

14.09.2022
Ct. 5
D/L 16
ab

WPA 19702 of 2022

Dipak Kumar Guha & Ors.

-Vs-

The State of West Bengal & Ors.

Mr. Saptarshi Roy,
Mr. Debrup Bhattacharjee,
Ms. Kakali Das Chakraborty

... for the petitioners

Mr. Amitesh Banerjee,
Ms. Ipsita Banerjee

... for the State/Competent Authority

Mr. Tapan Commaar Dey,
Ms. Shreya Chatterjee

... for the respondent no. 3

Mr. Siddhartha Banerjee,
Mr. Supratim Dhar,
Mr. Abhisek Baran Das,
Ms. Srijoni Changdar,
Mr. Soumyajit Majumdar,
Ms. Jyoti Routh

... for the respondent no. 4

The petitioners claim to represent the higher income group (HIG) of an Apartment Complex in Kolkata. The petitioners seek to form a separate Association on the basis of their status with reference to HIG Group. The immediate cause of action is directed against an order dated 3rd August, 2022 of the Competent Authority under The West Bengal Apartment Ownership Act, 1972. The petitioners rely on documents including on a General Terms & Conditions

(GTC)- Elite of the concerned Apartment Complex. According to the petitioners, the petitioners are entitled to form an Association on the basis of each individual Complex.

The contentions of the petitioners are opposed by the Competent Authority and the MIG Groups, which offers a common plank of objection. The contentions are opposed on Section 3(k) of the 1972 Act, which defines “Property (apartment)” and Bye-Law 3(1)(a) of The West Bengal Apartment Ownership Bye-Laws, 1974. According to learned counsel, there could be only one Association in respect of each property and the property, as defined under Section 3(k) cannot be demarcated into separable groups based on income.

Although the Court is of the prima facie view that the property has to be treated as an indivisible whole for formation of an Association as defined under the Act and the Bye-Laws, the impugned order of the Competent Authority dated 3rd August, 2022 cannot be sustained for reasons independent of such view of the Court.

The order refers to Form A under the Act, which essentially is for declaration under Sections 2, 10 and 10A of the Act. The Authority, however, refers to an order, which the Authority believes cannot be reviewed as there is no inherent power for such. The reasons for refusing to review the order are not immediately

comprehensible to this Court. The reference to the order needs clarity. This court is hence of the view that directing the Competent Authority to revisit the entire issue and pass an order on intelligible reasons would serve all the parties before the Court equally and well.

Finding the impugned order to be without clear basis, the impugned order is set aside. The Authority is directed to pass a fresh order, with reasons, within two weeks after the Court recommences in November, 2022. It is made clear that the Authority should proceed to decide the matter without being influenced by any observations made by this Court.

Needless to say, the parties before the Court shall be heard before the reasoned order is passed.

WPA 19702 of 2022 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)