

negligence, to any claim for compensation for any damage, detriment, inconvenience or nuisance caused by it or any one employed by it, in the exercise of any of the powers conferred by sub-section (1).

(3) The Municipal Commissioner may, on an application from the owner or owners of a private street, make arrangements for the lighting of such streets on such terms as the Mayor-in-Council may specify and upon such arrangements, shall, in respect of such street, exercise all the powers conferred by this section.

388. Prohibition for removal, etc. of lamps.—(1) No person shall, without any lawful authority, take away or wilfully or negligently break or throw down or damage—

- (a) any lamp or any appurtenance of any lamp or lamp post or lamp iron set up in any public street or any public place;
- (b) any electric wire for lighting such lamp;
- (c) any post, pole, standard, stay, strut, bracket or other contrivance for carrying, suspending or supporting any electric wire or lamp.

(2) No person shall wilfully or negligently extinguish the light of any lamp set up in any public street or any public place.

(3) If any person wilfully or through negligence breaks or causes any damage to anything referred to in sub-section (1), he shall, in addition to any penalty to which he may be subject under this Act, pay the expenses of repairing the damage so caused by him.

389. Power to take measures for generation of electricity.—The Corporation may on its own or in collaboration with any one erect plants for the generation of electric power subject to such regulations as may be made in this behalf.

CHAPTER XXII

Buildings

A. Procedure

390. Definitions.—In this Chapter, unless the context otherwise requires,—

(1) The expression “to erect a building” means—

- (a) to erect a new building on any site, whether previously built upon or not;
- (b) to re-erect—
 - (i) any building of which more than one-half of the cubical contents above the level of plinth have been pulled down, burnt or destroyed, or
 - (ii) any building of which more than one-half of the superficial area of the external walls above the levels of plinth has been pulled down, or
 - (iii) any frame-building of which more than half of the number of posts or beams in the external walls have been pulled down;

- (c) to convert into a dwelling house any building or any part of a building not originally constructed for human habitation or, if originally constructed for human habitation, subsequently appropriated for any other purpose;
- (d) to convert into more than one dwelling house a building originally constructed as one dwelling house only;
- (e) to convert into a place of religious worship or a sacred building any place or building not originally constructed for such purpose;
- (f) to roof or cover an open space between walls or buildings to the extent of the structure formed by the roofing or covering of such space;
- (g) to convert two or more tenement in a building into a greater or lesser number of such tenement;
- (h) to convert into a stall, shop, office, warehouse or godown, workshop, factory or garage any building not originally constructed for use as such, or to convert any building constructed for such purpose, by sub-division or addition, in greater or lesser number of such stalls, shops, offices, warehouses or godowns, workshops, factories or garages;
- (i) to convert a building, which when originally constructed was legally exempt from the operation of any building regulations, contained in this Act, or under any rules or regulations made under this Act, or contained in any other law in force for the time being, into a building which, had it been originally erected in its converted form, would have been subject to such building regulations;
- (j) to convert into or use as a dwelling house any building which has been discontinued as or appropriated for any purpose other than a dwelling house;
- (k) to make any addition to a building;
- (l) to close permanently any door or window in any external wall;
- (m) to remove or reconstruct the principal staircase or to alter its position;

(2) "occupancy" or "use group" means the principal occupancy for which a building or part of a building is used or intended to be used. For the purpose of classification of a building according to occupancy, an occupancy shall be deemed to include subsidiary occupancies which are contingent upon it. Building with mixed occupancies shall mean those buildings in which more than one occupancy are present in different portions thereof. The occupancy classification shall, unless, otherwise spelt out in any development plan under any law in force for the time being, include—

- (a) residential buildings, that is to say, any buildings in which sleeping accommodation is provided for normal residential purposes with or without cooking facility or dining facility or both;

such building shall include one or two or multi-family dwellings, ¹[***], hostels, ²[***] apartment houses and flats, and private garages;

- (b) educational buildings, that is to say, any buildings used for school, college or day-care purposes involving assembly for instruction, education or recreation incidental to educational buildings;
- (c) institutional buildings, that is to say, any buildings or part thereof ordinarily providing sleeping accommodation for occupants and used for the purposes of medical or other treatment or care of persons suffering from physical or mental illness, disease or infirmity, care of infants, convalescents or aged persons and or penal for correctional detention in which the liberty of the inmates is restricted; such buildings shall include hospitals, clinics, dispensaries, sanatoria, custodial institutions and penal institutions like jails, prisons, mental hospitals and reformatories;
- (d) assembly buildings, that is to say, any buildings or part thereof where groups of people congregate or gather for amusement or recreation or for social, religious, patriotic, civil travel, sports, and similar other purposes, such buildings shall include theatres, motion picture houses, drive-in-theatres, city halls, town halls, auditoria, exhibition halls, museums, skating rinks, gymnasium, restaurants, eating houses, hotels, boarding houses, ³[lodging or rooming houses, guest-houses, dormitories,] places of worship, dance halls, club rooms, gymkhana, passenger stations and terminals of air, surface and other public transportation services, recreation piers, and stadia;
- (e) business buildings, that is to say, any buildings or part thereof used for transaction of business for the keeping of accounts and records or for similar purposes; such buildings shall include offices, banks, professional establishments, court houses, and libraries for the principal function of transaction of public business and keeping of books and records, and shall also include office buildings (premises) solely or principally used as an office or for office purpose.

Explanation.—For the purposes of this clause,—

- (i) the expression “office purpose” shall include the purpose of administration and clerical work (including telephone and telegraph operating and operating computers), and
- (ii) the expression “clerical work” shall include writing, book-keeping, sorting papers, typing, filing, duplicating, punching

1. Words “lodging or rooming house,” omitted by s. 16(i)(A) of the Calcutta Municipal Corporation (Amendment) Act, 1996 (West Ben. Act VI of 1996), w.r.e.f. 4.12.1995.
2. Word “dormitories,” omitted by s. 16(i)(B), *ibid*, w.r.e.f. 4.12.1995.
3. Ins. by s. 16(iii), *ibid*, w.r.e.f. 4.12.1995.

- cards or tapes, machine calculating, drawing of matter for publication, and editorial preparation of matter for publications;
- (f) mercantile buildings, that is to say, any buildings or part thereof used as shops, stores or markets for display or sale of merchandise, either wholesale or retail, or for office, storage or service facilities incidental to the sale of merchandise and located in the same building; such building shall include establishments wholly or partly engaged in wholesale trade, manufacturer's wholesale outlets (including related storage facilities), warehouses, and establishments engaged in truck transport (including truck transport booking agencies);
 - (g) industrial buildings, that is to say, any buildings or structures or part thereof in which products or materials of all kinds and properties are fabricated, assembled or processed as in assembly plants; such buildings shall include laboratories, power plants, smoke houses, refineries, gas plants, mills, dairies, factories, workshops, automobile repair garages, and printing presses;
 - (h) storage buildings, that is to say, any buildings or part thereof used primarily for the storage or sheltering of goods, wares or merchandise as in warehouses; such building shall include cold storages, freight depots, transit sheds, store houses, public garages, hangars, truck terminals, grain elevators, barns and stables;
 - (i) hazardous building, that is to say, any buildings or part thereof used for the storage, handling, manufacture or processing of highly combustible or explosive materials or products which are liable to burn with extreme rapidity or which may produce poisonous fumes or explosions during storage, handling, manufacture or processing or which involve highly corrosive, toxic or noxious alkalies, acids or other liquids or chemicals producing flames, fumes, explosions or mixtures of dust or which result in the division of matters into fine particles subject to spontaneous ignition.
- 1[***]

(3) "alteration" means the change from one occupancy to another, or the structural change, such as the addition to any area or height, or the removal of a part of a building or the change to the structure, such as the construction or cutting into or removal of any wall, partition, column, beam, joist, floor, or other support, or the change to or closing of any required means of ingress or egress, or the change to any fixture or equipment.

391. Municipal Building Committee.—(1) The Mayor-in-Council shall constitute a Municipal Building Committee with the Municipal Commissioner as its Chairman and an officer of the Corporation as its convenor.

1. Sub-clause (i) omitted by s. 16(iv) of the Calcutta Municipal Corporation (Amendment) Act, 1996 (West Ben. Act VI of 1996), w.r.e.f. 4.12.1995, which stood as under :
 "(i) high rise buildings, that is to say, buildings the height of any of which exceeds thirteen and a half metres;"

(2) The Committee shall have, in addition to the Chairman and the convener, ¹[²[eight] other members] of whom—

- (a) one shall be a nominee of the Kolkata Metropolitan Development Authority,
- (b) one shall be a nominee of the Commissioner of Police, Kolkata, ³[***]
- (c) one shall be the Director of West Bengal Fire Services ⁴[or his nominees],
- ⁵[(d) one shall be a nominee of the State Government, ⁶[***],
- (e) one shall be the Chief Engineer, Municipal Engineering Directorate, ⁷[Department of Municipal Affairs,] Government of West Bengal, ⁸[or his nominee,]
- ⁹[(f) one shall be an architect of repute to be selected in consultation with the Council of Architecture constituted under section 3 of the Architects Act 1972 (20 of 1972), ¹⁰[***],
- (g) one shall be a Town Planner of repute to be selected in consultation with the Institute of Town Planners of ¹¹[India, and]],
- ¹²[(h) one shall be a nominee of the Department of Environment, Government of West Bengal.]

