

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1392 of 2021**

1. Narayan Lal Sharma, S/o Shri R. N. Sharma, Aged About 59 Years R/o Flat No. 408, Orchid 4, Green Earth City, Amleshwar District - Durg Chhattisgarh
2. Anil Kumar, S/o Late Shri B.P. Mahto, Aged About 46 Years R/o. Flat No. 203, Jasmine 1, Green Earth City, Amleshwar District - Durg Chhattisgarh
3. Dhirpal Singh Verma, S/o Banshi Lal Verma, Aged About 66 Years R/o. Flat No. 206, Tulip 6, Green Earth City, Amleshwar District - Durg Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh, Through, Its Registrar, Department Of Co-Operative Societies, 3rd Floor, Indravati Bhawan, Nava Raipur, Atal Nagar, Raipur Chhattisgarh
2. Deputy Registrar Co-Operative Societies, Bunkar Sangh Bhawan, Station Road, Santarabadi, District Durg Chhattisgarh
3. Green Earth City, Co-Operative Society, Amleshwar, Tahsil Patan, District Durg Chhattisgarh
4. M/s. Green Earth City Infra Ventures Ltd., 13 - A, Panchsheel Nagar, Near Chhattisgarh Club, Raipur Chhattisgarh
5. Commissioner Of Chhattisgarh Housing Board, Nava Raipur, Atal Nagar, Raipur, District Raipur Chhattisgarh

---- Respondents

For Petitioners : Shri Bhaskar Payashi, Advocate

For Respondents/State : Shri Sidhdharth Dubey, Dy. GA

No Representation is Made on Behalf of Respondent No.4.

For Respondent No.5 : Shri Amrito Das, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order**

30/07/2021

1. Heard.
2. Learned counsel for the petitioners would submit that the petitioners are the flat owners and as per the declaration given by the builder namely Green Earth City Infra Ventures Ltd. it will include the association only the apartment owners for the purpose of Green Earth City under the C.G. Prakostha Swamitva Adhiniyam, 1976 (hereinafter referred to as 'the Adhiniyam, 1976). It is stated that the act would be applicable to apartment owners which guarantees certain privileges, rights and duties to its members and the builders. He would further submit that respondent No.4 M/S. Green Earth City Infra Ventures Ltd. now has proposed to form a co-operative society by including the apartment owners and the private land owners who have constructed their individual houses. It is contended that by taking into the sweep the private owners who have their individual houses, the right which is guaranteed under the Adhiniyam, 1976 that of the petitioners, who are the owners of the apartment in the multistory building cannot be diluted. It is contended that by taking circuitous route the right of the apartment owners which is guaranteed under the Adhiniyam, 1976 are proposed to be taken away by forming a co-operative society. Therefore, the application of the co-operative society should be stayed.
3. No representation is made on behalf of respondent No.4 the builder.
4. Perused the Adhiniyam, 1976. Section 2 (b) defines the association of apartment owners, which defines that the association means all the apartment owners constituted by such owners acting as a group in accordance with the bye-laws and declaration. Annexure P-2 is the bye-laws of declaration of

Greeneearth Infraventures Pvt. Ltd., wherein the reference of the act means the Chhattisgarh Prakoshtha Swamitya Adhiniyam, 1976. Therefore, if the petitioners are the owners of the apartment in a multistoried building and they by purchase of the flat would prima facie come within the benefit of the Adhiniyam, 1976. Any Co-operative Society even if is formed by including apartment owners and the private land owners, who have their individual houses, the petitioner, who claims to be the apartment owners and are within the ambit of Adhiniyam, 1976, their right would be protected so far as the right and privilege which are covered under the Adhiniyam, 1976. Therefore, any decision even if is taken by the co-operative society prima facie it would not have an overriding effect to the right & privileges of apartment owners which are enveloped under the Adhiniyam, 1976 by virtue of purchase of flats. It is obvious that right of the individual house owner and flat owner in a apartment would be different as the flat owners enjoy common rights over part & benefit of apartments.

5. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu