

28-02-2022

ct no. 13

Sl.19

pk

WPA 19940 of 2021

Saptaparna Ray

-Versus-

District Magistrate and Collector, North 24 Parganas
and others

(Via Video Conference)

Ms. Priyanka Agarwal

... for the petitioner.

Mr. Pratip Mukherjee,

Mr. Ranjit Rajak

... for the private respondent nos. 6 and 7.

Mr. Raha Saha,

Mr. Biswabrata Basu Mallick

... for the State.

The writ petitioner had approached the erstwhile West Bengal Housing Industry Regulation Authority (hereinafter referred to as “the WBHIRA”) against the private respondents, inter alia, for damages arising due to delay in delivery of possession of flat booked, and for money for the same paid by her. The WBHIRA was constituted under the West Bengal Housing Industry Regulation Authority under the provisions of WBHIRA Act, 2017. The private respondents are promoters.

The complaint being COM 000128 of 2019 was allowed and disposed of by order dated 18.12.2019.

The order was put into execution by the Regulation Authority by order dated 16.03.2021, inter alia, directing the District Collector, North 24 Parganas to effect recovery of the amount due as arrears of land revenue in the manner as provided in “Bengal Public Demand Recovery Act, 1913”, as per Section 40 of the WBHIRA Act, 2017 read with Rule 27 of WBHIRA Rules, 2018.

The WBHIRA Act, 2017 was struck down by the Hon’ble Supreme Court as being ultra vires the Constitution of India and repugnant to the provisions of Real Estate (Regulation and Development) Act, 2016, in the case of **Forum for People’s Collective Efforts (FPCE) and another Vs. State of West Bengal and another** reported in **(2021) 8 SCC 599**.

While disposing of the Special Leave Petition, the Hon’ble Supreme Court at paragraphs 184 and 185 has stated as follows :

“184. For the above reasons, we have come to the conclusion that WB-HIRA is repugnant to RERA, and is hence unconstitutional. We also hold and declare that as a consequence of the declaration by this Court of the invalidity of the provisions of WB-HIRA, there shall be no revival of the

provisions of the WB Act, 1993, since it would stand impliedly repealed upon the enactment of RERA.

185. Since its enforcement in the State of West Bengal, the WB-HIRA would have been applied to building projects and implemented by the authorities constituted under the law in the State. In order to avoid uncertainty and disruption in respect of actions taken in the past, recourse to the jurisdiction of this Court under Article 142 is necessary. Hence, in exercise of the jurisdiction under Article 142, we direct that the striking down of WB-HIRA will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of this judgment.”

It is clear and evident from the aforesaid paragraph that what has been saved by the Supreme Court under Article 142 under the Struck Down Act, are legislation, sanction and permission already granted. The orders already passed under the said Repealed Act, have not been specifically mentioned to have been saved.

Counsel for the petitioner would argue that the orders of the erstwhile WBHIRA can be executed under the Real Estate Regulation Authority Act 2016 as applied, subsequently to the State of West Bengal.

Reference has been made to the decision of the Hon’ble Supreme Court in the case of **State of Manipur and others versus Surjakumar Okram and others** reported in **2022 SCC OnLine SC 130 at paragraph 20**, wherein it has been stated as follows :

“20. The aforesaid judgements leave no room for doubt that after enactment of the Repealing Act, 2018, the 2012 Act did not survive and the High Court ought not to have considered the constitutional validity of the same. To that extent, the High Court committed an error in declaring a non-existing law as unconstitutional. It is beyond question that this Court in *Bimolangshu Roy (supra)*, while dealing with the Assam Act, 2004 which is ad verbum to the 2012 Act, held that the Assam Act, 2004 was vitiated due to lack of legislative competence. However, the 2012 Act was not dealt with by this Court and the same continued to be valid till it was repealed. Indeed, the 2012 Act was not declared unconstitutional by any court before the High Court delivered the impugned judgment and therefore, it was well within the competence of the Manipur Legislature to repeal the 2012 Act. The High Court has committed an error in holding that the Manipur Legislature did not have the competence to enact the 2012 Act as a result of which, the Repealing Act, 2018 could not have been made. The law passed by the legislature is good law till it is declared as unconstitutional by a competent Court or till it is repealed. There is no error committed by the Manipur Legislature in repealing the 2012 Act in light of the judgement of this Court in *Bimolangshu Roy (supra)*.”

In view of the above, this Court is of the view that it is only the Hon’ble Supreme Court under Article 142 of the Constitution of India, that can clarify as to whether the orders passed under the erstwhile WBHIRA, are saved and the execution thereof can be continued post the decision in the **Forum for People’s Collective**

Case (Supra) or whether the execution should be carried out under the Real Estate Regulation Authority Act, 2016.

With the aforesaid observations, the writ petition is disposed of.

There will be no order as to costs.

(Rajasekhar Mantha, J.)