

June 26, 2024
Sl. No.1
Court No.9
s.biswas/srm

WPA 16276 of 2024

Somnath Narayan and others
vs.
The State of West Bengal and others

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

... for the petitioners

Mr. Vimal Kumar Shahi
Ms. Kakali Naskar

... for the State

Mr. Siddhartha Banerjee
Mr. Rahul Karmakar
Mr. Abhisek Baran Das
Ms. Srijoni Chongdar

... for the respondent no.4 & 6

1. The writ petition arises out of the impugned notice dated 3rd June, 2024 issued by the Greenfield City Association of Apartment Owners. By the said notice, the Greenfield City Association of Apartment Owners declared the election of the Board of Managers of the Greenfield City Association of Apartment Owners. Such decision has been challenged on the following grounds:-

a) That a writ petition challenging an order dated March 9, 2023 passed by the competent authority is pending before this court.

b) Clause 11.3 of the General Terms and Conditions governing the said complex, provides that separate apartment owners' association could be formed by the allottees of specific blocks/income groups. With a

mala fide intention, the promoter managed to form a single illegal association and decided to conduct the election of the Board of Managers, contrary to the terms and conditions governing the complex and contrary to the West Bengal Apartment Ownership Act, 1972.

c) The HIG and MIG apartment owners have separate units/property as they belong to different income groups. Section 3(k) of the West Bengal Apartment Ownership Act, 1972 (hereinafter referred to as the Act) allows multiple associations to be formed by the apartment owners of different income groups.

d) The competent authority had permitted a voting, to assess the intention and consent of the HIG and MIG apartment owners as to whether they intended to form separate associations. Before such an exercise could be undertaken by the promoter or the persons who claim to have formed the single association, the date for the election of the Board of Managers of the single association has been fixed.

e) Form E had been obtained from more than 850 members, which constitutes majority of the owners of the “Elite” block.

f) Provisions of Section 3(hh) of the said Act allows formation of multiple associations by flat owners of different income groups or flat owners of different blocks, etc. All the associations would come under the common umbrella of a “Federation”.

2. Mr. Banerjee, learned advocate appearing for the respondent nos.4 and 6, submits that the law does not provide for formation of multiple associations. Section 3(k) read with Explanation II indicates that different associations can be formed by different apartment owners only if there is no commonality in the usage of common areas and facilities like the community halls, parks, swimming pool etc. In this case, the deeds of conveyance of both MIG and HIG flat owners would clearly indicate that they had to share the common facility. Even the property was developed phase wise. Unless the exclusive areas of the property are demarcated, identified and mentioned in the deed of conveyance, there cannot be any segregation. This would disentitle the apartment owners forming individual associations, as they were part of the common property.
3. Relying on the definition of property, it is submitted that the definition of property comprises land, building, common areas and

facilities. In case of complexes having different types of apartments, meant for selling to people of different income groups, property shall mean the land, building and the common areas and facilities for that particular type of apartment.

4. In the present case, there are no separate facilities for the HIG and MIG flat owners.
5. Reliance has also been placed on Explanation III of Section 3(k) of the said Act to substantiate the argument that a single association will be formed in this case as the common areas, places and arrangements are jointly shared.
6. Bye-law 3(2) makes it mandatory to form an association of apartment owners within 45 days from acceptance of Form-A, by the competent authority or within such further period as the competent authority may allow.
7. Bye-law 7 empowers the Board to manage the affairs of the association. Bye-law 8 mandates election of the Board of Managers within 15 days from formation of the association.
8. Heard the learned advocates for the respective parties. The Act of 1972 and the Bye-laws and Guidelines to Form Associations, provide the mechanism by which an association is to be formed and registered. No doubt the law permits multiple associations subject to fulfilment of certain criteria. Three of the apartment owners

who belong to the elite blocks, have approached this court, challenging the notice for the election of the Board of Managers of the association. The notice indicates that the association had already been formed. Order dated March 9, 2023 passed by the competent authority also indicates that the Form A was submitted. The formation of the association takes place within 45 days from submission of Form A.

9. It also appears that some party had approached the competent authority for recall of Form A but the competent authority by order dated March 9, 2024 refused such prayer.
10. The petitioners had approached the competent authority for directions to allow separate association to be formed for MIG and HIG apartment owners and to stop the formation of the single association. The competent authority had found that the consent of the majority flat owners of HIG and MIG were required to be obtained before multiple associations could be formed and the formation of a single apartment owners association could not be stopped. Thus, voting was directed to be carried out by a third party to be engaged by the MIG and HIG flat owners, to obtain the majority view.
11. This court finds that such direction of the competent authority is also under challenge in

another writ petition being WPA 14265 of 2023. The petitioners are approbating and reprobating. On the one hand, they are aggrieved because the competent authority had asked them to show that the majority of the owners want to form separate associations for HIG and MIG and on the other hand, they are before this court seeking a direction to stall the proposed election of the Board of Managers when the exercise they were required to undertake by the order of the competent authority, has not been undertaken.

12. Even assuming that the direction for voting was not in accordance with the statute, prima facie, I am of the view that the competent authority has rightly held that to form an association, the persons who approached the competent authority were required to show that they had the support of majority of both MIG and HIG flat owners indicating that they wanted to form separate associations according to the income groups or type of blocks or phase wise allotment of blocks etc.
13. Whether the commonality of the facilities like joggers' park, community hall, swimming pool, etc. would amount to non-segregation of the MIG and HIG apartments or whether the segregation would be permitted exclusively on the basis of phase wise construction of different blocks of

apartments for different income groups, has to be decided by the competent authority, in accordance with law.

14. It is an admitted case that the MIG and HIG flat owners entered into separate deeds of conveyance. The covered areas of the flats are different. The price of the flats are also different. The flats were allotted phase wise. They were different blocks. The petitioners ought to have proved all these issues before the competent authority, including the willingness of the HIG and MIG flat owners to form different associations.
15. Once the association has been formed, the law requires the Board of Managers to be elected in terms of the bye-laws. The election shall be held. The right of the MIG and HIG owners to form separate associations, will be decided afresh by the competent authority in accordance with law, upon evidence. It is true that majority view would be relevant apart from a decision on the interpretation of Section 3(k), 3(hh), 5A of the said Act read with the terms and conditions.
16. The formation of the single association and the election of the Board will be subject to the decision of the competent authority. Separate associations can also be formed later, once the requirements of law are fulfilled.

17. The petitioners have failed to make out a *prima facie* case to stall the election, as the consent of the majority of the owners of the elite blocks are not before the Court and the remedy of the petitioners would be to go before the competent authority. A writ petition challenging a notice of election issued by a private body, is not amenable to writ jurisdiction.
18. Form A and Form E would not indicate that the majority of the HIG and MIG flat owners want separate associations.
19. Under such circumstances, the competent authority will decide the entire issue independently, within a period of one month from the date of communication of this order, upon the petitioners filing appropriate applications.
20. This Court is of the view that the competent authority must revisit the issue once again by interpreting Sections 3(k), 3(hh) and Section 5A Bye law, Guidelines and the General Terms and Conditions and decide whether in this particular case, multiple associations can be formed. The factual aspects shall also be considered.
21. The writ petition is, thus, disposed of.
22. There shall be no order as to costs.
23. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)