

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 16364 of 2022

Ajit Ghosh & Ors.

vs.

The State of West Bengal, Housing Department & Ors.

For the petitioners	:	Mr. S. K. Banerjee, Adv. Mr. Diptamoy Talukder, Adv. Ms. Chanchala Chatterjee, Adv. Mr. Abhiraj Tarafdar, Adv.
For the State	:	Mr. Amal Kumar Sen, Adv. Mr. Lal Mohan Basu, Adv.
For the respondent no. 5	:	Mr. Prodyut Banerjee, Adv. Mr. Subhendu Bhattacharjee, Adv. Mr. Dhrubaraj Bhowmik, Adv.
Last Heard on	:	18.01.2023.
Delivered on	:	25.01.2023.

Moushumi Bhattacharya, J.

1. The petitioners are developers who executed an Agreement for Sale on 30.11.2016 between the partnership firm of which the petitioners are partners and the private respondent no. 5 for sale of a flat in a proposed building on the Durgapur Expressway, Dankuni, Hooghly. The short point for adjudication is whether a Certificate proceedings against the petitioners for payment of Rs. 45,73,822/- can survive or continue in light of a Supreme Court judgment pronounced on 4th May, 2021 striking down the West Bengal Housing Industry Regulation Act, 2017 (HIRA) as being repugnant to the Real Estate (Regulation and Development) Act, 2016 (RERA).
2. The petitioners, through learned counsel, urge that the Certificate proceedings against the petitioners being Certificate Case No. 160(M)/ 2020-2021 cannot survive after the judgment of the Supreme Court.
3. Learned counsel appearing for the State as well as the private respondent contend otherwise. Counsel say that the judgment of the Supreme Court only saved registrations, sanctions and permissions which were granted under HIRA prior to the date of the judgment.
4. The petitioners admittedly received a sum of Rs. 20 lacs from the private respondents on 3rd December, 2016 and 20th June, 2017 for sale of the concerned flat. The Agreement for Sale is dated 30th November, 2016. The petitioners admittedly failed to hand over possession of the flat to the private respondents. The private respondents hence filed a complaint before the West Bengal Housing Industry Regulatory Authority in 2018 and by an

order dated 31st May, 2019, the petitioners were directed to refund the entire amount of Rs. 20 lacs along with interest at the State Bank of India prime lending rate + 2% per annum under Rule 18 of the Housing Industry Regulation Rules, 2018. The private respondent thereafter filed for execution of the aforesaid order and by an order dated 7th January, 2020, the designated authority under HIRA directed Secretary, HIRA to communicate the order to the District Collector, Hooghly for initiating a case of recovery against the petitioners. The Certificate Officer under the Bengal Public Demands Recovery Act, 1913 thereafter proceeded to pass a detailed order on 25th March, 2022 enclosing the particulars of the default on the part of the petitioners and directed the petitioners to pay the certificate amount of Rs. 45,73,822/- to the private respondent within 2nd April, 2022.

5. The petitioners have challenged the Certificate Case and the direction passed on the petitioners on 25th March, 2022 in the said case. The sole ground for challenging the impugned order is the judgment of the Supreme Court whereby WB-HIRA was struck down.

6. The impugned order of 25th March, 2022 passed in the Certificate Case contains a detailed statement which shows that the petitioners received an amount of Rs. 20 lacs from the respondent no. 5 on 3rd December, 2016 and on 22nd June, 2017. Interest has been calculated from these two dates at the SBI prime lending rate + 2% translating to Rs. 8,39,023/- and Rs. 7,51,799/- respectively. Penalty at the rate of Rs. 1000/- day was calculated from 15th July, 2019 in terms of the order passed by the Designated Authority under HIRA on 31st May, 2019. The penalty

amount translated to Rs. 9,83,000/-. The liability towards interest at the SBI prime lending rate as well as the penalty have been calculated under sections 40(1) and 62 of HIRA and Rule 18 of the West Bengal Housing Industry Regulation Rules, 2018. The sections impose monetary liability on a real estate agent/promoter for contravention of provisions relating to registration, sale and purchase of plots, apartments or building and unfair trade practices relating to such. Rule 18 specifies the rate of interest payable by the promoter to the allottee or vice versa at the SBI prime lending rate + 2% per annum in case of delay of payment by the allottee and delay on handing over the possession by the promoter as the case may be. Hence, the impugned order passed in the Certificate proceedings is accordance with HIRA and the 2018 Rules.

7. The only question is whether this order can survive after the pronouncement of the Supreme Court on 4th May, 2021 in *Forum For People's Collective Efforts (FPCE) vs. State of West Bengal*; (2021) 8 SCC 599.

8. Paragraph 185 of the said decision is material for this adjudication and is set out below.

“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.”

9. The above paragraph makes it clear that only registrations, sanctions and permissions namely steps taken in aid of allotment, delivery and possession of flats/immovable property which were granted under HIRA prior to the judgment, would remain undisturbed. The paragraph further indicates that the Supreme Court intended to preserve such actions taken under the HIRA for the sake of continuity and to protect the rights and processes which had already accrued in favour of the allottees and developers. The impugned order or the Certificate Case which is under challenge in this writ petition cannot come under any of the three specific areas mentioned in paragraph 185 since the petitioners (developers) have been made liable for breach/non-performance of their contractual obligations and directed to pay an amount on that basis to the private respondent for failing to hand over possession of the flat. Stretching paragraph 185 of *Forum for People's Collective Efforts* to include a penalty for a wrong done would be contrary to the import of the Supreme Court as expressed in the said paragraph. The dictum of the Supreme Court in *Kailash Chand Sharma vs. State of Rajasthan; (2002) 6 SCC 562* namely on prospective application of judgments is not relevant in this case since the entire issue revolves around paragraph 185 of *Forum for People's Collective Efforts*.

10. Besides, the orders passed by the authorities from 31st May, 2019 to 7th January, 2020 as well as 25th March, 2022 unequivocally record that the petitioners (respondents before the authorities) deliberately failed to appear on any of the dates before the authorities. Further, all the proceedings save

and except the final order of the Certificate Officer were passed before the pronouncement of the Supreme Court in *Forum for People's Collective Efforts*.

11. It is also relevant to record that counsel appearing for the petitioners expressed his disinclination to approach the Supreme Court for a clarification on paragraph 185 of the judgment and seeks an adjudication on the issue from the Court. Hence, the reliance placed by counsel on the order passed by a Coordinate Bench in WPA 19940 of 2021 loses relevance.

12. In view of the above reasons, this Court does not find any ground to allow the writ petition or the prayers contained therein namely dismissal of the Certificate Case against the petitioners. WPA 16364 of 2022 is accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)