

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 14265 of 2023

**Somnath Narayan and others
Vs.
The State of West Bengal and others**

With

W.P.A. No. 8125 of 2022

**Dipak Kumar Guha and others
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. Saptarshi Roy, Ms. Kakali Das Chakraborty
For the respondent no.4	:	Mr. S. Banerjee, Mr. Rahul Karmakar, Mr. Abhisek Baran Das
For the respondent no.3 in WPA No. 8125 of 2022	:	Mr. Amitava Mitra, Ms. Urmi Sengupta
Heard on	:	06.12.2024, 10.01.2025, 11.04.2025, 02.05.2025, 16.05.2025, 18.07.2025 & 08.08.2025
Reserved on	:	08.08.2025
Judgment on	:	22.08.2025

Sabyasachi Bhattacharyya, J:-

1. The petitioners and the private respondents are owners of different flats in a housing complex, namely Greenfield City, which schematically includes three categories of towers – the LIG, MIG and HIG segments. As per the allegations of the petitioners, they, along

with the majority members of the HIG segment of the said housing complex, were preparing to file a Declaration for registration of the towers allocated for the HIG section under the West Bengal Apartment Ownership Act, 1972 (hereinafter referred to as “the 1972 Act”). However, the private respondents, comprising a miniscule section of flat owners of different segments, without proper notice to the petitioners or other majority owners, filed a Declaration in Form-A under the 1972 Act, seeking registration of the same under the said Act. Such Form was accepted by the Competent Authority (CA) under the Act on April 12, 2022.

- 2.** Upon the petitioner learning of the same, they made a representation, on which a “speaking order” was passed by the CA on March 9, 2023, being aggrieved by which a writ petition, bearing WPA No. 19702 of 2022 was moved by the petitioners. A learned Single Judge of this Court, by an order dated September 14, 2022, remanded the matter to the CA, directing the latter to pass a fresh order with reasons within the period as specified therein. The said order questioned the CA’s previous finding that it had no power to review its own decision, but left it open to the CA to decide all questions afresh on merits.
- 3.** Subsequently, upon hearing both sides, the CA reiterated its stand, as taken in the previous order dated August 3, 2022, by passing another “speaking order” on March 9, 2023, thereby reiterating that it did not have the power to review its own order.
- 4.** The present writ petition challenges the said order of the CA dated March 9, 2023. Arguments have been advanced by both parties on

the legality of the acceptance of Declaration filed by the private respondents in Form-A on April 12, 2022, which merged in the order dated March 9, 2023. As such, the writ petition in effect challenges the decision of the CA to accept the Declaration filed by the private respondents in the first place, which culminated in and merged into the decision dated March 9, 2023 whereby the CA refused to recall such acceptance.

5. Learned counsel for the petitioners contends that no prior notice under Section 10A (1) was given to the remaining owners before submitting the Form-A to the CA. It is argued that, within the contemplation of Sections 2 and 10A of the 1972 Act, either the sole owner or all the owners or the majority of the owners are entitled to submit a Declaration in Form-A, whereas the private respondents comprised of only a miniscule number of the owners.
6. That apart, it is argued that the Declaration was signed on behalf of one of the private respondents purportedly by a constituted attorney, which is not permissible under the 1972 Act. It is next argued that under Rule 2A of the West Bengal Apartment Ownership Rules, 1974 (for short, “the 1974 Rules”), framed under the 1972 Act, the sole owner or all the owners or the majority of the owners must submit their property within three years from the date of the issuance of Completion Certificate by the CA. Thus, the issuance of Compliance Certificate is mandatory for filing a Declaration. In the present case, only an “Occupancy Certificate” was apparently filed with the Declaration, although Form-A, as prescribed in the 1974 Rules,

mandates the filing of a “Completion Certificate” along with Form-A. Thus, the petitioners contend that the acceptance of the Declaration itself was vitiated in law.