(3) The Committee may co-opt one person to be nominated by the concerned department of Government while dealing with any case regarding educational building or institutional building or assembly building or industrial building or hazardous building.

(4) The Committee shall meet at such periodical interval as may be ¹³[determined by the Mayor-in-Council :]

1. Words "five other members" subs. by s. 2(1) of the Calcutta Municipal Corporation (Amendment) Act, 1989 (West Ben. Act XV of 1989), for the original words "three other members".
2. Subs. by s. 28(1) of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Ben. Act XXVI of 1997), w.e.f. 22.12.1997, for "seven", which was earlier subs. by s. 17(a) of the Calcutta Municipal Corporation (Amendment) Act, 1996 (West Ben. Act VI of 1996), w.r.e.f. 4.12.1995, for "nine".
3. Word "and" omitted by s. 2(2) of the Calcutta Municipal Corporation (Amendment) Act, 1989 (West Ben. Act XV of 1989).
4. Subs. by s. 2(3), *ibid*, for the words "or his nominee."
5. Clauses (d) and (e) added by s. 2(4), *ibid*.
6. Word "and" omitted by s. 17(b) of the Calcutta Municipal Corporation (Amendment) Act, 1996 (West Ben. Act VI of 1996), w.r.e.f. 4.12.1995.
7. Subs. by s. 17(c), *ibid*, w.r.e.f. 4.12.1995, for the word "Development of Local Government and Urban Development".
8. Ins. by s. 10 of the Kolkata Municipal Corporation (Amendment) Act, 2003 (West Ben. Act, XXXIV of 2003), w.e.f. 1.6.2004.
9. Clauses (f) and (g) ins. by s. 17(d), *ibid*, w.r.e.f. 4.12.1995.
10. Word "and" omitted by s. 28(2) of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Ben. Act XXVI of 1997), w.e.f. 22.12.1997.
11. Subs. by s. 28(3), *ibid*, w.e.f. 22.12.1997, for the word "India".
12. Clause (h) ins. by s. 28(4), *ibid*, w.e.f. 22.12.1997.
13. Subs. by s. 16 of the Calcutta Municipal Corporation (Amendment) Act, 1988 (West Ben. Act XXI of 1988), w.e.f. 20.2.1989, for the words "provided by regulations."

Provided that ordinarily at least three meetings shall be held during every calendar month.

(5) The Committee shall, 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, scrutinize every application for erection or re-erection of a building for which notice has been received under section 393 or section 394, except for a residential building to be erected or re-erected on a plot of 500 square metres or less of land, and shall forward its recommendations to the Mayor-in-Council :

Provided that during such scrutiny the Committee shall consider matters related to preserving, developing and maintaining the aesthetic quality of urban and environmental design within Calcutta and shall, in respect of any building or any execution of work, if it affects or is likely to affect the skyline or the aesthetic quality of urban or environmental design, or any public amenity therein, recommended on such matters also :

Provided further that in respect of any building or execution of any work, if such building or work affects or is likely to affect—

- (a) the functioning of microwave systems for telecommunication purposes, or
 - (b) any functions for purposes of civil aviation, the Committee shall, in accordance with such rules as may be framed in consultation with such departments or agencies of Government as have control on such matters, refer such cases to such Departments for their opinions before finalizing its recommendations.
- (6) The Mayor-in-Council may refer any other matter, included in this Chapter, to the Committee for its scrutiny and recommendation.

(7) The Mayor-in-Council shall consider the recommendations of the Committee and, in case of any modification, alteration or cancellation of the same, shall record the reasons thereof in writing.

392. Prohibition of building without sanction.—No person shall erect or commence to erect any building or execute any of the works specified in section 390 except with the previous sanction of the Municipal Commissioner and in accordance with the provisions of this Chapter and of the rules and the regulations made under this Act in relation to such erection of building or execution of work ¹[and on payment of such fee as may be determined by the Corporation].

²[Provided that in case of allowing incremental Floor Area Ratio over and above the prescribed limit of Floor Area Ratio in the prescribed manner, rate or fee or charge payable for additional Floor Area Ratio shall be decided in terms of "Circle Rates" of State Government, and the formula for this purpose shall be finalised by the State Government, and all such additional rate or fees or charges to be collected on account of granting of additional Floor Area

1. Ins. by s. 9(i) of the Kolkata Municipal Corporation (Amendment) Act, 2014 (West Ben. Act XIX of 2014), w.e.f. 15.1.2015.

2. Proviso added by s. 9(ii), *ibid*, w.e.f. 15.1.2015.

Ratio will be payable to the State Exchequer directly, and as may be decided by the State Government, a portion of the collected rate or fees or charges shall be allotted or transferred to the Corporation for undertaking developmental schemes.]

¹[393. Erection of building.—Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form together with such fees including Drainage Development fee and containing such information as may be prescribed :

Provided that the Corporation may also levy fees under this section with retrospective effect.]

²[393A. Submission of on-line application form for sanction of building plan.—(1) Notwithstanding anything contained in this Act, the Corporation may make it mandatory for submission of application for sanction of building plan through on-line either for all or any of the categories of buildings, or for construction of building in any specific area or the entire area within its jurisdiction, and the process of submission of on-line application shall commence on and from the date as may be notified by the State Government in consultation with the Corporation.

(2) Upon issuance of notification by the State Government under sub-section (1), the provision of section 393 shall not be applicable to the categories of buildings or areas of the Corporation which have been notified by the State Government for implementation of this section.

(3) For making provision of submission of on-line application under sub-section (1), the Corporation shall make wide publication in such manner, as may be prescribed.

(4) All the applications in this section shall be submitted to the Municipal Commissioner in soft form along with soft copies of such documents and plans as may be prescribed, and the modalities for submission of on-line application forms together with fee under this section shall be such as may be prescribed.]

394. Application for addition to or repairs of buildings.—(1) Every person who intends to execute any of the works specified in ³[clause (b) to clause (m)] of sub-section (1) of section 390 shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form and containing such information as may be prescribed.

1. Subs. by s. 7 of the Kolkata Municipal Corporation (Amendment) Act, 2010 (West Ben. Act IV of 2010), w.e.f. 1.6.2010, which was earlier as follows :

"393. Erection of building.—(1) Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form and containing such information as may be prescribed.

(2) Every such notice shall be accompanied by such documents and plans as may be prescribed."

2. Section 393A ins. by s. 10 of the Kolkata Municipal Corporation (Amendment) Act, 2014 (West Ben. Act XIX of 2014), w.e.f. 15.1.2015.

3. Subs. by s. 35 of the Calcutta Municipal Corporation (Second Amendment) Act, 1984 (West Ben. Act XIII of 1984), w.e.f. 15.5.1984, for words, brackets and letter "clause (b)".

(2) Every such notice shall be accompanied by such documents and plans as may be prescribed.

¹[(3) For additional, alteration and repair of any building, falling under the categories of buildings which shall be notified by the State Government under sub-section (1) of section 393A, the modalities, as specified in section 393A shall be followed *mutatis mutandis*.]

395. Purpose for which building to be used and conditions of validity of notice.—(1) Every person giving any notice of his intention to erect a building under section 393 shall specify the purpose for which such building is intended to be used :

Provided that for any building, not more than one class of use, consistent with the occupancy or the use group within the meaning of sub-section (2) of section 390, shall be considered except in respect of the cases where, under this Act or any other law in force for the time being, mixed occupancies of specified nature may be permissible.

(2) Every person giving any notice under section 394 of his intention to execute any of the works specified in clause (b) of sub-section (1) of section 390 shall specify whether the purpose for which such work is intended to be executed is proposed, or is likely, to be changed by such execution of work :

Provided that if such change would result in mixed occupancies which are contrary to the provisions of this Act or of any other law in force for the time being, such change shall not be allowed.

(3) No notice shall be valid until the information required in sub-section (1) or sub-section (2) and any other information and plans which may be required by the rules made in this behalf have been furnished to the satisfaction of the Municipal Commissioner along with the notice.

396. Sanction or provisional sanction or refusal of building or work.—(1) The Municipal Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section (2) or sub-section (3) of this section or the provisions of section 405 or section 406 :

Provided that no such sanction shall be accorded without the prior approval of the Mayor-in-Council in case of any building, except a residential building, proposed to be erected or re-erected on a plot of ²[500 square metres or less of land, or a heritage building :]

Provided further that the Mayor-in-Council shall consider the recommendations of the Municipal Building Committee ³[and those of the Heritage Conservation Committee] and shall finalize its decision after such consideration.

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1. Sub-section (3) ins. by s. 11 of the Kolkata Municipal Corporation (Amendment) Act, 2014 (West Ben. Act XIX of 2014), w.e.f. 15.1.2015.
 2. Subs. by s. 29(1) of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Ben. Act XXVI of 1997), w.e.f. 22.12.1997, for "500 square metres or less of land."
 3. Ins. by s. 29(2), *ibid*, w.e.f. 22.12.1997.

(2) The sanction of a building or a work may be refused on the following grounds :—

- (a) that the building or the work or the use of the site for the building or the work or any of the particulars comprised in the site plan, ground plan, elevation, section or specification would contravene the provisions of this Act or the rules and the regulations made thereunder or of any other law in force for the time being;
- (b) that the notice for sanction does not contain the particulars or is not prepared in the manner required under the rules and the regulations made in this behalf;
- (c) that any information or document required by the Municipal Commissioner under this Act or the rules or the regulations made thereunder has not been duly furnished;
- (d) that in cases requiring a layout plan under section 364 or section 365 such layout plan has not been sanctioned in accordance with the provisions of this Act;
- (e) that the building or the work would be an encroachment or Government land or land vested in the Corporation;
- (f) that the site of the building or the work does not abut on a street or projected street and that there is no access to such building or work from any such street by any passage or pathway appertaining to such site.

