

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 333 of 2019

**Greenwood Park Extension Apartment Owners' Association and another
Vs.
State of West Bengal and others**

For the petitioner	:	Mr. Sakya Sen, Mr. Sukrit Mukherjee, Mr. Arindam Paul
For the respondent	:	Mr. Amitesh Banerjee, Sr. Adv., Ms. Ipsita Banerjee
Hearing concluded on	:	14.12.2020
Judgment on	:	22.12.2020

The Court:

1. The Greenwood Park Extension Apartment Owners' Association, a registered Association under the provisions of the West Bengal Apartment Ownership Act, 1972 (in brief, "the 1972 Act") and its Secretary have preferred the instant writ application against an order dated April 12, 2019, whereby the Competent Authority under the 1972 Act, upon hearing the grievance of Low Income Group (LIG) residents of the said apartment regarding maintenance charges and allied issues, ordered that the Association shall collect maintenance charges on the basis of the value of each apartment; if the Association wants to collect maintenance charges on the basis of built-up area of the apartment then

they have to amend the Form 'A' in accordance with present format by submitting Form 'B'. It was also ordered that all facilities, that is, community hall, lobby, gymnasium, etc., shall be opened for the use of all the owners.

2. The petitioners argue that the West Bengal Apartment Ownership Bye-laws, 1974 (in brief, "the 1974 Bye-laws") originally stipulated that maintenance charges would have to be calculated on pro rata basis according to the value of each individual flat as provided in Form 'A', being the declaration submitted under Section 10(1)(g) of the 1972 Act. However, with effect from February 26, 2016 such system was replaced, providing that maintenance charges were to be calculated pro rata according to the built-up area of the flats. With effect from November, 2016, the Board of Managers of the Association started raising maintenance bills on the flat owners as per the amended provisions of the 1974 Bye-laws. Such calculation on the basis of built-up area, instead of the value of the flats, became a bone of contention between the complainants (LIG owners) and the Board.
3. Learned counsel for the petitioners submits that, as per the amended Bye-law 20(2) of the 1974 Bye-laws, the maintenance charges have to be calculated pro rata according to the built-up area in terms of Form 'A'. Since the Form A submitted in respect of Greenwood Park Extension

reflects the built-up areas of all 276 flats within the apartment complex, the petitioners submit that there is no impediment to calculation of the maintenance charges on the basis of such built-up area.

4. Due to application of the amended rates, the LIG flat owners lost advantage as the value of their flats, which was the previous basis of calculation, was much lower in comparison with Middle Income Group (MIG) and High Income Group (HIG) owners due to Government subsidies granted during allotment. Thus, the share of the LIG owners in the maintenance charges stood increased.
5. Learned counsel for the petitioners argues that the office of the Competent Authority is defined under Section 3(g) of the 1972 Act, which does not confer jurisdiction to receive, entertain or adjudicate on private disputes among flat owners or between a group of flat owners and the Board of Managers. Thus, the Competent Authority acted without jurisdiction in passing the impugned order.
6. Moreover, it is argued, as per the amendment dated February 26, 2016, Bye-law 20(2) now contemplates maintenance charges to be calculated pro rata according to built-up area. The impugned order, in violation of such amended Bye-law, stipulated maintenance charges to be calculated on the basis of the value of the flats.

7. Since Form A was submitted in respect of the apartment-in-question in the year 2010 and stands unchallenged till date, the Competent Authority acted illegally in directing an amendment thereof.
8. Learned counsel for the petitioners next submits that the Competent Authority has taken a new stand in the affidavit-in-opposition, contending that since the petitioner-Association was registered under the 1972 Act prior to the 2016 amendment, such amendment does not apply to the Association, since the amendment does not have retrospective effect. It would necessarily follow from such logic that the petitioner-Association would be governed by the provisions of the unamended Bye-laws for all time to come, which is baseless. Although the amendment would apply prospectively so far as the calculation of maintenance charges after February 26, 2016 is concerned, such prospective application would, nevertheless, apply uniformly to all Associations regardless of the date of registration.
9. Learned counsel for the proforma respondent primarily argues that the LIG flat owners, contrary to the HIG and MIG owners, do not enjoy the amenities of the community hall, lobby, gymnasium, parking space etc., although they are now saddled with maintenance charges on the basis of the built-up area. Thus, the LIG flat owners would have to bear the brunt of maintenance charges on equal footing with HIG and MIG owners,

despite being deprived of all the facilities enjoyed by the latter two categories.

