitioner, the cinema hall was shut down sometime in 2020 and the cinema licence thereof was also surrendered. Thereafter, the petitioner came to learn that the respondent nos. 7 to 19 have illegally changed the nature and character of the premises by converting the cinema hall (Assembly category) situated at the premises, into a large format garment departmental store run under the name and style of ‘M-Bazar’. The petitioner therefore, claims that the category of the premises from an assembly hall has been converted to that of a ‘Mercantile building’.



5. This apart, the petitioner also contends that the respondent nos. 16 to 19 have undertaken a series of unauthorised structural modifications and that the change of use is illegal, in violation of statutory norms.
6. According to the petitioner, the respondent nos. 16 to 19 have thus, illegally converted the sanctioned use of the premises from a cinema hall (Assembly category) to a large format garment departmental store 'Mercantile building' without obtaining the requisite change of occupancy certificate as is required under Section 416 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the "said Act"). The change of use is patently illegal and invites huge risk to the inmates of the said building.
7. Being aggrieved and dissatisfied with the arbitrary acts and actions on the part of the respondents including that of the private respondents, the petitioner had filed a writ petition, which was registered as WPO 414 of 2024 before the Hon'ble High Court at Calcutta.
8. Records would reveal that by an order dated 22<sup>nd</sup> May, 2024 a Coordinate Bench of this Court was pleased to dispose of the said writ petition by directing the Commissioner of the Kolkata Municipal Corporation or its delegate to grant an opportunity of hearing to all necessary parties and ascertain whether the business run by the petitioner is in accordance with law or not. It was further provided that if, the concerned party fails to produce the requisite documents for running the business from the subject premises, then steps shall be taken by the official respondent to stop the business forthwith.
9. In terms of the order dated 22<sup>nd</sup> May, 2024, the Additional Municipal Commissioner, Kolkata Municipal Corporation conducted a hearing on 14<sup>th</sup> June, 2024 and on 4<sup>th</sup> July, 2024, with respect to the grant of trade licence/certificate of enlistment, and the Special Officer Building also initiated a demolition case being D/Case No. 08-D/VI/24-25.



10. On 18<sup>th</sup> July, 2024, the Additional Municipal Commissioner, Kolkata Municipal Corporation passed an order disposing of the proceeding with respect to the certificate of enlistment/trade licence by granting an opportunity to re-upload certain documents for certificate of enlistment. According to the petitioner, despite the respondent nos. 18 and 19 did not have requisite statutory sanction and permission for running the said business from the said premises and despite the above proceeding, the municipal authorities did not stop the business operations of the respondent nos. 18 and 19. As such the petitioner was constrained to move the Hon'ble Court in contempt jurisdiction, which was registered as CC. 78 of 2024. Records would reveal that the Municipal Commissioner in the contempt proceeding had filed an affidavit of compliance, disclosing that the Special Officer (Building) by order dated 4<sup>th</sup> December, 2024 had rejected/disallowed the change of use and/or occupancy of the subject premises. Consequently, Kolkata Municipal Corporation cancelled the certificate of enlistment on 20<sup>th</sup> November, 2023, which had been issued in favour of the respondent no.19. The order passed by the Special Officer (Building) dated 4<sup>th</sup> December, 2024 was subsequently affirmed by the Mayor in Council on 13<sup>th</sup> December, 2024.
11. Challenging the order dated 4<sup>th</sup> December, 2024, the respondent nos. 18 and 19 filed a writ petition being WPO 1234 of 2024. Though, the petitioner was not made a party, on the basis of an application for addition of party, the Court had allowed the petitioner to be added as a party in such proceedings. On contest, the writ petition being WPO 1234 of 2024 was disposed of by an order dated 1<sup>st</sup> May, 2025 by granting opportunity to the aggrieved party to avail the appellate remedy provided under Section 415 of the Kolkata Municipal Corporation Act, 1980, before the Municipal Building Tribunal. The respondent nos. 18 and 19 have since thereafter, filed an appeal before the Municipal Building Tribunal, which is pending.



12. In the interregnum, however, the petitioner claims to have been shocked and surprised to find out that despite the clear finding and the cancellation of the previous certificate of enlistment as also the pendency of WPO 1234 of 2024, a fresh certificate of enlistment dated 7<sup>th</sup> April, 2025 (commencement dated 2<sup>nd</sup> April, 2025) had been issued to the same entity for the said premises. Being aggrieved by such issuance of the certificate of enlistment, the petitioner has filed the instant writ petition, seeking cancellation thereof.
13. When the writ petition was initially moved though, the petitioner had sought for an interim order, however, this Court by order dated 6<sup>th</sup> November, 2025 noting that challenging a Fire Safety Certificate (in short "FSC) dated 11<sup>th</sup> April, 2025 issued by the Director, Fire Prevention Wing, West Bengal Fire and Emergency Services, a writ petition had been filed, which was registered as WPO 284 of 2025 and in such proceedings a Coordinate Bench of this Court had directed the said premises shall not be used for commercial purpose till 19<sup>th</sup> May, 2025 and on an appeal being filed therefrom, the Division Bench of this Hon'ble Court taking note of the peculiar facts and balance of convenience having not restrained the respondent no.18 from carrying out any business operations, and also noting that though a challenge to the same was pending before the Hon'ble supreme Court, did not grant any interim relief and directed the matter to be listed after disposal of the Special Leave Petition.
14. Records would reveal that challenging the order dated 6<sup>th</sup> November, 2025 an appeal was preferred before the Division Bench. By an order dated 6<sup>th</sup> January, 2026, the Division Bench of this Court was of the view that pendency of this Special Leave Petition should not stand in the way of consideration of interim relief in the writ petition and accordingly, directed this Court to take an independent decision in the matter. Following the above, the matter was taken up for consideration.