(3) If, for the use of a building, a licence or permission is required from any department of Government or statutory body under any law in force for the time being, and if such licence or permission is not immediately available, a provisional sanction shall be given for the erection of such building and upon the production of such licence or permission and submission of duly authenticated copies thereof, sanction under sub-section (1) shall be given :

Provided that the provisional sanction shall be subject to all other provisions of this Chapter.

(4) The Municipal Commissioner shall communicate the sanction or the provisional sanction to the person who has given the notice under section 393 or section 394; and where he refuses sanction or provisional sanction either on any of the grounds specified in sub-section (2) or under section 405 or section 406; he shall record a brief statement of his reasons for such refusal and shall communicate the refusal along with the reasons therefor to the person who has given the notice.

(5) The sanction or the provisional sanction or the refusal to the erection of a building or the execution of a work shall be communicated in such manner as may be specified in the rules and the regulations made in this behalf and, in the case of sanction or provisional sanction to the erection of a building, the occupancy or use group shall be specifically stated in such sanction.

¹[(6) Notwithstanding anything contained in the foregoing provisions of this section, sanction or refusal of sanction of building plan submitted through

1. Sub-section (6) ins. by s. 12 of the Kolkata Municipal Corporation (Amendment) Act, 2014 (West Ben. Act XIX of 2014), w.e.f. 15.1.2015.

on-line under section 393A shall be communicated through on-line in such manner and in such form as may be prescribed.]

¹[396A. Manner of processing the application submitted for approval of the building plan.—(1) Corporation may integrate inter-sectional clearance (such as tax clearance, title and mutation clearance etc.) in the forum of Municipal Building Committee constituted under section 391, and the Municipal Building Committee shall also act as a Single Window authority for according sanction of the building plans.

(2) After receipt of on-line application, the same shall be sent by the Corporation to all the concerned regulatory authorities, such as Fire and Emergency Services Department, Environment Department etc., wherever necessary, for parallel processing of such application.

(3) In cases where plans have been submitted on-line under section 393A, the plan shall not be deemed as sanctioned unless it is certified by the competent authority, as may be determined by the Corporation, that the said plan is duly uploaded.

(4) Sanction or refusal to sanction the building plans submitted on-line under section 393A shall be communicated on-line in such manner as may be prescribed.]

397. Sanction or provisional sanction accorded under misrepresentation.—If, at any time after the communication of sanction or provisional sanction to the erection of any building or the execution of any work, the Municipal Commissioner is satisfied that such sanction or provisional sanction was accorded in consequence of any material misrepresentation or any fraudulent statement in the notice given or information furnished under section 393 or section 394 or section 395, he may, by order in writing, cancel, for reasons to be recorded, such sanction or provisional sanction, and any building or any work commenced, erected or executed shall be deemed to have been commenced, erected or executed without such sanction and shall be dealt with under the provisions of this Chapter :

Provided that before making any such order, the Municipal Commissioner shall give a reasonable opportunity to the person affected as to why such order should not be made.

398. When building or work may be proceeded with.—(1) Where within a period of sixty days or, in cases falling under ²[clause (b) to clause (m)] of sub-section (1) of section 390, within a period of thirty days of the receipt of any notice under section 393 or section 394 or of any information under section 395 the Municipal Commissioner does not refuse the sanction to the erection of any building or the execution of any work or, upon refusal, does not communicate the refusal to the person who has given the notice, such person may make a representation in writing to the Mayor :

1. Section 396A ins. by s. 13 of the Kolkata Municipal Corporation (Amendment) Act, 2014 (West Ben. Act XIX of 2014), w.e.f. 15.1.2015.
2. Subs. by s. 36(a) of the Calcutta Municipal Corporation (Second Amendment) Act, 1984 (West Ben. Act XIII of 1984), w.e.f. 15.5.1984, for word, brackets and letter "clause (b)".

Provided that if it appears to the Municipal Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Municipal Commissioner may withhold sanction to the erection of the building or the execution of the work for such period, not exceeding six months, as he may deem fit, and the period of sixty days or, as the case may be, the period of thirty days, specified in this sub-section, shall be deemed to commence from the date of the expiry of the period for which the sanction has been withheld.

(2) Where the erection of a building or the execution of a work is sanctioned, the person who has given the notice shall erect the building or execute the work in accordance with such sanction and shall not contravene any of the provisions of this Act or the rules or the regulations made thereunder or of any other law in force for the time being.

(3) If the person as aforesaid or anyone lawfully claiming under him does not commence the erection of the building or the execution of the work within ¹[two years] of the date on which the erection of the building or the execution of the work is sanctioned ²[* * *], he shall give notice under section 393, or, as the case may be, under section 394 for fresh sanction and the provisions of this section shall apply in relation to such notice as they apply in relation to the original notice.

(4) Such person shall, before commencing the erection of the building or the execution of the work within the period specified in sub-section (3), give notice to the Municipal Commissioner of the proposed date of commencement of such erection or such execution :

Provided that if the commencement does not take place within fifteen days of the date so notified, the notice shall be deemed not to have been given and fresh notice shall be necessary in this behalf. ✓

³[398A. Bar to construction of building in certain cases for a limited period.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, with effect from the date of coming into force of the Calcutta Municipal Corporation (Amendment) Act, 1990 (hereinafter referred to in this section as the said Act) and for a period of one year from such date (hereinafter referred to in this section as the said period), no person shall apply for sanction of any plan to erect a building exceeding thirteen and a half metres in height.

(2) Any application for sanction of any plan to erect a building exceeding thirteen and a half metres in height, submitted by any person—

1. Subs. by s. 17 of the Calcutta Municipal Corporation (Amendment) Act, 1988 (West Ben. Act XXI of 1988), w.e.f. 20.2.1989, for the words "one year".
2. The words "or is deemed to have been sanctioned" omitted by s. 36(b) of the Calcutta Municipal Corporation (Second Amendment) Act, 1984 (West Ben. Act XIII of 1984), w.e.f. 15.5.1984.
3. Ins. by s. 2 of the Calcutta Municipal Corporation (Amendment) Act, 1990 (West Ben. Act I of 1990), w.r.e.f. 18.12.1989, which was preceded by the W. B. Ordinance No. IX of 1989 on 18.12.1989.

- (a) before the coming into force of the said Act and lying pending for such sanction on the date of coming into force of the said Act, or
- (b) at any time during the said period, shall stand rejected forthwith.

(3) Any person, whose application for sanction of any plan to erect a building exceeding thirteen and a half metres in height stands rejected under sub-section (2), may apply afresh for such sanction in accordance with the provisions of this Act and the rules made thereunder on the expiry of the said period.

(4) Any fee paid by any person for sanction of any plan to erect a building exceeding thirteen and a half metres in height, the application for which stands rejected under sub-section (2), shall at his option, be refunded to him or adjusted towards the fee payable by him for fresh application for such sanction under sub-section (3).

(5) Notwithstanding anything contained in the foregoing provisions of this section, the State Government may, if it considers necessary or expedient so to do in the public interest, by notification, exempt any application for sanction of any plan from the operation of the provisions of this section.]

399. Period for completion of building or work.—The Municipal Commissioner shall, when sanctioning the erection of a building or the execution of a work specify a reasonable period within which the building or the work is to be completed, and if the building or the work is not completed within the period so specified, it shall not be continued thereafter without fresh sanction obtained in the manner hereinbefore provided, unless the Municipal Commissioner, on an application made in this behalf, allows an extension of such period.

400. Order of demolition and stoppage of buildings and works in certain cases and appeal.—(1) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 396 or in contravention of any of the provisions of this Act or the rules and the regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order :

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Municipal Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made :

Provided further that where the erection or the execution has not been completed, the Municipal Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the

first proviso or at any other time, direct such person to stop the erection or the execution until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (3).

¹[Provided also that the Municipal Commissioner may by order, on such terms and conditions and on payment of such fees as may be prescribed by regulation, regularize the minor unauthorized erection, or execution of any minor work without sanction under this Act, or minor deviation from the sanctioned plan or execution of any minor erection or work in contravention of any sanctioned plan under this Act or the rules or the regulations made hereunder, as the case may be.

²[Provided also that the Municipal Commissioner may, by order, delegate his powers and functions under the first proviso and the third proviso of this sub-section to the Special Officers, appointed by the Municipal Commissioner with the approval of the State Government on such terms and conditions as may be determined by the Corporation, and expenses for payment of such officers shall be borne on the Municipal Fund.]

Explanation.—For the purpose of this section, 'minor deviation' shall be such as may be determined by regulations.]

Explanation.—In this chapter, "the person at whose instance" shall mean the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations or additions if any, or does it by himself.

(2) The Municipal Commissioner may make an order under sub-section (1), notwithstanding the fact that the assessment of such building has been made for the levy of the ³[property tax] on lands and buildings.

(3) Any person aggrieved by an order of the Municipal Commissioner made under sub-section (1) 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.

