

03.08.2023
Court No. 19
Item No.15
CP

C.O. 2523 of 2023

Avidipta Phase I HIG Apartment Owners'

Association & ors.

Vs.

Subrata De & ors.

Mr. Biswaroop Bhattacharya
Mr. Pranit Bag
Mr. Debabrata Das
Mr. Saptarshi Mukherjee
Mr. A. Agarwal

...for the petitioners.

Mr. Saptansu Basu, Sr. Advocate
Ms. Mrinalini Mazumdar
Mr. Abhijit Sarkar
Mr. Souvik Sana

.....for the opposite parties.

This revisional application is directed against an order dated July 15, 2023, passed by the learned District Judge, Alipore, South 24 Parganas in Misc. Appeal No. 238 of 2023. By the order impugned, the prayer for ad interim injunction made by the opposite parties was allowed.

The opposite parties who are members of the Avidipta Phase I HIG Apartment Owners' Association filed Title Suit No. 1041 of 2023, before the learned Civil Judge (Junior Division), 3rd Court at Alipore for the following reliefs:

“ a) Decree for declaration that the demand made by defendants to the tune of Rs.1.9 crores from its members is arbitrary.

b) Decree for declaration that the defendants are bound to supply copies of documents to the members of defendant no. 1 supporting it's projected demands for capital receipts of Rs.1.9 crores.

c) Decree for declaration that failure to pay additional funds cannot attract the consequence of CAM defaulters as no provision of bye laws supports such action.

d) Decree of permanent injunction from holding the SGM on the adjourned day as per notice dated 30.06.2023 and 03.07.2023.

f) receiver;

g) costs and incidental to the suit;

h) such other or further relief to which the plaintiffs be found entitled to in equity and under the law.”

Prayer 'd' in the said suit was for a decree of permanent injunction restraining the elected board members from holding the special general meeting as per the notices dated June 30, 2023 and July 3, 2023. In the suit, an ad interim prayer was made to restrain the board from holding the special general meeting on the basis of the above notices. The learned Trial Judge, upon considering clauses 5 and

6 of the West Bengal Apartment Ownership Bye Laws, 2022, came to the finding that there was no restriction under the said Bye Laws preventing the special general meeting and the concern expressed by the plaintiffs could be raised at the meeting. The learned court found that the plaintiffs could not substantiate that the procedure for holding such meeting had been flouted. Such order was passed on July 14, 2023 and the learned court called upon the defendants to show cause as to why the prayer for temporary injunction would not be allowed. Aggrieved by the aforementioned order, the plaintiffs moved the learned lower appellate court by filing Misc. Appeal No. 238 of 2023.

The learned lower appellate court on the very first day allowed the prayer for ad interim injunction, inter alia, holding that unless the defendants were restrained from holding the special general meeting on July 16, 2023 on the agenda of additional budget, essential facilities, repairing works, etc. the plaintiffs would be highly prejudiced.

This court finds that the appeal arose out of an order refusing ad interim injunction and on the very first day when the appeal was admitted and ad interim injunction was granted restraining the defendants from holding the meeting, which in my view amounted to allowing the main relief itself.

Further, the learned lower appellate court did not take into consideration the reasons on which the ad interim prayer was rejected by the learned Trial Judge.

Mr. Bhattacharya, learned advocate for the petitioners, relies on several documents which have been annexed to the revisional application in order to substantiate that the special general meeting was to be convened for discussion of different issues relatable only to HIG flat owners. More so, the issue with regard to installation of water treatment plant, borewell etc. was also restricted to the requirements of the HIG apartment owners only as the MIG and LIG had already received permission for such installation. It is further submitted that the agenda in the special general meeting were restricted only to Avidipta Phase I HIG Apartment Owners. That each of the clusters of the apartment owners HIG/MIG/LIG have their own boards which run the entire management and maintenance work.

Mr. Basu, learned senior advocate for the plaintiffs/opposite parties submits that the notice was bad as the other MIG and LIG flat owners were not notified about the special general meeting. This is not found to be, prima facie, correct as the document at page 65 of the revisional application indicates

otherwise. The balance of convenience is in allowing the meeting.

However, if the HIG flat owners are aggrieved by any agenda or any discussion at the meeting, they are at liberty to raise their objections in the meeting itself. If the majority of the flat owners are against the agenda, in that event, the resolution will not be passed.

However, I do not see any reason as to why the special general meeting which was called for discussion of issues relating only to HIG-I, would be stalled. It is not necessary that once a meeting is convened and is held all the agenda or the issues discussed have to be passed. All the parties have their right to voice their opinion at the meeting and the agenda will be accordingly decided.

The other prayers in the suit will be decided at the trial. This court is of the view that the meeting should be held. This court fixes the date of the Special General Meeting as August 20, 2023. This order shall serve as a notice to all. The petitioners shall affix the notice in the notice board, in the office of the HIG Association and shall e-mail to the members of the Association.

The date of the meeting shall also be circulated by affixing notices at the lobbies of each of the towers

of the HIG, in the office of the HIG and in other conspicuous places.

In any event, the plaintiffs are being represented by Mr. Basu and as such, this order should suffice as additional notice to the plaintiffs.

The learned Trial Judge will proceed with the application for temporary injunction in accordance with law, upon affording the defendants opportunity to file their written objection.

The implementation of the major works if passed in the special general meeting, will remain stayed till the temporary injunction application is disposed of. The learned Trial Judge is directed to dispose of the application for temporary injunction within a month from the next date fixed.

The functions of the board should not be hampered in any way. The other day to day maintenance work, day to day expenses, day to day repairs shall continue as before.

As this order is being passed for a direction upon the learned Trial Judge to hear out the application for temporary injunction, Misc. Appeal No. 238 of 2023 is also accordingly disposed of.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)