

Ct. 05
Item No.10
02.03.2023
(Suvendu)

WPA 4803 of 2023

Eugene Gonsalves & Anr.
Vs.
The Competent Authority under the
West Bengal Apartment Ownership
Act, 1972 and Ors.

Mr. Rajarshi Dutta
Mr. Shounak Mukherjee
Mr. Tridib Bose
Mr. Debayha Basu
.....for the petitioners

Mr. Soumya Roy
Mr. Benazir Kazi
Mr. Subhojit Saha
.....for the respondent no.3

Mr. Debasish Ghosh
Mr. Prantik Garai
.....for the State

The affidavit of service is kept on record.

The petitioners are the residents and members of the Board of Managers of a building complex in Kolkata. The petitioners are aggrieved by a Show-cause Notice dated 13.02.2023 issued by the Competent Authority under the West Bengal Apartment Ownership Act, 1972 and Joint Secretary, Government of West Bengal. By the said Notice, the petitioners have been directed to file a reply to the Show-cause Notice within 15 days from the date of the Notice.

Learned counsel appearing for the petitioners submits that the Competent Authority does not have jurisdiction to issue a Show-cause Notice under Section 16B of The West Bengal Apartment Ownership Act, 1972. Counsel places letters from the respondent no. 3 to the petitioners as well as the complaint made to the Competent Authority to submit that the dispute is essentially private in nature.

Learned counsel appearing for the Competent Authority submits that the petitioners have only been asked to file their reply to the complaint made to the Competent Authority and hence the petitioners are not prejudiced in any manner.

The private respondent is represented.

After hearing learned counsel appearing for the parties, this Court is of the view that since the impugned Show-cause Notice has specifically been issued under Section 16B(2) of The West Bengal Apartment Ownership Act, 1972, the Competent Authority is under an obligation to satisfy itself whether the complaint of the private respondent comes within the condition as laid down under Section 16B(2) of the Act which is that the Competent Authority must be of the opinion that the function of the Manager or the Board of

Managers is detrimental to the interest of (a) the Association of Apartment Owners, or (b) the Apartment Owners or (c) against the public interest.

Prima facie, it appears from the records that the complaint has been made on personal grounds involving an incident which took place between the private respondent and the petitioners on 26th January, 2023.

Notwithstanding the above, this Court is also of the view that the writ petition is premature since the petitioners have simply been asked to file their reply to the Show-cause Notice. The Competent Authority shall adjudicate upon the complaint upon hearing the writ petitioners and the other necessary parties before coming to a decision. The decision shall also take into account the jurisdiction of the Competent Authority to entertain and take steps in terms of the complaint under Section 16B(2) of the Act.

It is noted that the writ petition was filed on the very last day of expiry of the period within which the petitioners were to give their reply to the Competent Authority.

WPA 4803 of 2023 is accordingly disposed of with liberty to the petitioners to file their respective replies within 9th March, 2023. The

Competent Authority shall decide on the issue within 20th March, 2023 and copies of the order should be made available to the petitioners within 23rd March, 2023.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)