

AD-15
Ct No.09
11.10.2023
TN

WPA No. 21590 of 2023

Sri Amitabh Doss and others
Vs.
The State of West Bengal and others

Mr. Soumava Mukherjee,
Mr. Subhankar Chatterjee

.... for the petitioners

Mr. Amal Kr. Sen,
Mr. Lal Mohan Basu

.... for the State

Mr. Shiv Chandra Prasad

.... for the UOI

Mr. Rupak Ghosh,
Mr. Varun Kothari,
Mr. Rajesh Upadhyay

.... for the respondent nos.4 to 7 &
16 to 24

Mr. Chittapriya Ghosh,
Mr. Subyasachi Roy Chowdhury,
Mr. Kuntal Ray

.... for the respondent nos.8 & 15

1. Learned counsel for the petitioners contends that as many as nine representations were made by the petitioners to the Competent Authority under the West Bengal Apartment Ownership Act, 1972 (hereinafter referred to as "the 1972 Act"). However, no steps have been taken in pursuance thereof. The plinth of the arguments of the petitioners is apparently that due to the unlawful

action of several of the Villas Owners, the functioning of the Association could not take place properly.

- 2.** Learned counsel appearing for the different sets of respondents argue that the matter has become infructuous, not only because the election, which was on the anvil at the relevant juncture, has already been held but also because a civil suit initiated by the petitioners has met with a dismissal for default.
- 3.** It transpires from the nature of the allegations made in the representations made by the petitioners that those are beyond the purview of Section 16B of the 1972 Act. The meat of the allegations is against some of the villa owners, which villas comprise of the housing complex-in-question.
- 4.** Such unlawful acts, if any, are to be ventilated by the Association itself, if at all, before a competent Civil Court and not before the Competent Authority. Under Section 16B(1) of the 1972 Act, if the Association itself has a right to be exercised by the Manager or the Board of Managers and fails to perform its functions under the Act or Bye-Laws, the Competent Authority may give to it such directions as the Authority considers fit.

Under sub-section (2) of the said section, if the Competent Authority is of the opinion that the function of the Manager or Board of Managers is detrimental to the interest of the Association of Apartment Owners or is against the public interest, the Competent Authority may give a notice and remove the said Board of Managers or Manager.

- 5.** The present allegations sought to be levelled by the petitioners as the Managers or Board of Managers cannot be against themselves or the Association which was being run by them before the election. If so, the same would give rise to the absurdity that the petitioners seek their own removal under Section 16B of the Act.
- 6.** However, the allegations were by the then Board against some individual apartment owners which have to be ventilated before the proper Civil Court.
- 7.** In any event, since the election has already taken place, the petitioners are no longer the Managers or Board of Managers or portfolio holders of the Association. Thus, if the petitioners seek to challenge the election or ventilate their grievance against particular villa owners, the appropriate remedy for them lies in the Civil Court. However,

it is to be taken note of that in the meantime if any civil suit in that regard has been dismissed for default, the petitioners would be required to take due course of law in accordance with Order IX of the Code of Civil Procedure for getting the suit restored first before ventilating such grievances.

- 8.** In any event, in the light of the above observations, it is for the petitioners to decide how they want to approach before the competent Civil Court. However, there is no scope of interference in the present writ petition as the allegations made do not fall within the contemplation of Section 16B of the 1972 Act.
- 9.** Accordingly, WPA No. 21590 of 2023 is disposed of with liberty to the petitioners to take appropriate recourse of law before the competent Civil Court.
- 10.** There will be no order as to costs.
- 11.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)