

17.08.2022

MAT 1288 of 2022
With
CAN 1 of 2022
Atul Chandra Das
Vs.
The State of West Bengal & Ors.

Mr. Srijib Chakraborty
Mr. B. Ghosh
Mr. Sumitava Chakraborty

... ... for the appellant

Mr. Debasish Ghosh
Ms. Sweta Mukherjee

... ... for the State

Mr. Rohit Das
Mr. Indradip Das
Mr. Kishwar Rahman

... ... for the respondent nos. 4 to 6

By this intra-court appeal the appellant has challenged the interlocutory order of the learned Single Judge dated 5th August, 2022 passed in WPA 17884 of 2022.

The appellant had filed the writ petition before the learned Single Judge with the plea that he was the erstwhile secretary of the Eastern High Apartment Owners' Association and that the Special General Meeting dated 24th July, 2022 was held and resolution was passed therein contrary to the provisions contained in the West Bengal Apartment Ownership Bye-laws, 2022. In the writ petition the prayer for interim relief was also made.

Learned Single Judge by the order under appeal has duly considered the plea of the appellant that the meeting was held on 24th July, 2022 contrary to the bye-laws 6(2) and (5) of the Bye-laws of 2022 and has reached

to the conclusion that there was clear non-compliance of the Bye-laws.

The record reflects that the appellant was aggrieved by declaring him disqualified from filing the nomination form on the ground that he had served as a secretary of the association for one term therefore learned Single Judge has considered and allowed the interim prayer by directing the respondent nos.4 to 6 i.e., the Election Commissioners/Election Officers to extend the date of filing and acceptance of nomination form from 7th August, 2022 to 11th August, 2022 and further permitting the appellant to file his nomination within the extended date.

Submission of learned counsel for the appellant is that since the Special General Meeting dated 24th July, 2022 has been found to be in violation of the Bye-laws 6 of 2022, therefore any action taken in pursuance thereto itself would be void and that in the elections the requisite numbers of managers of the board have not been elected. Therefore the Bye-laws 7(2) has been violated.

In the above background he has made a prayer for issuing the interim direction to maintain status quo till the writ petition is decided. Additionally he has also submitted that one of the member in the meanwhile had filed the civil suit in which the order of the injunction was passed which was violating by holding elections.

Learned counsel for the State opposing the appeal by submitting that the elections have already been held

and pending writ petition can be decided by the learned Single Judge considering all these issues.

Learned counsel for the respondent nos.4 to 6 has also opposed the appeal by submitting that the appellant had suppressed the relevant facts at the stage of passing of the impugned order dated 5th August, 2022 by the learned Single Judge, inasmuch as the resolution of 24th July, 2022 was passed in the adjourned meeting with the due quorum and that suppressing the order of the learned Single Judge for holding the election, the order of injunction was obtained in the Trial Court, therefore such an order of the Trial Court could not be sustained.

We have heard the learned counsel for the parties and perused the record.

Undisputedly, after the order of the learned Single Judge the appellant had filled up the nomination form. The elections have already been held on 14th August, 2022. The writ petition is also pending before the learned Single Judge. The order impugned has been passed without exchange of affidavits. Therefore the conclusions drawn in the said interlocutory order under challenge are treated to be prima facie observations of the learned Single Judge on the basis of existing pleadings. The issue in respect of correctness of the resolution dated 24th July, 2022 is yet to be decided by the learned Single Judge.

Hence, we permit the parties to exchange the affidavits in pending writ petition within 10 days.

It has also been pointed out that though by the impugned order the next date of hearing was fixed on 17th August, 2022 but the matter has not been figured in the daily list of 17th August, 2022. Hence, we also permit the appellant to make a request to the learned Single Judge for fixing an early date to hear the writ petition.

Since elections are already held and all the issues which are raised in the writ petition will now be gone into by the learned Single Judge, therefore we refrain ourselves from expressing any opinion on the merits of the matter as that would prejudice the rights of the parties in pending petition.

However considering the facts and circumstances of the case, we direct that any action taken in the meanwhile on the basis of the elections result will be subject to the final outcome of the writ petition.

The appeal and the connected application are accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)