

7.4.2022
Court No. 19
Item no.7
sn

W.P.A. No. 10050 of 2021

Mr. Nicholas Warren Bird & anr.
Vs.
South City Apartment Owners' Association
& Ors.

Mr. Farhan Ghaffar ...for the Petitioners.

Mr. Bimalendu Das
Ms. Shomrita Das
Mr. Shomrik Dasfor the respondent nos. 1 to 3.

Mr. Alak Kr. Ghosh
Mr. S. Pandafor the K.M.C.

Despite service, none appears on behalf of the
respondent no.7.

It is submitted that the respondent no.7
carries on business under the name and style "M/s.
Dev Entertainmnet Ventures Private Limited", from
flat no. 29B, 29th floor, 375, Prince Anwar Shah
Road, Tower -IV(Ceder) Rightwing, South City
Apartments, Kolkata 700 068. Such business has
been causing disturbance to the wife of the
petitioner, who is terminally ill.

The allegation is that the Kolkata Municipal
Corporation had granted the certificate of enlistment
to the respondent no.7 on January 6, 2021, without
ascertaining that the said apartment was to be used
exclusively for residential purpose. It is submitted
that the said apartment had been converted to a

music studio, contrary to Rule 40 of the said South City Apartment Owners' Association Rules.

Prayer is made that the Corporation must be directed to cancel the certificate of enlistment and also be restrained from issuing further certificate of enlistment in respect of the said business.

Mr. Ghosh, learned advocate for the Corporation submits that until and unless the character the of apartment is changed and the features of the said premises is substantially altered externally or internally, the Corporation cannot look into such objections which have been raised by the petitioners Certificate of Enlistment cannot be denied.

He further submits that the Rules of the Corporation do not prevent usage of a particular apartment for business, unless there is substantial change in the nature, character and appearance of the said apartment. He urges that the fact that three certificates of enlistment were granted by the Corporation, would mean that the Corporation had taken the premises to be used for commercial purpose and all that the Corporation could check was whether compliance under the rules for issuance of certificate of enlistment, had been fulfilled.

Mr. Das, learned advocate for the respondent nos. 1-3 submits that such business is being carried

on, contrary to the Rules of the Owners' Association and such intimation was given to the Corporation.

Having heard the learned advocates for the respective parties, it appears that three certificates of enlistment were given by the Corporation for different types of business. It is the specific contention of the Corporation that the Corporation does not have any duty to ascertain whether such business is being run contrary to the apartment rules or contrary to the nature and purpose for which the said apartment was purchased by owners or whether the said business was creating any disturbance to the other flat owners, who are living in the same apartment.

In view of such submissions, if the business is being carried on contrary to the Rules of the Owners' Association or against the decision of the Association and without any permission from the Association, the Association must look into such private issues and take steps in accordance with their rules upon hearing all the parties. The contention of Mr. Das that as the Corporation had given the licence, no corrective measures could be taken by the association is not accepted. Those who have purchased the flats are bound by the Rules and grant of trade licence or certificate of enlistment by the Corporation cannot come in the way of such private dispute.

The writ court cannot grant any relief to the petitioner at this stage.

This is a private dispute, which has to be resolved by the Owners' Association upon hearing the complainant and the respondent no.7. The other remedy of the petitioner would be to approach the civil court.

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)