(4) Where an appeal is preferred under sub-section (3) against an order made under sub-section (1), 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 where the erection of any building or the execution of any work has not been completed at the time of the order made under sub-section (1), no order staying the enforcement of the order made under that sub-section shall be made by the Municipal Building Tribunal unless a surety, sufficient in the opinion of the said Tribunal, has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

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1. Third proviso along with *Explanation* added by s. 14 of the Kolkata Municipal Corporation (Amendment) Act, 2014 (West Ben. Act XIX of 2014), w.e.f. 15.1.2015.
 2. Fourth proviso added by s. 2 of the Kolkata Municipal Corporation (Third Amendment) Act, 2015 (West Ben. Act XVI of 2015), w.e.f. 1.8.2015.
 3. Subs. by s. 2 of the Calcutta Municipal Corporation (Amendment) Act, 2001 (West Ben. Act VIII of 2001), w.e.f. 23.3.2001, for the words "consolidated rate".

(5) Save as 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 taking any action or making any order in pursuance of the provisions of this section.

(6) Every order made by the Municipal Banking Tribunal on appeal and, subject to such order, the order made by the Municipal Commissioner under sub-section (1) shall be final and conclusive.

(7) Where no appeal has been preferred against an order made by the Municipal Commissioner under sub-section (1) or where an order under that sub-section has been confirmed on appeal, whether with or without modification, the person against whom the order has been made shall comply with the order 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 the order within such period, the Municipal Commissioner may himself cause the building or the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.

(8) Notwithstanding anything contained in this Chapter, if the Mayor-in-Council is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention of the provisions of this Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.

401. Order of stoppage of buildings or works in certain cases.—(1) Where ¹[the demolition of any heritage building or] the erection of any building or the execution of any work has been commenced or is being carried on without or contrary to the sanction referred to in section 396 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or the rules or the regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, by order, require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.

²[(1A) (a) Notwithstanding anything contained elsewhere in this Act or in any rules or regulations made thereunder, no owner of any building, and no person engaged in the construction of any building on behalf of the owner thereof shall allow storage or stagnation of water in the site for the construction of such building. Every such owner or every such person, as the case may be, shall completely empty all collections of such water at least once in a week.

(b) Where the construction of a building is carried on in contravention of the provisions of clause (a), the Municipal Commissioner may, in addition to any other action that may be taken under this Act, by a written order, require

1. Ins. by s. 30(1) of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Ben. Act XXVI of 1997), w.e.f. 22.12.1997.

2. Sub-sections (1A) and (1B) ins. by s. 30(2), *ibid*, w.e.f. 22.12.1997.

the person at whose instance such storage or stagnation of water in the site for the construction of the building is made to stop forthwith any further construction of the building, and such order shall remain in force till the person as aforesaid complies with the requirements of the order as aforesaid to the satisfaction of the Municipal Commissioner.

(1B) If an order made by the Municipal Commissioner under clause (b) of sub-section (1A) directing any person to stop the construction of any building is not complied with, the Municipal Commissioner may take such measures as he deems fit or may require any police officer to remove such person and all his assistants and workmen from the premises within such time as may be specified by the Municipal Commissioner and such police officer shall comply with such requirement.]

(2) No Court shall entertain any suit, application or other proceeding for injunction or other relief against the Municipal Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of the section.

(3) If an order, made by the Municipal Commissioner under section 400 or under sub-section (1) of this section directing any person to stop the erection of any building or the execution of any work, is not complied with, the Municipal Commissioner may take such measures as he deems fit or may require any police officer to remove such person and all his assistants and workmen from the premises within such time as may be specified by the Municipal Commissioner and such police officer shall comply with such requirement.

(4) After the requirement under sub-section (3) has been complied with, the Municipal Commissioner may, if he thinks fit, depute, by a written order, a police officer or an officer or other employees of the Corporation to watch the premises in order to ensure that the erection of the building or the execution of the work is not continued.

(5) Where a police officer or an officer or other employee of the Corporation has been deputed under sub-section (4) to watch the premises, the cost of such deputation to be determined by the Corporation by regulations shall be paid by the person at whose instance such erection or execution is being continued or to whom notice under sub-section (1) has been given and shall be recoverable from such person as an arrear of tax under this Act.

¹[401A. Construction of building in contravention of the provisions of the Act or the rules made thereunder.—(1) Notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person who being responsible by himself or by any other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of this Act, or the rules made thereunder as endangers or is likely to endanger human life, or any property

1. Ins. by the Calcutta Municipal Corporation (Amendment) Act, 1993 (West Ben. Act XVII of 1993), w.e.f. 21.12.1993.

of the Corporation whereupon the water-supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard, shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees.

Explanation.—"Person" shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new building or additional floor or floors of any building as aforesaid.

(2) The offence under sub-section (1) shall be cognizable and non-bailable, within the meaning of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Where an offence under sub-section (1) has been committed by a company, the provisions of section 619 shall apply to such company.

Explanation.—"Company" shall have the same meaning as in the *Explanation* to section 619].

402. Power of Municipal Commissioner to require alteration of work.—(1) The Municipal Commissioner may, at any time during the erection of any building or the execution of any work or at any time within three months after the completion thereof, by a written notice, specify any matter in respect of which such erection or execution is without or contrary to the sanction referred to in section 396 or is in contravention of any condition of such sanction or of any of the provisions of this Act or the rules or the regulations made thereunder and require the person who gave the notice under section 393 or section 394 or the owner of such building or work either—

(a) to make such alterations as may be specified by the Municipal Commissioner in the notice with the object of bringing the building or the work in conformity with such sanction or such condition of such sanction or such provisions of this Act or the rules or the regulations made thereunder, or

(b) to show cause, within such period as may be stated in the notice, why such alterations should not be made.

(2) If such person or such owner does not show any cause as aforesaid, he shall be bound to make the alterations specified in the notice.

(3) If such person or such owner shows the cause as aforesaid, the Municipal Commissioner shall, by an order, either cancel the notice issued under sub-section (1) or confirm the same subject to such modifications as he thinks fit.

403. Completion certificates.—(1) Every person giving notice under section 393 or section 394 or every owner of a building or a work to which notice relates shall, within one month after the completion of erection of such building or execution of such work, deliver or send or cause to be delivered or sent to the Municipal Commissioner a notice, in writing, of such completion accompanied by a certificate in the form specified in the rules

made in this behalf and shall give to the Municipal Commissioner all necessary facilities for inspection of such building or work.

(2) No person shall occupy or permit to be occupied any such building or use or permit to be used any building or a part thereof affected by any such work until permission has been granted by the Municipal Commissioner in this behalf in accordance with the rules and the regulations made under this Act :

Provided that if the Municipal Commissioner fails, within a period of thirty days of receipt of the notice of completion, to communicate his refusal to grant such permission, such person may make a representation in writing to the Mayor.

B. General Powers

404. Municipal Building Code.—(1) The State Government may make rules—

- (a) for the regulation or restriction of the use of sites for building, and
- (b) for the regulation or restriction of building,

(2) Without prejudice to the generality of the power conferred by sub-section (1), the rules made thereunder may provide for all or any of the following matters :—

- (a) information and plans to be submitted together with application under any of the provisions of this Chapter,
- (b) requirements of sites,
- (c) means of access,
- (d) development of land into land subdivision and layout,
- (e) land use classification and uses,
- (f) open spaces, area and height limitations,
- (g) parking spaces,
- (h) requirements of parts of buildings including plinth, habitable room, kitchen, pantry, bathroom and water closet, loft, ledge, mezzanine floor, store room, garage, roof, basement, chimney, lighting and ventilation of room, parapet, wells, septic tanks and boundary wall,
- (i) provision of lifts,
- (j) exit requirements including doorway, corridor, passageways, staircases, ramps, and lobbies,
- (k) fire protection requirements including materials and designs for interior decoration,
- (l) special requirements of occupancies for residential building, educational building, institutional building, assembly building, business building, mercantile building, industrial building, storage building and hazardous building (including those for assembly, movement, parking, loading, unloading, public conveniences, water-supply and vendors plazas),
- (m) structural design,
- (n) quality of materials and workmanship,

- (o) alternative materials, methods of design, and construction and tests,
- (p) building services including electric supply, air-conditioning or heating and telephones and telex,
- (q) plumbing services,
- (r) signs and outdoor display structures, and
- (s) any features to be included in building plans under Chapter XVII or Chapter XVIII or Chapter XIX or Chapter XX of this Act.

405. Buildings at corners of streets.—(1) Notwithstanding the provisions of this Act or the rules and the regulations made thereunder or of any other law in force for the time being, the Municipal Commissioner may, in the case of any building which is intended to be erected at the corner of two streets—

- (a) refuse sanction for such reasons as may be recorded in writing, or
- (b) impose restrictions on its use, or
- (c) place special conditions concerning exit to or entry from any street, or
- (d) require it to be rounded off or splayed or cut off to such height and to such extent as he may determine, or
- (e) acquire such portion of the site at the corner as he may consider necessary for public convenience or amenity :

Provided that no such action shall be taken without any scrutiny of such case by the Municipal Building Committee and without prior approval of the Mayor-in-Council in accordance with the provisions of this Chapter.

(2) The Municipal Commissioner may, by a written order, require any alteration corresponding to any of the conditions in clauses (b) to (e) of sub-section (1) to be made to any building completed before the commencement of this Act.

