

**(2006) 08 CAL CK 0050**

**Calcutta High Court**

**Case No:** APO No. 280 of 2003, W. P. No. 3915 of 1994

The Kolkata Municipal  
Corporation and Others

APPELLANT

Vs

Hallmark Consultants P. Ltd. and  
Special Officer (Building) K.M.C.  
and Another

RESPONDENT

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**Date of Decision:** Aug. 25, 2006

**Citation:** 110 CWN 935 : (2007) 1 ILR (Cal) 137

**Hon'ble Judges:** Tapan Kumar Mukherjee, J; Ashim Kumar Banerjee, J

**Bench:** Division Bench

**Advocate:** ;Barin Banerjee and Rama Banerjee for K.M.C., for the Respondent

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### **Judgement**

1. Despite being informed, none appears on behalf of the writ Petitioner/Respondent No. 1.
2. Mr. L. C. Bihani, learned senior Counsel who appeared for the writ Petitioner before the learned single Judge at our request has appeared before us and has informed this Court that he has no instruction in the matter. Mr. Bihani further submits that he has already contacted his Advocate on-Record. However, he has not been given any instruction to appear in this matter on behalf of the writ Petitioner/Respondent No. 1.
3. In such view of the matter, we proceed to hear this matter ex parte.
4. The writ Petitioner/Respondent No. 1 constructed a building within the Municipal limits of the Kolkata Municipal Corporation. A portion of the ground floor of the said building was to be kept earmarked for car parking space so sanctioned by the Municipal Corporation. The writ Petitioner/Respondent No. 1 deviated from the said plan by converting the car parking space into commercial shops and thereby not only violated the Building Rules but also the Rules relating to change of user. No revised plan was submitted prior to construction. However, the writ Petitioner/

Respondent No. 1 applied for sanction of the revised plan after the construction was carried out. There had been change of user without prior permission from the Municipal Corporation as required in law. When the notice of demolition was given by the Corporation the writ Petitioner raised objection. The Hearing Officer upon hearing the parties allowed the writ Petitioner to retain the unauthorised construction on condition that they would make payment of the penalty as per the prescribed fees stipulated by the Corporation for that purpose. The writ Petitioner paid a sum of Rs. 1 lac on account of such penalty and then filed the instant writ petition before this Court. The learned single Judge upon hearing the parties allowed the writ Petitioner/Respondent No. 1 by quashing the order of the Hearing Officer to the extent where he directed payment of penalty. Learned Judge found that the Statute did not empower the Corporation to levy any such penalty. Identical question was gone into by the Division Bench of our Court in ILR 1977 1 Cal 615 (WO Brothers V. Commissioner, Corporation of Calcutta). In the said decision the earlier Municipal Act of 1951 was considered by the Division Bench where an identical provision was made empowering the Corporation to demolish the unauthorised construction. 414 of the said Act 1951 was considered by Their Lordships which is *pari materia* with 400 of the present Municipal Act, 1980. Their Lordships ultimately held that the policy of laying down the fees cannot be said to be arbitrary and it applies in all cases where unauthorised construction is allowed to stand. Their Lordships were of the view that once the owner comes on an illegal construction in violation of the Statute, if such unauthorised construction is regularised by the order of retention, they must be penalised at the rate so prescribed by the Municipal Rules/ Regulations and that cannot be said to be arbitrary. We do not find any scope of disagreement with Their Lordships. The learned Judge, in our view, has not applied the ratio decide by, the Division Bench in WO Brothers (*supra*) in its true spirit.

5. The judgment and order of the learned single judge impugned herein is quashed and set aside.

6. APO No. 280 of 2003 is disposed of accordingly without, however, any order as to costs.

7. Xerox certified copy of this order be made available to the parties, if applied for, upon compliance of all formalities.