

**11.05.2022.**

Court No.13

Item No. 27

pk

**W.P.A. No. 7426 of 2022**

**with**

**I.A. No. CAN 1 of 2022**

**Ranjan Basu & others**

**Versus**

**State of West Bengal & Ors.**

Mr. Kishore Datta,  
Mr. Srijib Chakraborty,  
Mr. Aditya Mondal

...For the petitioners.

Mr. Anirban Ray, Ld. G. P.  
Mr. Raja Saha,  
Mr. Debasish Ghosh

...For the State.

Mr. Rohit Das,  
Mr. Kishwar Rahman

... For the respondent no. 3.

This matter has been dealt with at some length by a Co-ordinate Bench of this High Court by an order dated 6<sup>th</sup> May, 2022. The subject matter is an order dated 20<sup>th</sup> April, 2022, passed by the Competent Authority under the West Bengal Apartment Ownership Act, 1972.

By the impugned order, the “Board of Managers” of ‘Rosedale Garden Apartment Owners Association’ was superseded in terms of Section 16(B) of the said Act. An administrator has been appointed.

The proceedings started with a complaint was filed by the respondent no. 3, as regards the manner of conduct of election to the Board of Managers. It was

complained that voting by electronic means is not permitted either under the Act or under the bye- laws of the Association. There have been earlier rounds of litigation in this Court on this issue.

The petitioners were the elected as Managers to comprise in the Board to manage the Housing Society. The grievance of the private respondent no. 3 is that secrecy of the ballot could not have been maintained since votes were received by electronic means. As a consequence whereof, free and fair elections could not have been held. There are other grievances on the subject, one of which is that the Returning Officer was the wife of one of the candidates for the election, who was also the writ petitioner.

Reference is made to the decision of the Supreme Court in the case of **A. C. Jose Vs. Sivan Pillai and others** reported in **(1984) 2 SCC 656**, wherein the expression 'ballot' was defined to mean only a physical ballot not an electronic ballot.

Learned senior counsel for the petitioners, Mr. Datta, argues that the issue has been clarified in a subsequent decision in the case of **P. T. Rajan Vs. T. P. M. Sahir and others** reported in **(2003) 8 SCC 498**. It is also submitted that the said A. C. Jose case (supra) was rendered in respect of election under the Representation of Peoples Act.

There is substance in the submissions of the learned counsel for the petitioners that the principles

of election under the Representation of Peoples Act may not be strictly applied in respect of an election to an association of house owners.

The tenure of the Board of Managers is otherwise due to expire on 31<sup>st</sup> May, 2022. The Administrator as well as the petitioners themselves are ad idem on the need for calling of fresh elections.

This Court is of the view that issues in the writ petition can be put to rest by directing a fresh election to be held for the purpose of electing the Board of Managers to the aforesaid Rosedale Garden Apartment Owners Association. Therefore by consent of the parties the following order is passed.

The date of election of the Board Managers is fixed on May 26, 2022, and the last date for submission of nominations shall be the 19<sup>th</sup> May, 2022.

The petitioners shall publish the list of all eligible voters, together with their e-mail IDs and on the Notice Board of the Society by 17<sup>th</sup> May, 2022. Notice of this order shall also be sent to all members by e-mail.

Voting shall be held under the CDSL Platform. Notice of this order should be served on the CDSL Platform to facilitate the election, in terms of practices followed for holding such elections by the CDSL Platform.

The ballots should also be received by email and must be counted in the presence of a representative of the petitioners, the respondent no. 3 and a representative of the Administrator. The representatives shall be nominated by day after tomorrow.

It is expected that the parties cooperate in forming a Board of Managers and shall ensure that the members are able to live together in peace.

The impugned order dated 20<sup>th</sup> April, 2022 passed by the Competent Authority shall stand set aside.

With the above directions the writ petition and the connected application are disposed of.

There will be no order as to costs.

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

***(Rajasekhar Mantha, J.)***