Initially on 15<sup>th</sup> January, 2026, however, since an accommodation was sought for on that date by the respondent nos. 18 and 19 the matter was adjourned and was taken up for consideration on 22<sup>nd</sup> January, 2026. On 22<sup>nd</sup> January, 2026 this Court upon hearing the parties and noting that a certificate of enlistment in the name of the respondent no.19 was subsisting, was of the view that it shall not be appropriate to pass any interim order at this stage, so as to stall the business operation of the respondent no.19, accordingly, directed exchange of affidavits.

15. Records would also reveal that being aggrieved with the non-grant of interim order, the petitioner had preferred an appeal therefrom, which was registered as APO 6 of 2026. By an order dated 16<sup>th</sup> February, 2026, the Division Bench of this Hon'ble Court despite noting that the livelihood of some persons may be affected, felt that compliance of provisions of the statute is paramount and mandatory as pre-condition for running a garment shop, and in the backdrop of an order passed by the Special Officer (Building), confirmed by the Mayor-in-Council disallowing change of use of the building noted that the same is ex facie illegal and cannot be permitted. Having regard thereto, the Division Bench of this Court was of the view that the garment shop at the said premises cannot be allowed to run and should be shut down by the Kolkata Municipal Corporation forthwith and accordingly directed that the respondent M/s. Metro Retail shall not run the garment shop and it must be shut down. However, the above order of the Division Bench also makes it clear that the aforesaid order was only interim, and the same shall abide by the final result in the writ petition, when the parties shall be at liberty to canvass all arguments available to them in law, including maintainability of the writ petition and accordingly, requested the Court to take up the matter already fixed after affidavits and hear out and dispose of the writ petition without granting any unnecessary adjournments.



16. Since then the matter was mentioned for expeditious hearing and was listed on 12<sup>th</sup> March, 2026, incidentally on the said date, since the petitioner sought for time to use a response to the application being GA 1 of 2026 filed by the respondents, the matter was adjourned. Subsequently, though the matter was fixed on 2<sup>nd</sup> April, 2026 by consent of the parties, the matter was adjourned on the said date, and ultimately thereafter the matter could be finally heard out.
17. Mr. Kar, learned senior advocate appearing in support of the writ petition, has submitted that in the instant case, since, the Special Officer (Building) has already refused the permission to grant conversion, the petitioner cannot be permitted to obtain a certificate of enlistment for running the business. According to him, the present petition is not limited to a challenge to a mere certificate of enlistment but is a challenge to a patent and continuous illegality committed by the respondent nos. 18 and 19. He submits that the respondent nos. 18 and 19 have illegally procured the certificate of enlistment and commenced mercantile operations i.e. a garment departmental store. The same is in direct defiance of the order of rejection of the change of use and binding statutory directions. According to him, the Division Bench had to intervene to bring the business operations to a halt. He has also reiterated that the previous licence had been cancelled on the very same ground and the appeal against the order of rejection remains pending before the Municipal Building Tribunal. On the status of the petitioner, it is submitted that the petitioner runs a popcorn, snacks and soft drinks stall of 80 sq. ft. immediately inside the entrance of the cinema hall at 39, Bentinck Street where the large format garment departmental store/mall operated by the respondent nos. 18 and 19 is situated. On the locus of the writ petitioner, it is submitted that the petitioner had been impleaded by respondent nos. 18 and 19 in the appeal before the Municipal Building Tribunal wherein he has been arrayed as a respondent. He further submitted that this Court has already



adjudicated the petitioner's locus when his addition was allowed by the Coordinate Bench in GA 2 of 2025 arising out of WPO 1234 of 2024. It is still further submitted that in cases involving unauthorised construction, illegal change of use or continuing violation of municipal and planning laws, the issue assumes the character of a public wrong. Accordingly, any public spirited citizen, taxpayer, neighbour, outsider or even a stranger has sufficient locus to invoke jurisdiction to compel municipal authorities to discharge their statutory obligations and prevent continuing illegality. The rationale consistently adopted by the Courts is that unauthorised constructions and illegal use affects planned development, civic amenities and public safety. In support of his aforesaid contentions, he has placed reliance on the following judgments:

- i. ***Sri K. Ramadas Shenoy v. The Chief Officers, Town Municipal Council, Udipi & Ors.***, reported in (1974) 2 SCC 506,
- ii. ***Dipak Kumar Mukherjee v. Kolkata Municipal Corporation & Ors.***, reported in (2013) 5 SCC 336,
- iii. ***Smt. Banasri Mondal v. State of West Bengal & Ors.***, in WPA 740 of 2021, (2021:CHC-AS:5407).
- iv. ***Jamila Khatoon & Ors. v. State of West Bengal & Ors.***, reported in 2022 SCC OnLine Cal 2478,
- v. ***Shadab Jahan Begum & Ors. v. The Kolkata Municipal Corporation & Ors.***, in WPA 13617 of 2021, (2022: CHC-AS:7032) and
- vi. ***Shri Biplab Das v. Tamralipta Municipality & Ors.***, in WPA 11359 of 2021.
- vii. ***Lutfor Rahaman Sarkar & Ors. v. The State of West Bengal & Ors.*** in WPA 29596 of 2025.