7. Learned counsel for the petitioners further argues that Section 10A (2)(a) of the 1972 Act provides that prior to acceptance and registration of a Declaration, notice is to be issued to the “parties concerned” and an enquiry is to be held to ascertain whether the property concerned comes within the purview of the Act and the Declaration is in order. Thereafter, the CA has to pass an order in writing giving reasons therefor, either accepting or rejecting the Declaration.
8. In the present case, neither any prior notice was issued to the owners other than the private respondents, nor was any enquiry held within the contemplation of the statute. Thus, the mandatory provisions of Section 10A (2) of the 1972 Act as well as Rule 3 of the 1974 Rules were violated.
9. It is reiterated that under the Rules, the majority of the owners themselves have to sign and verify the Declaration in Form-A in presence of a Magistrate or any other person competent to administer oath. The said provision was flouted, since one Rajeev Agarwal, who represented himself as an authorized signatory of the builder/developer, purportedly counter signed the notice of intention in Form-E issued by only five apartment owners on March 24, 2022. The Act or the Rules, it is contended, do not permit the issuance of

notice or filing of such Forms by a constituted attorney of any of the owners or the developer.

- 10.** Learned counsel for the petitioners submits that an online application was made by an anonymous person on March 29, 2022 and a vague and premature notice dated April 9, 2022 was purportedly issued by the CA, asking the said sole anonymous applicant to appear before it on April 12, 2022.
- 11.** In view of the above, it is argued that the acceptance of the said Declaration and the subsequent affirmation of the same by the impugned order are vitiated in law.
- 12.** Learned counsel appearing on behalf of the petitioners next argues that the respondents have sought to justify the illegal submission of Form-A on the basis of the guidelines issued by a departmental Circular dated April 30, 2021 by the CA, who himself accepted the unlawful submission of Form-A on April 12, 2022, which is impugned herein. Such reliance, it is contended, is misconceived and without any legal basis, since the Circular is an executive instrument and not a piece of delegated legislation sanctioned by the statute. Only the State Government, it is argued, can frame rules to facilitate the operation of the 1972 Act, but the CA has no authority whatsoever to do so or, by executive fiat, to contradict the provisions of the Act or the Rules framed thereunder.
- 13.** The Declaration, it is argued, was time-barred, being in violation of Rule 2A of the 1974 Rules. It is argued that an Occupancy Certificate, issued under Rule 34(2) of the West Bengal Municipal Building Rules,

2007 (in brief, “the 2007 Rules”), cannot be a substitute for a Completion Certificate. It is argued that a certificate issued and signed by an architect or licensed surveyor under Rule 16(i) of the West Bengal Municipal Building Rules, 1992 (for short, “the 1992 Rules”) is to be deemed as a Completion Certificate within the contemplation of the 1972 Act, since the said Act does not provide for issuance of such Completion Certificate. Structural Stability Certificate is also to be issued by the architect and/or licensed surveyor under the said Rule as prescribed in Form-G under Rule 33, which were not complied with in the present case.

14. Learned counsel relies on the judgment of a learned Single Judge of the Kerala High Court in the matter of *P.V. Nidhish and another v. Sivaprakash*, for the proposition that the Occupancy Certificate issued by the local authority under Rule 22 of the Kerala Municipal Building Rules is not a Completion Certificate under the Real Estate Regulation and Development Act 2016 (for short, “the RERA”).
15. Learned counsel next cites a judgment of a learned Single Judge of this Court in *Erna Johanna Bose and others v. The State of West Bengal and others* [WPO No. 73 of 2024] in support of the argument that the expression “parties concerned” in Section 10A (2) of the 1972 Act means “all interested parties who are concerned in any manner by the Declaration being accepted and non-service of such notice would vitiate the acceptance of the Declaration in Form-A. The learned Single Judge relied on another unreported judgment of this Court in *WPA No. 25143 of 2023* [M/s Fortune Park Housing Project Limited and another

v. State of West Bengal and others] to hold that the contention that such notice is meant only for the applicant is absurd and contrary to law.

