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10.04.2024
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 19233 of 2023

Mrs. Malina Mahata
-versus-
The Kolkata Municipal Corporation & Ors.

Mr. Ujjal Ray
Mr. Ivan Roy
Sk. Abdur Rahim
Mr. Biswajit Mondal
...For the Petitioner.

Mr. Srijan Nayak
Ms. Sima Chakraborty
Ms. Gulnaz Quraishi
...For KMC.

The premises no. 59/3, P.G.H. Saha Road has been found to be constructed without any sanctioned plan and an order of demolition has been passed on March 1, 2023 to demolish the entire structure.

The petitioner claims to be a *bona fide* purchaser in respect of one of the flats in the said structure.

It has been submitted that no opportunity of hearing was given to the petitioner and the petitioner was never made aware of the fact that the construction in question is an unauthorized one.

It has been submitted that the flat in question was mutated in the name of the petitioner and the mutation certificate was also issued by the Corporation which was later asked to be surrendered.

The petitioner submits that one opportunity ought to have been given to the petitioner to defend her stand.

Learned advocate representing the Corporation relies upon the instruction forwarded by the Assistant Assessor Collector, Tolly Tax Department, Ward No. 95 signed on March 22, 2024 mentioning that the mutation certificate has been directed to be surrendered as a decision has already been taken for demolition of the subject structure. The mutation in question was done by one visit mutation, over the counter, where there was no opportunity to ascertain the existence of the building plan.

The Court completely appreciates the agony and pain of the purchaser in purchasing a flat with valuable consideration and thereafter mutating the same in his/her name and later coming to know that the same is an unauthorized construction suffering an order of demolition.

The Assessment Collection Department ought to have verified the documents of the subject structure prior to mutating the same and issuing the mutation certificate. It is extremely unfair to issue the mutation certificate and thereafter direct the assessee to surrender the same as the structure is later detected to be an unauthorized construction.

It has been submitted that as the mutation and the issuance of sanction plan are done by two different departments of the Corporation, accordingly, the Assessment

Collection Department did not have any information or knowledge with regard to the subject building plan.

The Commissioner of the Kolkata Municipal Corporation is directed to devise methods to plug the loopholes relating to non-communication between the different departments of the Corporation. The data base of the Corporation ought to contain all details so that the officer behind the counter has the relevant information at the click of a button and the unsuspecting buyers are not harassed or feel cheated in this manner.

Most of the buyers reel under misconception, that once the property is mutated and tax paid in respect of the same the structure gets legalized and the unauthorized construction, if any, gets regularized being oblivious of the law that payment of tax does not legalize or regularize any illegal construction. Any construction which does not have the approval of the plan sanctioning authority remains to be an illegal and unauthorized construction despite assessment and payment of tax and irrespective of the years for which the structure is standing.

As it appears that the construction in question is an absolute unauthorized one constructed without a valid sanctioned plan, the order of demolition that has been passed is liable to be implemented.

It will be open for the petitioner to sue the seller for damages that she has suffered

and seek compensation on account of the same, if permissible in law.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)