18. Mr. Kar has also invited the attention of this Court to the provisions of Section 199 of the said Act and the guidelines issued thereunder. According to him, Section 199 does not merely permit the State Government to frame guidelines. It expressly incorporates those guidelines into the statutory scheme. The application for a certificate of enlistment must be made as per the guidelines posted on the municipal corporation's web portal. Section 199 of the said Act mandates in no uncertain terms that the application shall be accompanied by the prescribed fee "and also" by the documents determined and specified by the State Government in the guidelines. It makes compliance with the guidelines a statutory pre-condition for a valid application, not a mere administrative convenience. He has also contended that the guidelines once issued under Section 199, cease to be a free-standing executive instructions and they become part of the statutory fabric of Section 199 itself. Non-compliance with the guidelines is in effect, non-compliance with the statutory provision. In this context, he has placed reliance on Clause 4 of the guidelines which mandates that every online application for a certificate of enlistment must be accompanied by a system-based integrated application cum self-declaration containing all particulars of Annexure I and Annexure II.
19. According to him, Annexure II is not a mere formality, it requires from the applicant a positive unequivocal affirmation, declaration and undertaking that : (a) the premises for which the Trade Licence is sought is fully compliant with all KMC laws and regulations; (b) The use of the premises is neither illegal nor unauthorised; and (c) In the event any information furnished is found to be false, the Certificate of Enlistment shall be liable to cancellation together with such other penal consequences as may follow.
20. Regulation 8(1)(d) of the Guidelines independently and expressly empowered the municipal corporation to cancel any Certificate of



Enlistment that was obtained by means of a false self-declaration. This is not a discretionary power. It is a mandatory consequence that flows from the very undertaking extracted from every applicant as a condition of grant. According to him, the respondent nos. 18 and 19 were aware that no change of use had been granted and that a prior enlistment for the same use had already been cancelled. Notwithstanding the above, by making false declarations they have obtained the permissions i.e. certificate of enlistment, and thereby played fraud upon Kolkata Municipal Corporation and upon this Court. Upon discovering this fraud, the Kolkata Municipal Corporation cancelled the trade licence. There is no irregularity in the same. It is still further submitted that the cancellation already affected by the Municipal Corporation cannot be undone. No formal application has been filed by the respondent nos. 18 and 19 to challenge the cancellation. This Court in the facts, should not entertain such challenge by way of supplementary affidavit. As such, no interference is called for.

21. The respondent nos. 18 and 19 have contested the matter by filing affidavit-in-opposition. Mr. Majumdar, learned senior advocate representing the respondent nos. 18 and 19, at the very outset, has raised the issue of maintainability and the locus of the writ petitioner to maintain the writ petition. According to him, the respondent no.20 is a developer who is supporting the petitioner and is the person behind the petitioner. He submits that the order dated 4<sup>th</sup> December, 2024 was passed pursuant to a writ petition instituted by one Shiv Shankar Dubey. The said writ petition being WPO 284 of 2024 mainly related to Fire Safety Licence dated 11<sup>th</sup> April, 2025 issued by the Director, Fire Prevention Wing, West Bengal Fire Emergency Service. While hearing out a challenge to the said order, the Coordinate Bench of this Court had directed that the subject premises shall not be used for any commercial purpose till 19<sup>th</sup> May, 2025 or until further order whichever is earlier. Challenging such order, an appeal was preferred which was



registered as APOT 136 of 2025 arising out of WPO 284 of 2025. The Division Bench of this Court while hearing the above appeal at that stage felt that the appellant ought not to have been restrained from operating its business in the said premises before arriving at a finding that the Fire Safety Certificate as issued, is not maintained in accordance with law. Accordingly, the interim order passed by the Coordinate Bench was vacated. He has also drawn the attention of this Court to the order dated 18<sup>th</sup> July, 2024 issued by the Municipal Commissioner and would submit that the Municipal Commissioner had only directed uploading of additional documents which was duly complied with. The certificate of enlistment according to him, was cancelled on 16<sup>th</sup> December, 2024 but the same was again reissued on 7<sup>th</sup> April, 2025, after making an online application. This, according to him, was applied for at a time when the interim order dated 15<sup>th</sup> February, 2025 passed by this Hon'ble Court in connection with WPO 1234 of 2024 was subsisting. He submits that having regard to the interim order passed in WPO 1234 of 2024 on 7<sup>th</sup> April, 2025, the petitioner applied for a fresh certificate of enlistment. There is no irregularity in that regard. According to him, the challenge to the rejection of change of use of occupancy is pending before the Tribunal and as such the same cannot interfere with the right of the petitioner to be entitled to the certificate of enlistment. According to him, the two issues as regards the change of occupancy and certificate of enlistment are mutually exclusive. By referring to the guidelines for enlistment of profession, Trade and Calling dated 28<sup>th</sup> August, 2020, he submits that the same does not require any change of occupancy certificate. Change of occupancy certificate is not a certificate or licence or a document that is required for issuance of certificate of enlistment. The lack of relevance of such a document was admitted by the advocate for the Kolkata Municipal Corporation in course of hearing before the Hon'ble Division Bench on 19<sup>th</sup> May, 2026, in connection with the appeal filed by the respondent nos. 18 and 19. By placing reliance on the provisions of



