

23
31.01.2024
d.p.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A 2967 of 2023

**Harsh Kumar & Ors.
-versus
The State of West Bengal Ors.**

**Mr. Amales Roy,
Ms. Suman Sehenabis.
...For the Petitioners.**

**Mr. Joyjit Choudhury, AAG
Mr. Momenur Rahman,
Mr. Nabankur Paul.
...For the State.**

**Mr. Bikramaditya Ghosh,
Mr. Deborshi Dhar.
...For the Respondent
Nos. 4 to 8.**

Affidavit-of-service filed in Court today is taken on record.

The order dated 14th December, 2023 passed by the Competent Authority under the West Bengal Apartment Ownership Act, 1972 is impugned in the present writ petition.

By the impugned order, the Competent Authority has invoked the provision of Section 16B(2) of the Act and removed/superseded the Board of Managers and appointed Captain Nalini Ranjan Roy as Administrator to perform the functions of the Board of Managers of Uttarayon Residency Apartment Owners' Association for a period of six months.

The Administrator was to take over all the affairs of the Board of Managers with immediate effect. He was permitted to operate all the bank accounts of the Association jointly with the facility manager of the Association. He was also permitted to conduct fresh election to the Board of Managers strictly in accordance with the West Bengal Apartment Ownership Act, 1972 and the Rules and Bye-laws made thereunder and to ensure smooth handover of the affairs to the new Board of Managers. The Administrator was permitted to take assistance from such volunteers who are from amongst the members of the Association for running the daily affairs of the Association as well as for conducting the election.

The said order was passed allegedly in compliance of the direction passed in CPAN 48 of 2023 arising out of WPA 2812 of 2022.

On a perusal of the impugned order, it appears that the Competent Authority passed the order without mentioning the reasons for removal/supersession of the Board of Managers. Only one line has been mentioned in the entire order for invoking the provision of Section 16B(2) of the Act. The line reads as “whereas a reply from Mr. Harsh Kumar has been received by this Department on 9th December, 2023 which is not satisfactory”.

The reason as to why the Competent Authority did not find the reply filed by Mr. Harsh Kumar to be unsatisfactory has not been disclosed therein. The order impugned appears to be a non-speaking and cryptic one. The same is in violation of the principles of natural justice.

According to Section 16B(2), if the Competent Authority is of the opinion that the function of the Manager or the Board of Managers is detrimental to the interest of the Association of apartment owners or of the apartment owners or is against the public interest, the Competent Authority may give a notice to the Manager or the Board of Managers to show cause why he should not be removed or, as the case may be, it should not be superseded. If the reply of the Manager or the Board of Managers is not considered satisfactory, the Competent Authority may by order remove the Manager or the Board of Managers, as the case may be, and appoint any member from amongst the members of the concerned Association of apartment owners or any employee of the State Government or any other person as Administrator to perform the functions of the Manager or the Board of Managers, as the case may be, for a period not exceeding six months.

In the instant case, the Competent Authority found that the reply given by the Manager was not satisfactory. The Competent Authority ought to have specified the reasons as to why the said reply was not considered satisfactory.

In the absence of proper reasons being disclosed in the order, it is not possible to ascertain whether the ground for his removal/supersession is valid or not. There may be genuine reason to remove him, but without the said reason being mentioned in the order of removal, the said order will fall foul and will not pass the test of observing the principle of natural justice. There has to be transparency and fairness in the decision making process. There remains a cloud of suspicion if proper reasons are not stated in the order.

In view of the above, the order impugned cannot be sustained in the eye of law. The same is liable to be set aside and is, accordingly, set aside.

The primary order of removal/ supersession being set aside, the consequential order of the Competent Authority appointing Captain Nalini Ranjan Roy as the Administrator is also set aside.

It appears from the submissions made on behalf of all the parties that an election is required to be conducted for managing the affairs of the Association.

The Competent Authority, who is the Special Secretary of the Government of West Bengal, Housing Department, is directed to appoint an Administrator from any of the employees of the State Government in accordance with the provision of Section 16B(2) for performing the function of the Manager of the Association and for conducting the election in accordance with the prevailing Rules and Bye-laws.

The timeline mentioned in the Act for functioning as Manager shall be adhered to at the time of acting in accordance with the direction passed herein above.

The writ petition stands disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)