

Item No. 26

9.11.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 6240 of 2022
Smt. Mohua Saha @ Maohua Saha
v.
Kolkata Municipal Corporation & Ors.

Mr. Surajit Samanta
Ms. Sohini Samanta
... for the petitioner.

Mr. P.C. Paul Chowdhury
Mr. K. Pal Chowdhury
... for the respondent nos. 7 & 8.

Mr. Swapan Kumar Debnath
Mr. Ranajit Chatterjee
... for KMC.

The petitioner is aggrieved by the order passed on February 28, 2022 by the Executive Engineer Civil (Building), Borough IV & V, Ward No. 40 in respect of the Premises No. 71, Sitaram Ghosh Street, Kolkata-700009.

The prayer of the petitioner for cancellation of the building plan has been refused.

According to the petitioner, the plot in question was purchased by the petitioner way back in the year 2004. The said plot of land was again sold by the vendors in favour of the private respondents in the year 2014. The private respondents relying on the subsequent Deed of Sale applied for mutation and sought permission for making construction thereon. The Corporation sanctioned the building plan in favour of the private

respondents. Construction is long over. Completion certificate has also been issued.

According to the petitioner the subsequent sale is bound to fail because there is already a sale prior to the sale in favour of the private respondents. The petitioner relies upon the provision of Section 48 of the Transfer of Property Act, 1882.

Learned advocate representing the private respondent nos. 7 & 8 submits that they purchased the property from the vendors being the respondent nos. 9 to 14. Pursuant to the Deed of Sale they mutated the property in their names and thereafter obtained permission for making construction. The construction is complete and apartments have been sold to the respective purchasers after issuance of the completion certificate from the Corporation.

Learned advocate representing the Corporation submits that the Corporation acted in accordance with the documents produced before the authority.

It appears from the submissions made on behalf of the parties that though the petitioner claims to have purchased the property in the year 2004, but surprisingly, she never applied before the Corporation for mutating the property in her name. The Corporation was not made aware of the sale of the property in question in favour of the petitioner. The Corporation took note of the documents relied upon by the private respondent nos. 7 & 8 and sanctioned the building plan.

The ownership/title of the petitioner in respect of the said property is under a cloud and the same cannot

be decided either by the Kolkata Municipal Corporation or this Court sitting in the writ jurisdiction.

It will be open for the petitioner to apply before the appropriate forum for remedy, if so advised.

The impugned order passed by the Kolkata Municipal Corporation in the given facts, does not appear to be unreasoned or an arbitrary one.

In the aforesaid facts and circumstances no relief can be granted to the petitioner in the instant writ petition.

The writ petition fails and is hereby dismissed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)