Section 390 of the said Act, he submits that Section 390 of the said Act refers to simultaneous use of premises for more than one purposes which will be clearly seen from the words “are used” in the definition clause under Section 390 of the said Act. Admittedly, the Cinema Hall has been closed since 2020. Since then, the respondent nos. 18 and 19 had been carrying out business upon obtaining the certificate of enlistment issued in its favour. In this context, he has also placed reliance on Schedule V and VA. According to him ‘Mercantile building’ does not fall within the category of premises under Schedule V which mandatorily requires permission to operate and cannot be operated without any permission. He submits that a Mercantile building which has been defined in Section 390(2)(f) of the said Act, for carrying out operation in such building, no specific permission in terms of Schedule V is required, and hence also supports the respondent nos. 18 and 19 in the case. This apart, it is submitted that though the Hon’ble Division Bench of this Court did not by its order dated 16<sup>th</sup> February, 2026 direct the municipality to cancel the certificate of enlistment, though the same has been cancelled citing the order of the Division Bench.

22. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, the primary question that falls for consideration in the present case, apart from the maintainability issue and the locus of the petitioner, is whether the respondent nos. 17 and 18 have any right to carry on business from a building which is admitted by the parties to be a ‘Mercantile building’ from where (previously, Paradise Cinema Hall) Cinematograph Films were being shown and exhibited.

23. The ancillary question that also falls for consideration in the present application is whether having regard to the order dated 4<sup>th</sup> December, 2024 passed by the Special Officer (Building), which dealt with proceedings under Section 400 and under Section 416(5) of the



said Act, whereunder change of use was disallowed, could the respondent nos. 18 and 19 carry on business contrary to such order and lastly, whether the right to seek issuance of certificate of enlistment is dependent upon allowing change of use of a building.

24. Since the above issues are interlinked, they are taken up together for consideration. To appreciate the above, it is necessary to understand the scope of the relevant provisions for grant of certificate of enlistment and change of use of a building. I find that Section 199 of the said Act authorises the Municipal Commissioner or any official authorised by him to issue a certificate of enlistment. In this context, it may be noted that Section 199 of the said Act makes it obligatory for every person engaged or intending to be engaged in any profession, trade or calling, in Kolkata as categorized in Schedule IV of the said Act, either by himself or by any authorised agent or representative, to obtain a certificate of enlistment for such period and on payment of such fees, as may be determined by the Corporation and as may be specified in the form of guidelines issued by the State Government. The same also provides that the certificate of enlistment must be renewed, on or before the expiry of the validity period thereof, from the Municipal Commissioner or, in his absence, from the concerned official authorised by the Municipal Commissioner upon presentation of an application together with such application fees, at such rates or, as may be determined by the Corporation under sub-section (3) of Section 131 and also documents as may be determined and specified by the State Government in the Guidelines that may be hosted in the web portal. Sub-section (2) provides that the Municipal Commissioner or an official authorised by him, shall, on receipt of an application under sub-section (1), grant such certificate of enlistment, if such application is in order and upon payment of fees under sub-section (3) of Section 131 of the said Act or shall reject the application, if it is not in order. Guidelines for enlistment of profession, trade and calling in Kolkata Municipal Corporation areas



has since been notified by superseding the previous guidelines on 28<sup>th</sup> August, 2020. The documents required for submission of application for the certificate of enlistment have been identified in Clause (4) thereof. To morefully appreciate the same, the relevant clause along with the note appended thereto is enclosed herewith:

**4. Documents required for submission of application for the Certificate (to be posted in the Corporation's web portal <https://www.kmcgov.in>):—**

- (a) For submission of **online application** under clause 3, the following documents shall be submitted/ uploaded as attachments for all professions, trades & callings along with system based integrated online application cum self-declaration containing all particulars of **Annexure I & II** :

Only 2 (two) documents are required to be submitted (All copies shall be self-attested):—

- (i) **Identity proof document** : Any Photo Identity Document (EPIC/ AADHAAR/DRIVING LICENSE/PASSPORT etc.) issued by any government authority as Identity proof as well as residential proof of the applicant.
- (ii) **Proof of ownership/occupancy**: Any one of the following documents as occupancy proof of business address:—Property tax bill/ Property tax receipt/Deed of Conveyance/Lease deed/ Sublease deeds/Leave and licence agreement/Rent receipt/Rent Agreement/No objection certificate if it is rent free/Electricity bill/ Telephone bill in respect of the place of business and in the name of the applicant.

- (b) For submission of **offline application**, the same two documents as in clause 4(a)(i) and 4(a)(ii) are to be submitted along with application cum self-declaration [**Annexure I & II**]

*Note I*.—For trades where statutory certificates, licenses, permissions, permits are required to be obtained by traders, production of such certificates, licences, permissions, permits are not required prior to and/or at the time of issuance/renewal of Certificates.

*Note II*—However, such enlistment or renewal thereof shall not absolve such person from any liability to take out any license under any other law like Fire license/Fire No objection Certificate/Pollution Control Board Certificate Clinical or Health Certificates/Excise(Liquor) Deptt./RBI/SEBII Customs/Police/Import Export etc. and alike for the time being in force.