406. Provisions as to buildings and works on either side of new streets or near fly-overs or transportation terminals.— (1) The sanction to the erection of any building or the execution of any work on either side of a new street may be refused by the Municipal Commissioner unless and until such new street has been levelled, and, in the opinion of the Municipal Commissioner, wherever practicable, metalled or paved, drained, lighted and laid with a water main, to his satisfaction.

(2) The sanction to the erection of any such building or the execution of any such work may be refused by the Municipal Commissioner if such building or any portion thereof or such work comes within the regular line of any street, the position and direction of which has been laid down by the Municipal Commissioner but which has not been actually erected or executed, or if such building or any portion thereof or such work is in contravention of any building plan or any other scheme or plan prepared under this Act or any other law in force for the time being.

(3) The Municipal Commissioner may refuse permission for the erection or re-erection of any building, which when completed, will be within such

distance from a flyover or overbridge or transportation terminal or other construction as may be prescribed under the rules and the regulations made in this behalf.

407. Provisions against use of inflammable materials for buildings, etc. without permission.—(1) No roof, verandah, pandal or wall of a building or no shed or fence shall be constructed or reconstructed of cloth, grass leaves mats or other inflammable materials except with the written permission of the Municipal Commissioner, nor shall any such roof, verandah, pandal, wall, shed or fence constructed or reconstructed in any year, be retained in a subsequent year except with the fresh permission obtained in this behalf.

(2) Every permission granted under sub-section (1) shall expire at the end of the year for which it is granted.

(3) The Municipal Commissioner may regulate the use of materials, design or construction, or other practices for interior decoration in accordance with the rules and the regulations made in this behalf.

408. Power to regulate future construction of buildings in particular streets or localities.—(1) The Municipal Commissioner may, subject to the prior approval of the Mayor-in-Council, give public notice of his intention to declare—

- (a) that in any street or portion thereof specified in such notice, the elevation and construction of the frontage of all buildings or any classes of buildings erected or re-erected after such notice shall in respect of their architectural features, be such as the Mayor-in-Council may consider suitable to the locality; or
- (b) that in any locality specified in such notice, there shall be allowed the erection of only detached or semi-detached buildings or both and that the land appurtenant to each such building shall; be of an area not less than that specified in such notice; or
- (c) that the minimum of building plots in particular localities shall be of a specified area; or
- (d) that in any locality in the notice, the construction of more than a specified number of buildings on each acre of land shall not be allowed; or
- (e) that in any streets, portions of streets or localities specified in such notice, the construction of any one or more of the different classes of buildings (such as residential, educational, institutional, assembly, business, mercantile, industrial storage, and hazardous buildings);

shall not be allowed without the special permission of the Mayor-in-Council.

(2) The Mayor-in-Council shall consider all suggestions or objections, received within a period of three months of the publications of such notice, and may confirm the declaration, or may modify it so however that its effect is not extended.

(3) The Municipal Commissioner shall publish any declaration so confirmed or modified in the *Official Gazette* and the declaration shall take effect from the date of such publication.

(4) No person shall, after the date of publication of such declaration, erect or re-erect any building in contravention of such declaration.

409. Power to stop excavation.—If, during excavation or any other operation for the purpose of construction of any building or execution of any work, any of the underground utilities (such as, electric or telephone cables, water-supply, sewerage and drainage mains, and gas pipes) is touched or is likely to be touched, or if the Municipal Commissioner is of opinion that such excavation may cause danger to public, the Municipal Commissioner may, by a written order, stop forthwith any such excavation or other work till the matter is investigated and decided to his satisfaction.

410. Power to require alteration of existing buildings.—The Municipal Commissioner may, with a view to promoting public or occupier's convenience, safety, privacy, or sanitation or to securing conformity with the provisions of this Act and the rules and the regulations made thereunder, by order in writing, require the owner of any existing building to make such alterations therein within such period as may be specified in the order:

Provided that before making any such order, the Municipal Commissioner shall afford a reasonable opportunity to the owner to show cause why such order should not be made.

411. Power to order removal of dangerous buildings.—(1) If any wall or building, or anything affixed thereto, be deemed by the Municipal Commissioner to be in a ruinous state, or likely to fail, or to be in any way dangerous, he shall forthwith cause a written notice to be served on the owner and to be put on some conspicuous part of the wall or building or served on the occupier, if any, of the building requiring such owner or occupier forthwith to demolish, repair or secure such wall, building or thing, as the case may require:

¹[Provided that in the case of a heritage building the Municipal Commissioner may refer the state or the condition thereof to the Heritage Conservation Committee for its consideration and decision.]

(2) The Municipal Commissioner may, if it appears to him necessary so to do, cause a proper hoarding or fence or other means of protection to be put up at the expense of the owner of such wall or building for the safety of the public or the inmates thereof; and may, after giving them such notice as the Municipal Commissioner may think necessary, require the inmates of the building to vacate it.

(3) The provisions of this Act and of any rules or regulations made thereunder relating to buildings shall apply to any work done in pursuance, or in consequence, of a notice issued under sub-section (1).

(4) (a) Notwithstanding anything contained in the foregoing sub-sections, the Municipal Commissioner may, forthwith or with such notice as he thinks fit, demolish, repair or secure or cause to be demolished, repaired or secured, any such wall or building or thing affixed thereto, on the report of the Chief Municipal Architect and Town Planner, certifying that such

1. Added by s. 31 of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Ben. Act XXVI of 1997), w.e.f. 22.12.1997.

demolition, repair or securing of the building, wall or thing is necessary for the safety of the public or the inmates of the building.

(b) In any such case the Municipal Commissioner may cause the inmates of the building to be summarily removed from the same or such portion thereof as he may consider necessary.

(c) All expenses incurred by the Municipal Commissioner in taking action under this sub-section shall be paid by the owner of such wall, building or thing.

(5) Any action taken by the Municipal Commissioner under sub-section (4) shall, unless the contrary is proved, be deemed to have been taken lawfully and in good faith and with due care and attention.

412. Power to order building to be vacated in certain circumstances.—(1) The Municipal Commissioner may, by order in writing, direct that any building, which in his opinion is in a dangerous condition or is not provided with sufficient means of egress in case of fire or is occupied in contravention of section 396 or section 403, be vacated forthwith or within such period as may be specified in the order :

Provided that at the time of making such order, the Municipal Commissioner shall record a brief statement of the reasons therefor.

(2) If any person fails to vacate the building in pursuance of such order, the Municipal Commissioner may direct any police officer to remove such person from the building and the police officer shall comply with such direction.

(3) The Municipal Commissioner shall, on the application of any person who has vacated or has been removed from any building in pursuance of any order or any direction, as the case may be, under this section, reinstate such person in the building as soon as the circumstances permit.

413. Inspection of buildings.—(1) The Municipal Commissioner may, at any time during the erection or re-erection of a building or the execution of any work under this Chapter, make an inspection thereof without giving any previous notice of his intention so to do.

(2) The Municipal Commissioner may inspect any existing building at any time by giving seven day's notice in advance.

¹[413A. Regularization of buildings in certain cases.—(1) Notwithstanding anything contained in this chapter or elsewhere in this Act, all buildings, the construction of which by the persons displaced from East Pakistan (now Bangladesh) or by their successors-in-interest on lands occupied by such persons have been completed on or before the commencement of the Calcutta Municipal Corporation (Amendment) Act, 1996, and where the documents of title to such lands have been granted by the State Government, shall be regularized by the Municipal Commissioner under this chapter, subject to payment of the requisite fees and charges and on submission of application in the prescribed form along with the plan for each such building :

1. Ins. by s. 18 of the Calcutta Municipal Corporation (Amendment) Act, 1996 (West Ben. Act VI of 1996), w.r.e.f. 4.12.1995.

Provided that such regularization shall be made only in the cases where the constructions have been completed in conformity with the existing building rules of the Corporation :

Provided further that in the cases where the buildings have been completed not in conformity with the existing building rules of the Corporation, in the appropriate cases the Municipal Commissioner, in relaxation of such building rules, shall be competent to regularize such building :

Provided also that where the documents of title to the lands as aforesaid have not been granted by the State Government, the buildings on such lands shall be regularized in the aforesaid manner after the documents of title to such lands are granted by the State Government.

Explanation.—While relaxing the building rules of the Corporation, the Municipal Commissioner shall, in addition to other factors, if any, take into account the structural stability and safety of the buildings in accordance with such rules as the State Government may make in this behalf.

(2) Where the construction of the building has been completed by such person on or before the commencement of the Calcutta Municipal Corporation (Amendment) Act, 1996, and the document of title to land has been granted by the State Government, such person shall apply for regularization in accordance with the provisions of sub-section (1) within ¹[three years] from the date of commencement of the Calcutta Municipal Corporation (Amendment) Act, 1996.

(3) Where the construction of the building has been completed but the document of title to land has not been granted by the State Government, such person shall apply for regularization in accordance with the provisions of sub-section (1) within one year from the date of grant of document of title to land.

(4) Any building, the construction of which on the land as aforesaid has not been completed at the date of commencement of the Calcutta Municipal Corporation (Amendment) Act, 1996, or any building proposed to be constructed on or after the said date, shall be governed by the provisions of this chapter.]

C. Licensed Building Architects

2[414. Engagement of technical person.—(1) Every person, who intends to erect, add to, or alter, any building, shall, subject to the provisions of this Act, engage such technical person and in such manner as may be prescribed.