- 10.** Learned counsel further submits that previous litigations, which are relevant for the present purpose, were suppressed by the petitioners. The proforma respondent, it is submitted, was the erstwhile president of the Association during 2013-2014, when maintenance charges were received from all groups of flat owners on the basis of the value of the flats. Even after the petitioner's resignation from the post of president, during the periods of 2014-2015 and 2015-2016, maintenance charges continued to be collected on the basis of the value of flats.
- 11.** It is argued that the present writ petition has been filed by one Arnab Basu (petitioner no. 2) in the capacity of the Secretary of the Association, who is not an elected Secretary of the Association, since after expiry of the 2016 term, no election was held, rendering the Association itself defunct.
- 12.** Learned counsel appearing for the respondents-authorities argues that, since the Form 'A' in respect of the Association was filed prior to the 2016 amendment, the same cannot be a basis for charging maintenance on the basis of super built-up area in tune with the amendment. However, if an amended form mentioning the current super built-up area

of the flat owners respectively is filed, there is no impediment in maintenance being charged on the basis of the 2016 amendment.

- 13.** It is argued that Section 16B of the 1972 Act specifically provides that if the Association of Apartment owners fails to perform its functions under the Act or Bye-laws made thereunder, the Competent Authority may issue such direction as the Authority considers fit. The “functions” of the Association are defined in Bye-law 10 of the 1974 Bye-laws, which include care, up-keep, maintenance, etc., of the common areas and facilities of the property concerned. Since several representations were made to the Competent Authority by the private respondents, complaining of inflated maintenance bills being received by the members of the LIG flat owners, the Competent Authority duly forwarded such complaint to the petitioners and obtained the reply of the petitioners. After following such due process of law, the Competent Authority heard both sides and passed the impugned order. As such, it is argued, there was no irregularity in passing the said order.
- 14.** Since Form ‘A’ was filed by the Association in 2010, well before the amendment of the Act and the Bye-laws, which has not been given retrospective effect, and as there was no provision prior to the 2016 amendment for furnishing the built-up area of each apartment, the Form ‘A’ submitted by the petitioners does not disclose the same. As such, it is

submitted, the Form 'A' can be amended only by an application in Form 'B'. This was the reason why the Competent Authority held that, till such amendment is carried out in the previous Form 'A', the calculation of maintenance charges would be on the basis of value of the flats as applicable prior to the 2016 amendment and not on the basis of the built-up area.

- 15.** Section 16B(1) of the 1972 Act provides that if the Association of apartment owners, having right to be exercised by the Manager or the Board of Managers, fails to perform its functions under the Act or the Bye-laws made thereunder, the Competent Authority may interdict with such directions as the Authority considers fit.
- 16.** Bye-law 10 of the 1974 Bye-laws, on the other hand, stipulates powers and duties of the Board of Managers. Clause (1)(i) of Bye-law 10 includes the care, up-keep, maintenance, repairs and replacement of the common areas and facilities within the direct responsibility of the Boards. Thus, it is evident that the Competent Authority has jurisdiction to interdict the action of the Boards, acting for the Association, in respect of maintenance of the common areas and facilities. In fact, Section 16B(2) of the 1972 Act goes one step further by empowering the Competent Authority to give a notice to the Manager or the Board of Managers to show cause why he/it should not be removed or superseded if his/its

action is detrimental, in the opinion of the Competent Authority, to the interest of the Association or apartment owners or against public interest. If the reply of the Manager or Board is not considered satisfactory, the Competent Authority may by order remove the Manager or supersede the Board of Managers and appoint any member from amongst the members of the concerned Association or any employee of the State Government or any other person as administrator to perform the functions of the Manager or the Board for a period not exceeding three months. Such period may be extended for a further period, not exceeding six months at a time, if the Competent Authority considers it necessary; however, the aggregate period of such appointment shall not exceed three years.