25. The provision for registered companies, restriction of issue of certificate of enlistment and the issue of new certificate and the modalities for renewal thereof, including its validity have been detailed in Clauses 5, 6, 7, 8, 9 and 10. To morefully appreciate



the same, the relevant clauses are extracted hereinbelow:-

**5. Provision for registered companies etc.:**—Companies registered under the law shall apply for and obtain CE for registered office first as office of Accounts and Administration, and thereafter shall apply for and obtain separate CEs for separate profession, trade and calling carried out upon payment of fees as per Clause 3.

**6.** No one shall apply for fresh CE or renewal for any profession, trade and calling in dangerous, ruinous, hazardous buildings as notified by Building Department, KMC unless such notification is withdrawn.

**7.** No one shall apply for certificate in residential buildings against any hazardous profession, trade and calling involving use of explosive, gas etc. and wine/ liquor shops which are prohibited in residential buildings as per provision of section 435A. As per provision of section 435A, trade and commercial activities as specified in Schedule VA are allowed only in such residential buildings which are located alongside major roads and maximum 45% of the total floor area of the building may be used for such trade & commercial purposes.

#### **8. Issue of New Certificate**

##### **(I) Online:**

- (a) Issue of new Certificate of Enlistment for all profession, trade and calling shall be processed real time in online mode through KMC web portal <https://www.kmcgov.in>.
- (b) List of profession, trade and calling will be shown in drop box menu and fee will be auto calculated. Demand generation, auto calculation and fee payment as well as generation of Payment Receipt cum Certificate of Enlistment will be real time in cases of online new applications.
- (c) In case of real time issue of certificate, a disclaimer shall be printed on the Payment Receipt cum Certificate of Enlistment that "This document is auto generated through computer system as per data submitted by applicant himself online; respective department/agencies/institutions may verify documents/credentials from CE holders if so deem fit."
- (d) If it is detected at a later date, after issuance of Certificate in real time, that such certificate has been issued on the basis of false information or in violation of any provisions of relevant sections of the Act and relevant regulations of the Kolkata Municipal Corporation, then such certificate shall be cancelled forthwith.

##### **(II) Offline :**

The Commissioner, or in his absence, the official/ employee of the Corporation authorized in this behalf, on receipt of the applications and requisite documents and on receipt of prescribed fees shall within three (03) working days from the date of receipt of the application, issue a Certificate; as the case may be, to the applicant concerned or reject the application, if it is not, in order.

In case of rejection of any application, the Commissioner or employee/ official authorized by him in this behalf shall communicate the applicant the reason of such rejection within three 03 days of such rejection.



Clause 8(l) (d) will be also applicable in respect of certificate issued offline.

*Note* : Immediately after issuance of certificate in offline mode all data thereof will be entered in the computerized system and the certificate holder will be able to exercise online option, if so desires. for later activities like renewal, change, correction & closure.

**9. Modalities of New Issuance & Renewal of Certificate of Enlistment.—**

- (a) Certificate of Enlistment may be issued/renewed for all professions, trades and callings as categorized in Schedule IV for a period of one financial year or for such multiple financial years as specified in this 'Guidelines', on payment of fees paid for one year or consolidated fees for such multiple years as per the rate specified in the Budget Schedule.
- (b) Whatever be the initial period of validity of a certificate. the CE holder, on expiration of that period, can apply for renewal for any number of years as is permitted. i.e.. for 1 (one) / 3 (three) / 5 (five) / 15 (fifteen) years.
- (c) For Warehouse/Godown/Aarat/Store/Stockist in addition to the above there will be facility for "Lifetime" CE issuance/renewal if so opted by the trader on payment of such consolidated fees for 20 (twenty) years. Life time certificate, once obtained, either initially or at the time of renewal does not require renewal.
- (d) Even if the business is closed much earlier than the expiry of such period the fees shall not be refunded.
- (e) The Certificate, if not renewed in due time, shall be deemed to be lapsed/expired. However, after the due date certificate can be renewed in real time upon online application under section 199 subject to up-to-date payment with all arrears including late fines as prescribed in the budget schedule.
- (f) New demand for CE lying unpaid for 30(thirty) days will expire automatically and the applicant has to apply afresh.
- (g) Certificate for letting out of Ceremonial Houses will be guided by the provisions stated in the Kolkata Municipal Corporation (Control. Restraint and Levy of fees and Charges upon premises permitted to let out for holding Ceremonial Functions) Regulations. 2003. Provisions of Clause 8(l)(d) will be applicable for in case of violation.

**10. Validity and renewal of the certificate.—**(1) The Certificate issued under clause 8 shall remain valid for a period of one financial year or for the period of 3(three) / 5(five) / 15 (fifteen) years.

For Warehouse/Godown/Aarat/Store/Stockist in addition to 1/3/5/15 years there will be facility for "Lifetime" certificate, if so opted by the trader, on payment of consolidated fees for 20 (twenty) years. Application for life time certificate can be made for the first time or at the time of renewal.

(2) Within 3 (three) months from the expiry of the certificate, it shall be renewed by the holder for a further period of 1(one) year or for such multiple years as per option exercised by the applicant online on payment yearly fees. or consolidated fees for multiple years as the case may be.

26. As would appear from the above, the same also requires a self-declaration to be submitted containing all particulars of Annexure I and Annexure II. Although, a lot of stress has been placed by Mr. Kar, to, *inter alia*, contend that an application for grant of certificate of



enlistment mandatorily requires authorisation for change of use, I have not been able to identify any such requirement from the relevant section and the guidelines.