1. Subs. by s. 32 of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Ben. Act XXVI of 1997), w.e.f. 22.12.1997, for the words "one year".

2. Subs. by s. 19 of the Calcutta Municipal Corporation (Amendment) Act, 1996 (West Ben. Act VI of 1996), w.e.f. 11.4.1996, for the following:

"414. Licensing of Building Architects.— (1) The Municipal Commissioner may, from time to time and in accordance with such rules regarding qualifications of architects in respect of several classes of buildings as may be prescribed, grant

[Footnote contd. on the next page]

(2) The categories, and the qualifications, competence, duties and responsibilities, of the technical persons shall be such as may be prescribed.

(3) The Municipal Commissioner may by notification specify the manner or enrolment of, or grant of licence to, the technical persons.

(4) The Municipal Commissioner may by order cancel the enrolment of, or revoke the licence granted to, a technical person on the ground of dereliction of any duty or responsibility prescribed under sub-section (2), or professional misconduct or moral turpitude, on his part after giving him a reasonable opportunity of being heard.

(5) If, in any case, any loss of life or property is caused, or is likely to be caused, by reason of any misconduct on the part of a technical person engaged under sub-section (1), such technical person shall be subject to the provisions of section 401A.

Explanation.—For the purposes of this section, the expression “technical person” shall mean a technical consultant.]

D. Municipal Building Tribunal

¹[415. Municipal Building Tribunal.—(1) The State Government shall appoint a Municipal Building Tribunal (hereinafter referred to in this section as “the Tribunal”) to hear and decide appeals arising out of matters referred to in section 400 or section 416 in accordance with such procedure and to realise such fees in connection with such appeals as may be prescribed :

[Footnote contd. from the previous page]

licence to any architect to act as a Licensed Building Architect for the purposes of this Chapter.

(1A) An architect who obtains a certificate of enlistment under section 199, shall be eligible to practise as an architect for so long as his name is not removed from the register of architects for India under the Architects Act, 1972 (20 of 1972) and there is no complaint by the Municipal Commissioner against his professional conduct or on the ground of dereliction of duty on his part to the Council of Architecture constituted under section 3 of that Act.

(2) Every such licence shall be renewed every three years.

(3) The Mayor-in-Council may, from time to time, prescribe a scale of fee for Licensed Building Architects in respect of any class of buildings to be made applicable in the absence of any written contract to the contrary.

(4) Notwithstanding anything contained in this section, the Municipal Commissioner may from time to time and in accordance with such rules regarding qualifications of building surveyors in respect of several classes of buildings as may be prescribed, grant licence to any person to act as a Licensed Building Surveyor and the Municipal Commissioner may accept plan, elevation or section, submitted in respect of a building not exceeding thirteen and a half metres in height with any application for permission to erect a new building when it bears the signature of a Licensed Building Surveyor.”.

Subs. by s. 18 of the Calcutta Municipal Corporation (Amendment) Act, 1988 (West Ben. Act XXI of 1988), w.e.f. 20.2.1989, for the following :

“415. Municipal Building Tribunal.—(1) The State Government shall appoint a Municipal Building Tribunal (hereinafter referred to in this section as “the Tribunal”) to hear and decide appeals arising out of matters referred to in section 400 or section

[Footnote contd. on the next page]

¹[Provided that, if it is felt necessary by the State Government, the Tribunal shall hear and decide appeals arising out of matters, referred to in sections 199 and 201 of the Siliguri Municipal Corporation Act, 1990 (West Ben. Act XXX of 1990), sections 199 and 201 of the Asansol Municipal Corporation Act, 1990 (West Ben. Act XXXI of 1990), sections 202 and 204 of the Chandernagore Municipal Corporation Act, 1990 (West Ben. Act XXXII of 1990), and section 4 of the Durgapur Municipal Corporation Act, 1994 (West Ben. Act LIII of 1994), read with section 201 of the Siliguri Municipal Corporation Act, 1990 (hereinafter referred to in this section as "hear and decide appeals under the other Municipal Corporation Acts")].

(2) The Tribunal shall consist of a Chairman and such number of other members not exceeding ²[fourteen] as the State Government may determine :

[Footnote contd. from the previous page]

416 in accordance with such procedure and to realise such fees in connection with such appeals as may be prescribed.

(2) The Tribunal shall consist of a Chairman and two Assessors.

(3) The Chairman shall be an officer of the West Bengal Higher Judicial Service having such experience as may be prescribed.

(4) One of the Assessors shall be appointed by the State Government and the other shall be appointed by the Corporation with such time as may be fixed by the State Government and, in default, the State Government may appoint the other Assessor also :

Provided that no Councillor, Alderman, or officer or employee of the Corporation shall be appointed as an Assessor :

Provided further that only such persons shall be appointed as Assessors as shall have, as far as possible, knowledge or experience in town planning, civil engineering or architecture.

(5) The Chairman and the Assessors shall be appointed for such period and on such terms and conditions as the State Government may, by notification, specify and shall be paid from the Municipal Fund.

(6) The State Government may, if it thinks fit, remove for incompetence or misconduct or any other good and sufficient reasons any Assessor appointed under sub-section (4).

(7) If any Assessor is removed or dies, the State Government shall appoint forthwith another Assessor.

(8) Notwithstanding anything contained in this section, the State Government may appoint any other Municipal Building Tribunal under any other law in force for the time being and such Tribunal shall exercise all the powers of the Tribunal under this section.

(9) The Tribunal shall have an establishment consisting of such officers and other employees appointed on such terms and conditions as may be prescribed. The expenses of the establishment shall be paid out of the Municipal Fund.

(10) The provisions of Part II and Part III of the Limitation Act, 1963 (36 of 1963) relating to appeals shall apply to every appeal preferred under this section.

(11) No court shall have jurisdiction in any matter for which provision is made in this Chapter for appeal to the Tribunal."

1. Proviso added by s. 14(i) of the Calcutta Municipal Corporation (Amendment) Act, 2001 (West Ben. Act VIII of 2001), w.e.f. 23.3.2001.
2. Subs. by s. 14(ii)(a) of the Calcutta Municipal Corporation (Amendment) Act, 2001 (West Ben. Act VIII of 2001), w.e.f. 23.3.2001, for the word "six".

¹[Provided that the Chairman may constitute one or more Benches for Calcutta, and shall constitute one or more Benches, if felt necessary by the State Government, to hear and decide appeals under the other Municipal Corporation Acts. Each of such Bench shall comprise of at least two members one of whom shall be a judicial member and another a technical member];

(3) The Chairman or a judicial member shall be a person who is or has been a member of the West Bengal Higher Judicial Service having such experience as may be prescribed.

(4) A technical member shall be a person who shall have knowledge or experience in town planning, civil engineering or architecture as may be prescribed.

(5) The Chairman and the other members of the Tribunal shall be appointed by the State Government for such period and on such terms and conditions as the State Government may determine and shall be paid from the Municipal Fund :

²[Provided that the expenditure connecting to the payment of remuneration, travelling allowance and other expenditure, of the judicial and non-judicial members of the Tribunal constituting the Benches to hear and decide appeals under the other Municipal Corporation Acts, shall be paid out of the fund of the concerned Municipal Corporation :

Provided further that a Councillor or a person who is, or has been, an officer or employee of the Corporation shall not be eligible for appointment as a member of the Tribunal.].

(6) The State Government may, if it thinks fit, remove for incompetence or misconduct or any other good or sufficient reasons the Chairman or a member appointed under this section.

(7) The Tribunal shall have an establishment consisting of such officers and other employees appointed on such terms and conditions as may be prescribed. The expenses of the Tribunal shall be paid out of the ³[Municipal Fund:]

⁴[Provided that the Benches constituted under the Tribunal in order to hear and decide appeals under the other Municipal Corporation Acts shall be provided with an establishment consisting of such officers and other employees as may be prescribed by the concerned Municipal Corporations].

1. Proviso subs. by s. 14(ii)(b), of the Calcutta Municipal Corporation (Amendment) Act, 2001 (West Ben. Act VIII of 2001), w.e.f. 23.3.2001, which formerly stood as follows :
"Provided that the Chairman may constitute one or more Benches, each Bench comprising at least two members one of whom shall be a judicial member and another a technical member".
2. Proviso subs. by s. 14(iii), *ibid.*, w.e.f. 23.3.2001 which formerly stood as follows :
"Provided that a Councillor or an Alderman or a person who is or has been an officer or employee of the Corporation shall not be eligible for appointment as a member of the Tribunal".
3. Subs by s. 14(iv)(a) of the Calcutta Municipal Corporation (Amendment) Act, 2001 (West Ben. Act VIII of 2001), w.e.f. 23.3.2001, for "Municipal Fund".
4. Proviso added by s. 14(iv)(b), *ibid.*, w.e.f. 23.3.2001.

(8) The provisions of Part II and Part III of the Limitation Act, 1963 (36 of 1963), relating to appeal shall apply to every appeal preferred under this section.

(9) No court shall have jurisdiction in any matter for which provision is made in this Chapter for appeal to the Tribunal.]

CHAPTER XXIII

Regulation of Building Uses

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, of such permission—

- (a) use or permit to be used for the purpose of human habitation any part of a building not originally erected or authorized to be used for such purpose;
- (b) change or allow the change of the use of any building for any purpose other than that specified in the sanction under section 396;
- (c) 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;
- (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 rules 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 rules 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 ¹[section 385] of the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951), shall be deemed to be an authorized 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 ²[determined by regulations] a fine not exceeding

1. Subs. by s. 38 of the Calcutta Municipal Corporation (Second Amendment) Act, 1984 (West Ben. Act XIII of 1984), w.e.f. 15.5.1984, for the word & figures "section 416".
2. Subs. by s. 19 of the Calcutta Municipal Corporation (Amendment) Act, 1988 (West Ben. Act XXI of 1988), w.e.f. 20.2.1989, for the word "prescribed".

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 of 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 taking any action or making any order in pursuance of the provisions of this section.

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

417. Power to prevent use of premises in particular areas.—(1) The Municipal Commissioner may, subject to prior approval of the Mayor-in-Council, give public notice of his intention to declare that in any area specified in the notice, no person shall use any premises for any purpose specified in such notice and for reasons stated therein.

(2) Objections to any such notice shall be received within a period of one month from the publication of the notice.

(3) The Municipal Commissioner shall consider all objections received within the period as aforesaid, giving any person affected by the notice an opportunity of being heard during such consideration, and may thereupon make a declaration in accordance with the notice published under sub-section (1), with such modifications if any, as he may think fit so however that its application is not extended.

(4) Every such declaration shall be published in the *Official Gazette* and in such other manner as the Municipal Commissioner may determine, and shall take effect from the date of its publication in the *Official Gazette*.

(5) No person shall, in any area specified in the declaration published under sub-section (4), use any premises for any purpose specified in the declaration, and the Municipal Commissioner shall have the power to stop the use of any such premises by such means as he considers necessary.

418. Hospital, nursing home, clinic, etc., not to be established without permission.—(1) No person shall, without the previous permission in writing of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, of such permission, use any premises in Kolkata for the propose of a hospital, nursing home, clinic, polyclinic, diagnostic laboratory or such other institutional medical facility as may be specified by the Mayor-in-Council from time to time.

(2) The Municipal Commissioner may refuse to give such permission if he is of the opinion that the proposed premises is not suitable for the purpose as aforesaid in view of criteria of hygiene and environmental sanitation.

419. Factory, etc., not to be established without permission.—(1) No person shall, without the previous permission in writing of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, of such permission, establish in any premises, or materially alter, enlarge or extend, any factory, workshop or trade premises in which it is intended to employ steam, electricity, water or other mechanical power :

Provided that no such permission shall be granted in contravention of the provisions of section 425.

(2) The Municipal Commissioner may refuse to give such permission if he is of the opinion that the establishment, alteration, enlargement or extension of such factory, workshop or trade premises in the proposed position—

- (a) would be objectionable by reason of density of population in the neighbourhood thereof, or
- (b) would be a nuisance to the inhabitants of the neighbourhood, or
- (c) would be in contravention of any land use control under this Act or any other law for the time being in force.

420. Warehouses, godowns, goods transport business, etc., not to be established without permission.—(1) No person shall, without the previous permission in writing of the Municipal Commissioner or otherwise than in conformity with the condition, if any, of such permission use, or materially alter, enlarge, or extend the use of any premises as a warehouse or a godown or for running a goods transport business either by his own carriers or by arrangement with the owners of such carriers :

Provided that no such permission shall be granted in contravention of the provisions of section 425.

(2) The Municipal Commissioner may refuse to give such permission if he is of the opinion that the use, or the alteration, enlargement or extension

of the use, of any premises as a warehouse or a godown or for running a goods transport business—

- (a) would be objectionable due to the traffic constraints in the vicinity of such premises, or
- (b) would be undesirable due to inadequate space for parking of vehicles or loading or unloading of goods, or
- (c) would constitute a fire hazard, or
- (d) would be a nuisance to the inhabitants of the neighbourhood.

(3) In a case where such permission is granted, the Municipal Commissioner may specify such conditions for parking of vehicles or loading or unloading of goods as he may deem fit.

421. Eating houses, etc., not to be established without permission.—

(1) No person shall, without the written permission of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, of such permission, use, or permit to be used, or materially alter, enlarge, or extend the use of, any premises for the purpose of establishing or keeping open an eating house, hotel, boarding houses, tea shop, coffee house, cafe, restaurant, refreshment room, snack shop, snack bar, sweet meat shop, liquor house, tavern, wine shop, beer shop, spirit shop, arracks shop, toddy shop, *ganja* shop, bhang shop, opium shop, tobacco shop, *bidi* shop, cigarette shop, *zarda* shop, betel shop or betel leaf *masalla* shop or for the purpose of sale of *dab* or *dab* water, or any place, where the public are admitted for repose or consumption of any food or drink or where food is sold or is prepared for sale¹ [for any such purpose, or any premises let out to any person for performance of any sacred thread, marriage, *annaprasan* or *sradh* ceremony or marriage or death anniversary or similar other ceremony :]

Provided that no such permission shall be granted in contravention of the provisions of section 425.

(2) The Municipal Commissioner may at any time cancel or suspend any permission under sub-section (1), if he is of the opinion that the premises covered by such permission are not kept in conformity with the conditions of such permission or the provisions of any rules or regulations made in this behalf, whether the person is prosecuted under this Act or not.

422. Theatres, circuses, exhibitions, and places of public amusement not to be established without permission.—(1) No person shall, without the written permission of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, of such permission, which shall be granted subject to the provisions under section 425, use, or permit to be used, or materially alter, enlarge or extend the use of any premises for the purpose of establishing or keeping open any theatre, cinema house, drive-in theatre or cinema house, circus, fair, fete, exhibition or dancing hall, or any other place of similar public resort, recreation or amusement for any such purpose :

1. Subs. by s. 33 of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Ben. Act XXVI of 1997), w.e.f. 22.12.1997. for the words "for any such purpose".

Provided that nothing in this section shall apply to private performance in any place.

(2) The Municipal Commissioner may specify any conditions for providing, within the premises, space for the vendors catering to the public needs in connection with such purposes.

423. Permission in case of markets, shops, etc., along certain traffic corridors.—(1) The Municipal Commissioner may, from time to time and with the prior approval of the Mayor-in-Council, notify that no new market or shop or trading premises shall be established or kept open to abut on a category I or category II or category III street or portion thereof, without his prior permission, which shall be subject to the provisions of section 425.

(2) The Municipal Commissioner may refuse to give such permission with due regard to the traffic constraints in the vicinity.

(3) Notwithstanding the existence of any markets or shops on any such street, such refusal of the Municipal Commissioner shall be final.

424. Permission in case of other non-residential uses of premises.—(1) The Municipal Commissioner may, from time to time and with the prior approval of the Mayor-in-Council, notify such other non-residential uses of premises (including the one for an educational building or an institutional building or an assembly building or a business building or a mercantile building or an industrial building or a storage building or a hazardous building) as are not provided for in this chapter and in the case of which prior permission of the Municipal Commissioner shall be necessary, subject to the provisions of section 425, for establishing, or materially altering, or enlarging, or extending the use of, any such premises.

(2) The Municipal Commissioner may refuse to give such permission in any case on the ground that such use—

- (a) would be objectionable by reason of the density of population in the neighbourhood, or
- (b) would add to the traffic constraints in the vicinity including parking spaces, for vehicles, or
- (c) would not conform to other predominant uses in the neighbourhood, or
- (d) would constitute a fire hazard, or
- (e) would be a nuisance to the inhabitants of the neighbourhood, or
- (f) in the case of hospital or clinic would be harmful to the patients due to noise or an environment which poses a health hazard, or
- (g) in the case of an educational building would deprive the students of playground facilities; or on any other similar ground.

(3) Subject to any land use control under this Act or any other law for the time being in force, the Municipal Commissioner's decision in refusing permission under this section shall be final.

425. Conditions for grant of permission.—(1) In the case of any premises for the use of which a licence or permission is required from Government or any statutory body under any law for the time being in force, the Municipal Commissioner shall not grant any permission under this Act to

any person until such person produces before the Municipal Commissioner the licence or the permission from Government or statutory body, as the case may be, and submits duly authenticated copies thereof to him :

Provided that in the case where production of a municipal permission is a pre-condition for the grant of a licence or permission under any other law for the time being in force, the Municipal Commissioner may grant a provisional permission which shall become final upon production of a licence or permission under the said law :

Provided further that such provisional permission shall have validity only for the purpose of fulfilling any pre-condition for the licence or the permission under any other law as aforesaid.

(2) Notwithstanding anything contained in this Act, the Municipal Commissioner may, while granting permission under this Chapter, specify such special conditions, relevant to each case, regarding disposal of solid, liquid or gaseous wastes or for parking of vehicles or for loading or unloading of goods or for abatement of nuisance of any kind whatsoever as he deems fit.

¹[CHAPTER XXIIIA

Preservation and Conservation of Heritage Buildings

425A. Owner to maintain, preserve and conserve heritage building.—Every owner or occupier of any heritage building declared as such by the Corporation shall maintain, preserve and conserve it and shall not change its use in contravention of the provisions of this Act or the rules or the regulations made thereunder for its maintenance, preservation or conservation.

Explanation I.—The word “maintain”, with its grammatical variations and cognate expressions, shall include fencing, covering, repairing, restoring or cleansing, or doing of any act which may be necessary for the purpose of preserving or conserving, of, or securing convenient access to, a heritage building.

