

April 7, 2022
Court No.1.
AD-12
SG

MAT 324 of 2022
with
CAN 1 of 2022

Rosedale Garden Apartment Owners Association
-versus-
The State of West Bengal and others

Mr. Kishore Dutta, Sr. Advocate
Mr. Srijib Chakraborty,
Mr. Bimalendu Das,
Mr. Aditya Mondal,
Ms. Shorita Das,
Mr. Shoumik Das, Advocates
... for the appellant.

Mr. Anirban Ray, Id GP
Mr. Debasish Ghosh,
Mr. Nilotpall Chatterjee, Advocates
... for the State.

Mr. Rohit Das,
Ms. Kishwar Rahaman,
Mr. Preetam Majumdar, Advocates
... for the respondent No.3.

This appeal at the instance of the writ petitioner is directed against the order of learned Single Judge dated 07.03.2022 whereby WPA 3847 of 2022 has been disposed of with certain observations.

The appellant, an Apartment Owners Association had approached the writ Court challenging the notice dated 21.02.2022 issued by respondent No.2 in the background of the fact that the election of the Board of Management of the appellant association had taken place in the month of May, 2019 by e-voting which was questioned by some of the members by filing a complaint on the basis of which the competent

authority had issued the impugned notice under Section 16(B)(2) of the West Bengal Apartment Ownership Act, 1972.

Submission of learned counsel for the appellant is that earlier also a complaint was made by some of the members and the competent authority had issued the show-cause notice and thereafter had passed the order dated 29.09.2020, thereafter, second show-cause notice could not have been issued. He submits that the issue cannot be reopened and under the provisions of Section 16(B) of the said Act the case is not covered as it does not involve public interest.

Learned counsel for respondent No.2, the competent authority, has submitted that on receipt of the complaint, the competent authority has issued the show-cause notice inviting the response and the appellant has the opportunity to raise all permissible grounds. He has assured that the ground so raised by the appellant will be duly considered by the competent authority.

Learned counsel for respondent No.3 has also supported the order of learned Single Judge and has submitted that the Single Bench has taken the view that the voting should be either by secret ballot or by show of hands and thereafter the election have taken place and that earlier the complaint was not filed under Section 16(B) of the said Act.

Having heard learned counsel for the parties and on perusal of the record it is noticed that the scope of interference in a challenge to the show-cause notice in exercise of the writ jurisdiction is limited.

The Hon'ble Supreme Court considering the limited scope of interference in a challenge to show-cause notice in the matter of **Special Director and another vs Mohd. Ghulam Ghouse and another** reported in **(2004) 3 SCC 440** has held:

“5. This court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not

denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.”

Similarly in the matter of **Union of India and another vs Kunisetty Satyanarayana** reported in **(2006) 12 SCC 28** it has been held:

“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board v Ramesh Kumar Singh, Special Director v Mohd. Ghulam Ghouse, Ulagappa v Divisional Commr., Mysore, State of U.P. v Brahm Datt Sharma, etc.*

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that

the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.”

In the present case, the impugned show-cause does not suffer from the defect of inherent lack of jurisdiction or competence of the authority to issue a show-cause notice. It has not been pointed out that notice has been issued in violation of any statutory provision. So far as the other issues which have been raised before us, we refrain ourselves from going into those issues because it is open to the appellant to raise those issues before the competent authority who will duly consider the same in accordance with law.

It has also been pointed out to us that meanwhile the reply has been filed by the appellant before the competent authority and the pleadings are complete and the matter is now listed today and fixed at 4 pm.

We make it clear that if any of the parties makes a prayer for any additional pleadings before the competent authority, then it will be duly considered.

Hence, we expect that the competent authority will duly examine all legally permissible issues which will be raised before the authority by both the parties.

In these circumstances, we are of the opinion that learned Single Judge has not committed any error in reaching to the conclusion that the challenge to the show-cause notice at this stage is premature. Hence, no case for interference in the order of learned Single Judge is made out.

Accordingly, MAT 324 of 2022 along with CAN 1 of 2022 is dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)