27. Insofar as the regulation of building uses is concerned, the same finds place in Chapter XXXIII of the said Act. Section 416 of the said Act prohibits the change of use of building without permission. The same provides that no person shall, without any written permission of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, or such permission use or permit to be used for the purpose of human habitation any part of a building not originally erected or authorised to be used for such purpose; change or allow the change of the use of any building for any purpose other than that specified in the sanction under Section 396; 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; convert or allow the conversion of a tenement under a particular occupancy or use group to a tenement under another occupancy group or use group provided 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. To morefully appreciate the same, the relevant section is extracted hereinbelow:-

**“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, or such permission,—*

- (a) *use or permit to be used for the purpose of human habitation any part of a building not originally erected or authorised to be used for such purpose;*
- (b) *change or allow the change or the use of any building for any purpose other than that specified in the sanction under section 396;*



(c) *change or allow the change or the use of any building eroded 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 rates 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 rates 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] of the [Kolkata] Municipal Act, 1951 (West Ben. Act XXXIII of 1951), shall be deemed to be an unauthorised 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] 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 or 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 inking any action or making any order in pursuance of the provisions or this section.*

*(9) Every order made by the Municipal Building Tribunal on appeal and subject to such order, the order or 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 or appeal, whether with or without modification, the person against whom such order has 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.”*

28. In this context, it may be necessary to note that the Special Officer (Building) while dealing with the above issue has made the following observations.

*“Whereas as per section 416(1)(d) of the K.M.C. Act, 1980 implements that No person shall without any written permission of the Municipal Commissioner or otherwise than in conformity with the conditions, if*



*any, of such permission convert or allow the conversion of a tenement under a particular occupancy or use group to a tenement under another occupancy or use group.*

*For such change as per section 416(2) of the K.M.C. Act, 1980 unless necessary alterations 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. For which it may be noted that already notice under section 416(5) of the said Act has been issued in respect of the said premises by the Building Department.*

*That as per prevailing system of K.M.C change of use of any nature of a building if done by any person/occupier/owner to apply before the Building Department with relevant documents for such change of use along with appropriate plan of such change with other statutory certificate for permissible for such changes. Thereafter, Building Department will examine and inspect the site with all documents and will give their appropriate decision of such change of use.*

*In this respect the application made by the applicant for change of use on the ground floor of the premises on 12.04.2024 for conversion Cinema Hall into Garment Shop for running livelihood of the employees. Prior to that application, concerned Executive Engineer already issue notice under section 416(5) of the K.M.C. Act, 1980 on 04.04.2024 which indicates stop forthwith of such unauthorized use of such change.*

*That while going through the documents in respect of the sub-lease deed dated 10.11.2023 and main lease deed dated 11.10.2012 it indicates that the said premises only use for Cinema business and other allied purposes by the lessee and also by his associate and subsidiary companies wherein the Lessee is directly involved. Wherein sub-lease deed dated 10.11.2023 indicates that the said demised premises only use for distribution, exhibition and exploitation of feature films and for cinema business and other allied business as permitted under the Head Leases after procuring necessary permissions.*



*Hence from the above, it can be observed that the Hon'ble High Court Division Bench, wherein allowing the P.R. for carrying out their business at the said premises. Simultaneously, documents submitted by the parties which reflects that there is a violation or misuse of the said premises in respect of running of the business as granted by the Lessor/Owner in the main Lease Deed dated 11.10.2012.*

*In view of above observation, it can be concluded that change of use as done by the P/R without appropriate permission from the KMC authority tantamounts to violation followed by the usage of the said permission as mentioned in the lease deeds dated 11/10/2012 and 10/11/2023 as stated above, for which said change of use is disallowed.”*

29. Challenge to the aforesaid order is now pending before the Tribunal. The question that arises for consideration is whether non-grant of a change of use, which is otherwise not impermissible in terms of the provisions of this Act and when a challenge thereto is pending before the Tribunal, can the grant of certificate of enlistment by the municipality be construed to be bad and whether the petitioner can have any right to seek cancellation of such certificate of enlistment.
30. In this context, it may be relevant to note that the Coordinate Bench of this Court in the case of ***In re: Venode Kumar Jalan v. Calcutta Municipal Corporation & Ors.***, reported in **1987 SCC OnLine Cal 158** and the Division Bench of this Court in the case of ***The Chairman, Khardah Municipality & Anr. v. M/s. Annapurna Bakery & Anr.***, reported in **1996 SCC OnLine Cal 186**, was of the view that though under the pre-amended provision an enquiry was required to be made by the Municipal Commissioner, such enquiry did not authorise the Commissioner to embark upon an enquiry into the title. The same view has been reiterated in the case of ***Raghnathpur Municipality & Ors. v. Sabita Chowdhury & Anr.***, reported in **2019 SCC Online Cal 5947**. Another Coordinate Bench of this Court in the case of ***Subir Bhowmick v. The State of West Bengal & Ors.***, reported in **2018 SCC OnLine Cal 7639**, after considering the scope of enquiry as contemplated under the



provisions of both the Kolkata Municipal Corporation Act, 1980 including its amended provisions and the West Bengal Municipal Act 1993, and diverse authorities including the case of **Indu Bhushan Bhattacharya v. Swaroop Kumar Shah** delivered by the Division Bench of this Court rendered in AST 216 of 2012 dated 4<sup>th</sup> October, 2012, had noted that the municipality should limit this enquiry with regard to the requirement of the provisions and nothing else, and despite a provision having being made under the prescribed form for production of landlord consent, the municipal authorities cannot refuse to grant certificate of enlistment to the petitioner who intends to be engaged in a trade within the municipal area for non-production of such landlord's consent letter. In other words, the Court directed the enquiry to be confined strictly to the provisions of the specific section of statute.

