

D/L
Item No 7.
27.04.2022
KOLE

**FMA 701 of 2021
With
IA No. CAN 1 of 2021**

**Natural City Flat Owner's Welfare Association
Rept. by its President Vinod Kumar Choraria
-Vs.-
The State of West Bengal & Ors.**

*Mr. D. Trivedi,
Mr. A. Sharma
Mr. B. Gupta,
Mr. V. Kothari,
Mr. H. Haque,*

...for the appellant.

*Mr. A. Ray,
Mrs. M. Bhowal,*

...for the respondent nos. 2 to 5.

*Mr. A. Mitra, Sr. Adv.
Mr. S. Mukherjee,
Mr. S. Bhattacharyya,
Mr. S. Biswas,*

...for the private respondents.

By consent of the parties the appeal and the application are taken up for hearing together.

This is an appeal against a judgment and order dated March 3, 2021 whereby WPA 407 of 2021 was dismissed.

The appellant Association had approached the learned Single Judge with the grievance that the developer and the promoter of the housing complex in question, had converted common passages into car parking areas. It was contended before the learned Judge that the concerned Municipality should not have permitted the developer to convert the open area into car parking space.

The learned Single Judge looked into the concerned title deeds and observed that the same contain a clause permitting the vendor/developer to sell and use the open space surrounding the building, including the car parking space. The learned Judge was of the view that since the petitioner had accepted the terms and conditions of the Deeds of Sale, the petitioner could not make any grievance regarding conversion of open common space into car parking area. Accordingly, the writ petition was dismissed.

Being aggrieved, the writ petitioner is before us by way of this appeal.

At the outset, Mr. Mitra, learned Senior Advocate, appearing for the respondent nos. 6 and 7 submitted that a point of maintainability of the writ petition was urged before the learned Single Judge by way of filing a demurrer application being CAN 1 of 2021. However, no decision was taken on such application by the learned Single Judge.

We have heard the parties on the point of maintainability of the writ petition. We have considered several judgments cited by the parties. We refrain from referring to all such judgments as the law appears to be fairly well settled that a writ petition at the instance of an unincorporated Association is not maintainable. The Association can only maintain a writ petition where the right of the Association is affected by any act of a public authority but not where the rights of the individual members of the Association are affected.

In the case of a body incorporated by law, the corporate body acquires a legal personality of itself and is as such entitled to maintain legal proceedings. However, an unincorporated Association has no legal personality and it is nothing but an aggregation of its members who can only bring legal proceedings in their individual capacity. Even where an Association is permitted by law to bring a legal proceeding, it can maintain an application under Article 226 of the Constitution of India only when its rights as a collective body as distinguished from the rights of its members, are affected by the act challenged in the proceedings : (See) ***AIR 1969 Cal 149: Director General Ordnance Factories Employees' Association v. Union of India and Director General Ordnance Factories; AIR 1990 Calcutta 176: Sand Carrier's Owners' Union & Ors. v. Board of Trustees for the Port of Calcutta & Ors.; 2001 (3) KarLJ 123: Bangalore Mahanagara Nagareeka Kriyasamithi v. Bangalore Mahanagara Palika & Ors.; and 1998 SCC OnLine Cal 440: All India Scheduled Castes and Scheduled Tribes Rly. Employees Association & Ors. v. Union of India.***

The individual members will be at liberty to approach the writ court ventilating their grievance if their rights are affected.

In view of the aforesaid, we are of the opinion that the learned Single Judge ought not to have entertained the writ petition filed by the unincorporated Association and ought

not to have returned a finding on merits. The order under appeal is set aside.

Mr. Trivedi, learned Advocate, appearing for the appellant submits that the Association could not be registered till date because the completion certificate has not been issued by the concerned Municipality in its favour. We put such point on record but make no comment in respect thereof. We have not considered the merits of the case at all.

We dispose of this appeal and connected application by observing that if the individual members of the unincorporated Association which filed the writ petition are aggrieved by any act of any public body, they will be at liberty to approach the appropriate forum for redressal of their grievance in their individual capacities in accordance with law.

FMA 701 of 2021 and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)