

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 1198 of 2022
With
CAN 1 of 2022
CAN 2 of 2022

Reserved on: 17.08.2022
Pronounced on: 13.09.2022

Shankar Biswas and Others

...Appellants

-Vs-

Prasun Bhuit and Others

...Respondents

Present:-

Mr. Kishore Dutta, Sr. Advocate
Mr. Mainak Bose,
Mr. Sirsanya Bandopadhyay,
Mr. Rajiv Kumar, Advocates

... for the appellants

Mr. Tilak Bose, Sr. Advocate
Mr. Promit Bag,
Mr. Debabrata Das,
Mr. Saptarshi Mukherjee, Advocates

...for the respondent no. 1.

Mr. Aritra Basu,
Mr. Partha Banerjee,
Mr. Buddhadeb Ghosh, Advocates

... for the respondent no. 5

Mr. Jayanta Sengupta,
Mr. Durbadal Sen, Advocates

... for the respondent no. 6

Mr. Biswaroop Bhattacharya,
Mr. Pratik Majumder, Advocates

... for the intervenors

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is directed against the order of the learned
Single Judge dated 18th of July, 2022 passed in WPA 13054 of 2022

and the subsequent order dated 28th of July, 2022 whereby certain typographical error in the earlier order passed in WPA 13054 of 2022 have been corrected.

2. The respondent no. 1 (writ petitioner) had filed the petition challenging the order dated 3rd of June, 2022 passed by the competent authority appointing the Board of Administrators comprising of three members exercising the power conferred by Bye-Law 39 of West Bengal Apartment Ownership Bye-Laws, 2022. Learned Single Judge, while disposing of the writ petition has appointed the Advocate Commissioner to scrutinize and supervise the process of election and has also directed that three nominated persons representing the writ petitioners' group should join the three Administrators of the other group for quick and effective compliance of 2022 Bye-Laws.

3. Submission of learned counsel for the appellants is that there are no two warring groups and there is no writ petitioners' group and the learned Single Judge has committed an error in granting right to the sole writ petitioner to appoint three Administrators. He further submits that the order of the competent authority under Bye-Law 39 is an administrative order for which no reasons are required to be assigned.

4. As against this, learned counsel appearing for the respondents has supported the impugned order.

5. Having heard the learned counsel for the parties and on perusal of the record, it is noticed that learned Single Judge has examined the issue raised in the writ petition in detail in the light of the provisions contained in Bye-Laws, 2022. It has been noted by the learned Single Judge that the writ petitioners' application dated 24th of

May, 2022 and 30th of May, 2022 were before the competent authority but while passing the order dated 3rd of June, 2022, the competent authority had not even referred to those applications. Learned Single Judge has also found that the order does not contain even a singular reason for appointing three office bearers of the erstwhile Association to form the Board of Administrators or for appointing Subrata De as the Chairperson of the Board who was one of the members of the erstwhile Association.

6. The main contested issue before the learned Single Judge was about the constitution of three members Board of Administrators. Learned counsel for the respondent (writ petitioner) has pointed out that the representation dated 31st of May, 2022 was filed before the competent authority under the signature of 105 flat owners including the writ petitioner. Hence, the contention of the appellants that no two groups exist and right has been given to appoint three additional members to the sole petitioner is found to devoid of any merit.

7. Learned Single Judge has duly considered the requirement and effect of Bye-Laws 3, 5, 6 and other relevant Bye-Laws of the West Bengal Apartment Ownership Bye-Laws, 2022 and having regard to the nature of controversy in the matter has committed no error in permitting the petitioner's group to nominate three persons to join the three Administrators of the other group. The said direction has been issued in order to ensure quick and effective compliance of Bye-Laws, 2022.

8. It cannot be disputed before this Court that the election should be held expeditiously, hence, this Court finds no error in the

direction of the learned Single Judge to appoint an Advocate Commissioner to scrutinize and supervise the process of election.

9. Thus, we find no error in the order of the learned Single Judge and no case for interference is made out. The appeal is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
13.09.2022

PA(RB)

(A.F.R./N.A.F.R.)