31. In my view, the grant of certificate of enlistment does not stand on the same footing as of an unauthorised construction, nor can the same be considered to be a social evil, for any individual to object of such grant. It is well-settled that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the authority/officer concerned and there is a failure on the part of that authority/officer to discharge the statutory obligation. The chief function of the writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunal and officers exercising public functions within the limits of their jurisdiction. Reliance in this regard is placed on the judgment delivered by the Hon'ble Supreme Court in the case of **Union of India & Ors. v. C. Krishna Reddy**, reported in **(2003) 12 SCC 627**. Therefore, for this Court to exercise jurisdiction and issue a writ of mandamus to compel the authorities to do certain acts, the petitioner must be able to demonstrate that there is a statute which imposes a legal duty/obligation and the aggrieved party has a legal right under the statute to enforce its performance. Admittedly, in the present case, I find that originally, the business carried on from the said premises was exhibition of Cinematograph films which in terms of Schedule V read



with Section 435 specifically required a municipal licence to use the same. In this context, I may note that Chapter XXV of the said Act, which engrafts Section 435 provides that a premises is not to be used for non-residential purpose without licence. As such, the building in question which was running a cinema hall was run for non-residential purpose with the sanction of the municipal authority in the form of a licence, and was not a prohibited business within the meaning of the schedule. To morefully appreciate the same, Section 435 is extracted hereinbelow: -

**“435. Premises not to be used for non-residential purpose without municipal license.—***(1) Except as hereinafter provided in this Act, no person shall use or permit to be used any premises for any of the non-residential purposes mentioned in schedule V without or otherwise than in conformity with the terms of a municipal licence granted by the Municipal Commissioner so as not to contravene the provisions of sub-section (2):*

*Provided that no such municipal licence shall be given in respect of any non-residential use of a premises which is otherwise than in conformity with the provisions of this Act or any other law for the time being in force or the rates or the regulations or orders made thereunder.*

*(2) In case of a non-residential use of a premises for a purpose for which a licence or permission is required from Government or any statutory body under any law for the time being in force, no municipal licence under this section shall be given until the licence or permission under the said law has been produced before the Municipal Commissioner, and duly authenticated copies thereof are submitted to him:*

*Provided that in the case where production of a municipal licence is a precondition for the gram ora licence under any other law for the time being in force, the Municipal Commissioner may grant a provisional municipal licence which shall become final only upon production of a licence or permission under the said law;*



*Provided further that such provisional municipal licence shall have validity only for the purpose of fulfilling the preconditions of the licence under any other law as aforesaid.*

*(3) In specifying the terms of a licence granted under this section, the Municipal Commissioner may require the licensee to take all or any of such measures as he may deem fit to guard against danger to the, health or property or for the abatement of nuisance of any kind.*

*(4) The Corporation shall by regulation determine the fees to be paid in respect of a municipal licence to be granted under sub-section (1), and may specify different fees for different categories of non-residential uses in different areas of [Kolkata]:*

*Provided that no such fees shall exceed rupees two thousand and five hundred in any case.*

*(5) The Corporation may by regulation determine the following:—*

*(a) when the initial licence is to be taken out and the procedure of annual renewal thereof;*

*(b) matters connected with the display of licence, inspection of premises, powers of inspectors, and such other matters.*

*(6) The Municipal Commissioner shall maintain two separate registers in such form and in such manner as may be prescribed so that in respect of each municipal licence granted under this section,—*

*(a) one register shall contain 'premises wise' information on the non-residential uses, and*

*(b) one register shall contain such information, on basis of different 'non-residential user groups', for factories, warehouses, medical institutions, educational institutions and others as may be prescribed."*

32. It is an admitted position that the cinema hall has since closed down long back and the building in question as admitted by the parties is now a 'Mercantile building' within the meaning of Section 390(2)(f) of the said Act. It is not the case of the parties that the building is a residential building. The petitioner in fact has made a statement that he carries on commercial business from the small stall at the entrance of



the aforesaid Mercantile building. It is not the case of the petitioner that it has stopped carrying on commercial business from the said 'mercantile building'. Though, Mr. Kar, has attempted to contend by placing reliance on the order passed by the Coordinate Bench in GA 2 of 2025, that the petitioner's locus to object to the grant of certificate of enlistment and change of use had already been decided in favour of the petitioner, in my view, the aforesaid question was neither argued nor dealt with by the Coordinate Bench. A perusal of the order dated 15<sup>th</sup> January, 2025 passed in WPO 1234 of 2024 would reveal that the petitioner was the complainant and at the instance of the petitioner complaining of unauthorised construction and/or wrongful use of Paradise Cinema Hall that the writ petition was disposed of by the order dated 22<sup>nd</sup> May, 2024, directing the Commissioner, Kolkata Municipal Corporation or its delegate to decide on the issue of running the business from the said premises, which resulted in the order dated 4<sup>th</sup> December 2024. Since, the order dated 4<sup>th</sup> December, 2024 formed subject matter of challenge in WPO 1234 of 2024, the application for addition being GA 2 of 2025 was allowed. To morefully appreciate the same, the aforesaid order dated 15<sup>th</sup> January, 2025 passed in GA 2 of 2025 filed in connection with WPO 1234 of 2024 is extracted hereinbelow: -