- 17.** In such view of the matter, the Competent Authority had ample jurisdiction to pass the impugned order.
- 18.** As far as the merits of the matter regarding the enhancement of maintenance charges without submitting amended Form 'A' is concerned, a glance at Section 10 of the 1972 Act reveals the contents of the requisite declaration. It is evident that Clause (g) of Section 10(1) of the 1972 Act was substituted by the 2015 amendment of the Act, lending credence to the arguments of the respondent-authorities that the provision of disclosing built-up area of the property and each apartment

and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owners was newly introduced.

19. The declaration mention in Section 10 is qualified by sub-rules (1) and (3) of Rule 5 of the West Bengal Apartment Ownership Rules, 1974 (in brief, “the 1974 Rules”). The said sub-rules provide, inter alia, that when any amendment is to be made in the declaration submitted under sub-section (1) of Section 10A by the owner or owners, such owner/owners shall submit to the Competent Authority a fresh declaration in Form ‘A’, superscribed “Amended Declaration”, incorporating therein the amendment asked for in place of the portion to be amended. Such fresh declaration shall be accompanied by an application for amendment in Form ‘B’ stating clearly the circumstances necessitating such amendment and also the amendment to be made in the declaration. Thereafter the Competent Authority, after following the procedure laid down in Section 10A(2)(a), shall record an order under Section 10A(2)(b) accepting the amendment and comply with the further procedure as laid down in Rule 5(3).
20. Rule 4 of the 1974 Rules provides the circumstances in which a declaration may be amended under Section 10(2). Clause (b) of Rule 4 incorporates any alteration in the description of nature of the property or

any part thereof to which the declaration relates, subsequent to the submission of the declaration. Clause (c) includes an amendment necessary for carrying out the purposes of the Act, subject to the approval of the Competent Authority. Thus, it is clear that the declaration filed under Section 10, read with Section 2 of the 1972 Act, is amenable to amendment when there is a change in the Act, the Rules or Bye-laws.

- 21.** In the present case, the 2016 amendment necessitated an obvious change in the declaration under Form 'A', which was filed as long back as in 2010, in consonance with the amended Section 10(g) of the 1972 Act, to incorporate the built-up area of the property and each apartment and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner.
- 22.** Such amendment in declaration has to be necessarily visited by the submission of an amended Form 'A', along with Form 'B' indicating the nature and reason of such amendment, as provided in Rule 5(1) of the 1974 Rules.
- 23.** Unless the built-up area is indicated in the Form 'A' by an amendment of the same, the maintenance charge could not be arbitrarily enhanced on the basis of the perception of the respective built-up areas of the owners by the Association or Board.

- 24.** Thus, the act of the petitioners of increasing the maintenance was *ex facie* illegal. That apart, the reasoning advanced by the respondents-authorities, that the LIG owners could not be charged maintenance on the common facilities without giving them access to such amenities, is perfectly justified. As evident from the arguments of the respondents and proforma respondent, the LIG owners do not have access to the common amenities of the apartment, which take out the justification behind enhancing maintenance uniformly for all flat owners, including the LIG owners, on the basis of the built-up area of such common amenities and facilities in terms of the 2016 amendment. Hence, an ingredient of violation of natural justice also crept in such enhancement of maintenance charges by the Association and its Board of Managers.
- 25.** In the light of the above discussions, the Competent Authority was perfectly justified in directing the petitioner-Association to file an amended Form 'A' declaration, along with Form 'B' specifying the cause and scope of such amendment, in terms of Rule 5 of the 1974 Rules. The maintenance charges were correctly ordered to be paid pro rata on the basis of the value of the flats, till such amended Form 'A' and connected Form 'B' were submitted.

- 26.** Thus, there is no scope of interference with the impugned order. Accordingly, WPO No. 333 of 2019 is dismissed without any order as to costs.
- 27.** Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)