

25-07-2025
Item No.3
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.11524 of 2025
Durgapur Real Estate Private Limited & Anr.

-vs-

The State of West Bengal & Ors.

Mr. Kaushik Dey
Mr. Amajit De
Ms. Akanksha Mukherjee ...for the petitioners

Mr. Vimal Kumar Shahi, AGP
Ms. Pratiti Das ...for the State

1. Leave granted to the petitioner to file the supplementary affidavit. Affidavit of service filed in Court be taken on record.
2. The petitioners are aggrieved by an order passed by the West Bengal Real Estate Regulatory Authority (WBREERA) on February 11, 2025 in Complaint No. WBREERA/COM000874 (Madan Kumar Chaubey v. Durgapur Real Estate Private Limited).
3. The primary ground for challenge of the order of the WBREERA is that the authority does not have jurisdiction to decide the issue under the provisions of the West Bengal Real Estate (Regulation and Development) Act, 2016 as the construction in question stood completed long prior to coming into effect of the subject Act. The Act in question does not have any retrospective operation.
4. The second challenge is that the order passed by WBREERA is only by a single member. There was lack of coram in passing such order. The order is

void ab initio.

5. The petitioners preferred an appeal before the appellate tribunal, but the tribunal, without entering into the issue of maintainability of the petition before WBRERA, directed the appellant to pay the pre-deposit amount as determined by the WBRERA by holding the same as mandatory. The appellate authority has not decided as to whether the tribunal at all had the jurisdiction to decide the issue or not.
6. It has been argued that as the petitioners have raised a preliminary objection with regard to the maintainability of the application before WBRERA, the tribunal ought to decide the said issue first. If the appellate authority is of the opinion that the application is maintainable before WBRERA, then the appellate authority may pass necessary order for payment of the mandatory pre-deposit.
7. Learned counsel for the State raises a preliminary objection with regard to the maintainability of the writ petition and submits that the petitioners ought to have preferred a regular appeal in terms of section 58 of the 2016 Act.
8. In reply, the petitioners submit that as the order passed by WBRERA is null and void and without jurisdiction, the jurisdiction of this Court under Article 226 of the Constitution can be invoked.
9. Section 3 of the West Bengal Real Estate (Regulation and Development) Act, 2016 has been relied upon by the petitioners which mentions that the projects that are ongoing on the date of commencement of the Act for which completion certificate has not been issued, the promoter may make an application to the authority for

registration of the project.

10. Specific contention of the petitioners is that the subject project stood completed in the year 2013, long prior to commencement of the 2016 Act and, accordingly, the provisions of the Act cannot be made applicable in the instant case.
11. On a perusal of the documents annexed to the writ petition it is clear that the issue of non-maintainability of the application before WBRERA has been raised by the petitioner at the very first instance. The adjudicatory authority ought to have decided the issue whether the application was maintainable or not. Any order passed by a forum not having jurisdiction will fall flat being coram non judice. If it is found that the adjudicatory authority did not have the jurisdiction to decide the issue, then the question of payment of pre-deposit will not arise at all.
12. I am of the opinion that the appellate Tribunal ought to decide the issue of maintainability of the application at the very first instance prior to entering into the merits of the application.
13. It has been submitted that the appeal is pending before the Tribunal and that the next date for hearing of the appeal is August 4, 2025.
14. It is expected that the Tribunal will endeavour to decide the issue of maintainability of the proceeding before WBRERA first and that it will also take note of the execution proceeding that has been initiated by the complainant and the order passed by WBRERA on July 16, 2025 directing the District Magistrate to take steps to execute the order within a month from the date of receipt of the certified copy of the order.
15. Liberty granted to the petitioners to pray for

interim order before the appellate Tribunal in case the preliminary objection raised by the petitioners is not decided before execution of the order passed by WBRERA.

16. The writ petition stands disposed of.
17. All parties are to act on the server copy of this order duly downloaded from the official website of this court.
18. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]