

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***MAT 1373 of 2024*
CAN 1 of 2024
**Kakali Sengupta @ Kakoli Sarkar
Vs.
Suresh Kumar Mohata & Ors.****

For the Appellant	:	Mr. Arindam Banerjee
For the State	:	Sk. Md. Galib Mr. Kapil Guha
For the municipality	:	Mr. Siddhartha Banerjee
Heard on	:	10.9.2024 & 25.9.2024
Judgment on	:	25.09.2024

Joymalya Bagchi, J.:-

1. Appellant is the owner of a flat in the building. Mr. Banerjee for the appellant contends his client had complained of unauthorised constructions in the premises.
2. During hearing before the respondent authority a sketch map was produced and after considering the deviations from the sanctioned plan, the respondents directed demolition of the flat of the

appellant. Learned counsel contends no notice had been given to the appellant that the respondents intended to demolish his unauthorised flat and he had no opportunity to present his case.

3. In rebuttal, learned counsel for the respondent contends appellant is not a person at whose instance the unauthorised construction was made. He is a subsequent purchaser and has no right of hearing.
4. We have considered the grievance of the appellant. Appellant had approached the municipality alleging there were unauthorised constructions in the premises. In course of enquiry it came to light that appellant's flat itself was an unauthorised construction. Apart from saying he had purchased the flat for valuable consideration, nothing is placed on record to show the flat in question was constructed as per sanctioned plan.
5. Referring to section 218 of the West Bengal Municipal Act, 1993, Mr. Banerjee argues not only the person at whose instance construction was made but the owner of the structure is also entitled to hearing before order of demolition can be passed. In spite of opportunity given to the appellant, he is unable to place on record anything to show that the flat in question was lawfully constructed as per the sanctioned plan. In such view of the matter we are of the opinion remitting the matter for fresh hearing would amount to empty formality.
6. We find no merit in the appeal and the same is accordingly, dismissed.

7. There shall be no order as to costs.
8. Urgent Photostat certified copy of judgment, order if applied for be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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