Explanation II.—“Owner” shall, notwithstanding anything contained elsewhere in this Act, include, for the purposes of this chapter,—

- (a) a joint owner of a heritage building vested with the power of management thereof on behalf of himself and any other joint owner, or successor-in-title of any such joint owner, or
- (b) a manager, or trustee, vested with the power of management of a heritage building, or successor-in-office of such manager or trustee.

425B. Power of Corporation to declare a building as a heritage building.—Where the Corporation, on the recommendation of the Heritage Conservation Committee and also of the Mayor-in-Council, is of the opinion

1. Chapter XXIIIA containing sections 425A to 425P ins. by s. 34 of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Ben. Act XXVI of 1997), w.e.f. 22.12.1997.

that any building in Kolkata should be preserved and conserved for historical, architectural, environmental or ecological purpose, it may declare such building as a heritage building :

Provided that during the period when any proposal for declaring building as a heritage building is under consideration of the Heritage Conservation Committee or the Mayor-in-Council, no owner of such building, or no lessee or sub-lessee to whom such building has been leased out, shall transfer such building by way of sale, lease or mortgage without the prior approval of the Municipal Commissioner.

425C. Gradation of heritage building.—The gradation of a heritage building according to its historical, architectural, environmental or ecological purpose shall be such as may be prescribed.

425D. Heritage Conservation Committee.—(1) The Mayor-in-Council shall constitute a Committee to be called the Heritage Conservation Committee with the Municipal Commissioner as its Chairman and an officer of the Corporation as its Convenor.

(2) The Committee shall have, in addition to the Chairman and the Convenor, seven other members of whom—

- (a) one shall be a nominee of the Calcutta Metropolitan Development Authority,
- (b) one shall be the Director of the Development of Archaeology, Government of West Bengal, or his nominee,
- (c) one shall be an eminent architect,
- (d) one shall be an artist,
- (e) one shall be an environmentalist,
- (f) one shall be a historian, and
- (g) one shall be the Chief Valuer and Surveyor of the Corporation.

(3) The Committee may co-opt one person to be nominated by the concerned department of the State Government while dealing with any land or building under the management of the said department.

(4) The Committee shall, in accordance with the provisions of this Act and the rules and the regulations made thereunder, scrutinize every application or proposal for declaration of a building as a heritage building, and recommend to, and also advice, the Mayor-in-Council in respect of the preservation and conservation of such building as a heritage building.

(5) The Committee shall meet at such periodical interval as may be determined by the Mayor-in-Council.

(6) The Municipal Commissioner shall, in the case of emergency, take such measures as may be necessary for the preservation and conservation of a heritage building, provided that such measures shall be required to be approved by the Heritage Conservation Committee at its meeting.

425E. Powers and functions of Heritage Conservation Committee.—The Heritage Conservation Committee shall have the power to function independent of the Municipal Building Committee for purpose of preservation, conservation and maintenance of heritage buildings in so far as such power

does not offend any other provisions of this Act or the rules made thereunder relating to construction or use of building :

Provided that for erection or re-erection in a heritage building or part thereof, or for restoration of any heritage building to its old shape, design or beauty in the case of unlawful demolition, or for making any change of internal or external wall, structural pattern, floor, roof, interior or exterior architectural floor, facade or skyline, or for any other change, of a heritage building, the provisions of Chapters XXII and XXIII of this Act and the rules made thereunder shall apply *mutatis mutandis*.

425F. Power of Corporation to require, purchase or take on lease heritage building.—Subject to the other provisions of this Act, the Corporation may acquire, purchase or take on lease any heritage building for the purpose of preservation and conservation thereof :

Provided that in the case of a heritage building declared as such for the purpose of preservation and conservation as required under sub-clause (ii) of clause (a) of sub-section (4) of section 31 of the West Bengal Town and Country (Planning and Development) Act, 1979 (West Ben. Act XIII of 1979), the approval of the concerned department of the State Government shall be taken.

425G. Transfer of right of development for the purpose of acquisition by agreement.—When the owner of any heritage building is not willing to preserve or conserve any heritage building, the Municipal Commissioner may, for the purpose of acquisition of such heritage building by agreement and on the recommendation of the Heritage Conservation Committee and with the approval of the Mayor-in-Council, allow the transfer of right of development of such heritage building, which shall be heritable and transferable, to the owner of such heritage building in such manner, and subject to such conditions, as may be prescribed.

Explanation I.—“Development” shall have the same meaning as in clause (7) of section 2 of the West Bengal Town and Country (Planning and Development) Act, 1979 (West Ben. Act XIII of 1979).

Explanation II.—“Right of development of a heritage building” shall mean the right of development, in the prescribed manner, of such potentials as may be available in respect of such heritage building on a plot of land different from the land and building comprising the heritage building but in the same ward of the Corporation.

425H. Right of access to heritage building acquired by Corporation.—Subject to such rules or regulations as may be made under this Act, every person shall have the right of access to any heritage building acquired by the Corporation.

425-I. Sub-lease of heritage building.—The Corporation shall have the right to allow the transfer of right of development to the lessee of a heritage building where the unexpired period of the term of lease is for 90 years, and to take the heritage building on sub-lease by agreement, if there is provision for such sub-lease in the deed executed between the owner and the lessee, provided that the question of payment of premium or rent in such case to the

owner shall not, notwithstanding any agreement in this behalf, arise, and if the owner as confirming party to the agreement waives the right to receive any further payment of such premium or rent.

425J. Permission of concerned department of State Government before acquisition of heritage building.—If the Corporation considers that it is necessary to acquire any building declared as a heritage building for the purpose of preservation and conservation as required under sub-clause (ii) of clause (a) of sub-section (4) of section 31 of the West Bengal Town and Country (Planning and Development) Act, 1979, by agreement or under the Land Acquisition Act, 1894 (1 of 1894), permission of the concerned Department of the State Government shall be taken before such acquisition.

425K. Power to exempt rates and taxes, etc. on heritage building.—If the owner of a heritage building enters into an agreement with the Corporation to maintain, preserve and conserve such heritage building properly at his own expenses, the Corporation may, in such case, exempt wholly or partly the owner of such heritage building from payment of rates of taxes or fees for supply of water or any other charge in respect of such heritage building.

425L. Agreement with owner of heritage building pending acquisition.—(1) The Municipal Commissioner may, pending acquisition of a heritage building by the Corporation under this Act and with the approval of the Mayor-in-Council, propose to the owner of such heritage building to enter into an agreement with the Corporation for a specified period for the maintenance of such heritage building.

(2) The agreement as aforesaid may provide for all or any of the following matters :

- (a) maintenance of the heritage building by the owner or by any other person willing to maintain the said heritage building;
- (b) custody of the heritage building and the duties of the person who may be employed to watch it;
- (c) the restrictions of the owner's right—
 - (i) to use the heritage building for any other purpose detrimental to its conservation,
 - (ii) to charge any fee for entry into, or inspection of, the heritage building, and
 - (iii) to build on or near the site of the heritage building.

425M. Voluntary contribution and agreement with any voluntary organisation, person or company.—(1) The Municipal Commissioner may receive voluntary contributions towards the cost of maintaining any heritage building and may give order as to the management and application of such contributions for the purpose of preservation and conservation of such heritage building.

(2) Subject to the approval of the Mayor-in-Council, the Municipal Commissioner may enter into any agreement with any person or voluntary organisation or company, whether incorporated or not, willing to preserve and

conserve any heritage building on such terms and conditions as the Municipal Commissioner may determine.

425N. Taking over management and control of heritage building.—

(1) If the Municipal Commissioner, on receipt of any information, is satisfied that the owner of a heritage building fails to preserve or conserve the heritage building, the Municipal Commissioner may, when the heritage building is vacant and after hearing the owner, by order in writing, take over the management and control of such heritage building for the purpose of preservation and conservation thereof, suspending the right of the owner to transfer such heritage building for a maximum period of five years, subject to acquisition either by agreement or under the provisions of the Land Acquisition Act, 1894 (1 of 1894).

(2) The Municipal Commissioner shall thereafter notify the heritage building for letting it out by agreement to any person as tenant for the purpose as aforesaid, and the owner shall be entitled to an amount equal to the reasonable letting value of the heritage building as rent less the cost on account of preservation and conservation of the heritage building.

425O. When heritage building ceases to be heritage building.—If the Corporation decides that any heritage building has ceased to be of public interest or has lost its importance for any reason whatsoever, it may, with the approval of the State Government, declare that such heritage building has ceased to be a heritage building for the purposes of this Act.

425P. Penalty.—(1) Any person who destroys, removes, alters, defaces or misuses any heritage building or does any act, or abets in the commission thereof, in contravention of any provision of this chapter or the rules or the regulations made thereunder, shall be punishable with rigorous imprisonment for a term which may extend to three years and also with fine which may extend to fifty thousand rupees and, in default, with further rigorous imprisonment for six months.

(2) Any court convicting any person under this section shall, by order, direct such person to restore the heritage building to its former shape and beauty at his cost, and any failure to comply with such order shall be deemed to be a continuing offence and such person shall be punishable with an additional fine of rupees two hundred and fifty for every day during which such contravention or failure continues after conviction for the first such contravention.

(3) Where an offence under this section has been committed by a company, the provisions of section 619 shall apply to such company.

*Explanation.—*For the purposes of this section,—

- (a) "person" shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier who supervises or causes erection, destruction, removal, defacement or misuse of any heritage building, and
- (b) "company" shall have the same meaning as in the *Explanation* to section 619.]