*"The Court: It appears that the order impugned in this writ petition was based on a complaint filed by the applicant.*

*In that view of the matter, GA/2/2025 for addition of party is allowed.*

*The petitioner will be at liberty to correct the cause-title.*

*Accordingly, let a copy of the amended writ petition be served upon the applicant within a period of one week from date.*

*List this matter after one week under the same heading.*

*Interim order granted earlier is extended for a further period of one month.*



*The Corporation is restrained from taking any coercive steps against the petitioner for a period of one month.”*

33. The said order does not deal with the issues raised herein or the locus of the petitioner to object to the grant of certificate of enlistment. Such issue was not raised before this Court either in WPO 414 of 2024 or in WPO 1234 of 2024. Simply because, the respondent nos. 18 and 19 as appellants before the Building Tribunal, while maintaining a challenge to the order dated 4<sup>th</sup> December, 2024 has arrayed the petitioner as a party respondent, the same cannot authorise the petitioner to object to the grant of the certificate of enlistment. This apart, certificate of enlistment, in my view, is only the first step for running a business operation, which is otherwise not prohibited by law. Admittedly, the business operation, which the respondent nos. 18 and 19 were running are not prohibited business. Further, for the petitioner to object to the grant of certificate of enlistment, the petitioner must be in a position to demonstrate that the petitioner had a right to object and was otherwise entitled to notice in connection with grant of certificate of enlistment by the municipal authorities. Having regard to the provisions contained under Section 199 of the said Act, and the guidelines framed thereunder, this Court did not find any scope or opportunity available to the petitioner to object to the grant of certificate of enlistment. Since the statute does not provide for any opportunity to the petitioner to be entitled to a notice to object to the grant of certificate of enlistment, in my view, the petitioner does not have the legal right to challenge the grant. In this regard, I must note that Mr. Kar, learned advocate for the petitioner to sustain the petition had submitted that the petition was not limited to a mere challenge to the certificate of enlistment but is a challenge to the patent and continuous illegality committed by the respondents in illegally obtaining the certificate of enlistment. Unfortunately, having regard to the observation made hereinabove, I am afraid unless the petitioner can establish that he has a right to object to



the grant of certificate of enlistment, he cannot complain of any wrong being committed against him in the petitioner obtaining the certificate. The judgments relied on by Mr. Kar deal with illegal construction which stands on a different footing than a grant of certificate of enlistment. The judgment delivered in the case of **Sri K. Ramadas Shenoy** (supra), **Dipak Kumar Mukherjee** (supra), **Smt. Banasri Mondal** (supra), **Jamila Khatoon & Ors.** (supra), **Shadab Jahan Begum & Ors.** (supra) deal with the issue of illegal construction, and as noted above the same stands on a different footing, and as such are distinguishable on facts. The judgment delivered in the case of **Lutfor Rahaman Sarkar & Ors.** (supra) deals with the issue of carrying out a business of boarding house in a residential premises. In such case as well, the Court did not direct cancellation of the certificate of enlistment. Such case also dealt with illegal construction. As such the above judgments do not assist the petitioner.

34. Thus, the petitioner having not been able to demonstrate what legal right of the petitioner has been infringed, the present petition at the instance of the petitioner who is also carrying on commercial business from the mercantile building, is not maintainable. I may however, add that though, a grant of certificate of enlistment may not authorise the party to carry on business contrary to the other provisions of the statute, however, a grant of certificate of enlistment in the given facts cannot be said to be bad especially when, a challenge to the order rejecting the change of use is pending before the Tribunal. I also notice that the application for obtaining certificate of enlistment online was made at a point of time when there was a subsisting interim order passed in WPO 1234 of 2024.
35. There is another aspect of the matter though, the Division Bench by its order by dated 16<sup>th</sup> February, 2026 as and by way of interim measure had only directed the municipality to ensure that the respondent nos. 18 and 19 do not carry out the business operation, however, the municipality being overzealous without seeking leave of



this Court had purported to cancel the certificate of enlistment despite that the main matter was pending before this Court by citing the order of the Hon'ble Division Bench. Though Mr. Kar had insisted that in absence of any application this Court should not interfere, however, this Court has taken a very serious view of the matter and strongly believes that the steps taken by the Municipal Commissioner to cancel the licence undermines the majesty of the Court especially when there was no directive by the Division Bench or this Court to cancel the licence and the parent issue was at large and under consideration of this Court. In the given facts, this Court to restore public confidence in the judiciary which has been eroded by the overzealous act of cancellation of the certificate of enlistment, feels it appropriate that the order passed by the municipality, which has been passed without seeking leave, should be set aside and accordingly, quashes the same.

36. Considering the fact that the appeal from the order of rejection of change of use is pending for some time now, in the fitness of things, it is only appropriate that the Municipal Building Tribunal should be and is accordingly directed to by considering the fact that the livelihood of several persons is at stake, conclude the proceedings on an expeditious basis preferably within a period of one month from the date of communication of this order.

37. With the above observations and directions, the writ petition being WPO 491 of 2025, along with the connected application, if any, stand disposed of.

38. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be made available to the parties, on priority basis, upon compliance of all formalities.

**(RAJA BASU CHOWDHURY, J.)**