

09.08.2021
Ct. No.13
Sl. No.80
pk

W.P.A. 11802 of 2021 [via video conference]

[Partha Sarathi Dutta -Vs- State of West Bengal & Ors.]

Mr. Devajyoti Barman,
Ms. Sanjukta Basu
... .. for the petitioner

Mr. Anirban Ray,
Mr. Raja Saha,
Mr. Rajat Dutta
... .. for the State.

Mr. Dinabandhu Chowdhury,
Mr. Amal Kumar Saha,
Mr. I. Paul
... for the respondent no. 5.

Learned counsel for the petitioner has obtained order dated 24.02.2021 against the private respondent/promoter under the West Bengal Housing Industry Regulatory Authority. An appeal against the said order is pending before the appellate authority. In the meantime, however, by judgement and order dated 4th May, 2021 passed in W. P. (C) 116 of 2019 in the case of Forum for People's Collective Effort Vs. State of West Bengal and others, the Hon'ble Supreme Court has struck down the WBHIRA Act for being ultra vires the Constitution of India.

The petitioner submits that he is unable to execute the orders that has been obtained by him against the private respondent or defend the appeal against the same since there is no tribunal or appellate functional.

Counsel for the State submits that Real Estate (Regulation and Development) Act, 2016 has been notified by the State of West Bengal and the Real Estate Regulatory Authority and the Real Estate Appellate Tribunal have been

constituted pursuant to the gazette notification dated 29th April and 30th April, 2021.

Rules under the said Act have also been framed and brought into force. It is submitted that the Tribunal is in the process of being set up and consultations are on with the High Court in this regard.

The orders obtained by the petitioner against the private respondent passed by the erstwhile HIRA would essentially have to be tested before the new Tribunal and/or under the Rules framed by the State of West Bengal under the RERA 2016.

In that view of the matter, the State is directed to set up the infrastructure expeditiously under the newly adopted West Bengal RERA. The petitioner would have to move the appropriate authority under the New Act and thereafter seek remedies in accordance with law.

With the aforesaid directions, the writ petition is disposed of.

There shall be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)