16. It was held further that Section 2 leaves no manner of doubt that it has conferred the discretion on the apartment owners themselves to choose whether to subject themselves to the provisions of the Act or not, which option cannot be an open-ended window, left open forever. A sufficiently reasonable time of three years from issuance of the Completion Certificate has been given by Rule 2A for the apartment owners to seek registration by submission of a Declaration. It was held in the said case that if the same was done after an inordinately long period of 13 years from the issuance of the Completion Certificate, the Declaration sought was time-barred.
17. Learned counsel appearing for respondent no. 4, the contesting respondent, submits that due notice was served within the contemplation of Section 10A (1) by affixation on the general notice board of the apartments.
18. It is contended that an Occupancy Certificate is issued under the Municipal Laws when a portion of the project is completed.
19. Thus, for all practical purposes, the “Completion Certificate” as contemplated in the 1972 Act and the 1974 Rules includes an Occupancy Certificate. Learned counsel argues that Section 3(a) of the 1972 Act defines “apartment” as the part of a property, having direct exit to a road, street or highway or to a common area leading to such road, street or highway together with its undivided interest in the

common areas and facilities which forms an independent residential unit, and includes flat.

- 20.** The expression “Property” is defined in Section 3(k) of the Act to comprise of the land, the building and the common areas and facilities and, in case of complexes having different types of apartments meant for selling to people of different income groups, shall mean the land, building and the common areas and facilities for that particular type of apartment. Thus, since the Completion Certificate is not issued unless the entire project is completed, Occupancy Certificates issued for each of the towers of the housing complex would come within the purview of ‘Completion Certificate’ insofar as the said tower is concerned.
- 21.** It is argued that the terms “Occupancy Certificate” and “Completion Certificate” have been used separately in different statutes. Whereas “Occupancy Certificate” has been mentioned in Section 2(zf) of the RERA, 2016 and its corresponding Rules as well as Section 115A (4) of the West Bengal Municipal Act, 1993 and the 2007 Rules, the expression “Completion Certificate” has been used in Section 2(q) of the RERA, 2016 and its Rules as well as the 1993 Act and the 2007 Rules. Since, in the present case, the entire project has not been completed, Completion Certificate has not been granted by the relevant authorities. Therefore, the Occupancy Certificate has to be treated as the Completion Certificate insofar as the completed apartments are concerned.

- 22.** Learned counsel highlights the expression “parties” in the expression “notice to the parties” as used in Section 10A (2) of the 1972 Act. It is submitted that, as defined in Black’s Law Dictionary as well as Mitra’s Legal and Commercial Dictionary, a “party” is a person who participates and/or is involved in any proceeding. Thus, the persons who have participated in the process of filing the Declaration or who have intended to submit themselves within the jurisdiction of the 1972 Act can be considered as parties. Any other meaning would defeat the purpose of the Section, which has been promulgated to exclude the disturbance created by the minority in a complex and/or a project.
- 23.** Since the petitioners and other owners, despite a notice on the common notice board, chose not to give representation or be present before the CA, no further notice was required to be issued to them, since Section 10A (1) had already been complied with.
- 24.** Lastly, learned counsel argues that Section 2 of the Powers of Attorney Act, 1882, clearly provides for conferment of authority on a Power of Attorney holder for any purpose whatsoever. There is no bar in the 1972 Act to a Power of Attorney doing any act contemplated under the said Act.
- 25.** Upon hearing the counsel for the parties, the court comes to the following **conclusions**:
- 26.** Certain provisions of the 1972 Act are required to be considered for a complete adjudication of the *lis*.

- 27.** Section 2 of the Act provides that the sole owner, all owners, or the majority of owners are required to register a Declaration as per Section 10 of the Act.
- 28.** Section 10A (1) provides that the Declaration referred to in Section 2 of the 1972 Act has to be submitted, at the first instance, by such sole owner, all owners or majority owners in duplicate within 30 days of its execution to the CA with copies of plans, etc., along with a notice of intention to submit to the Act by the majority owners to the remaining owners in prescribed form if the Declaration is submitted by the majority owners. The said provision also permits the remaining owners to submit Declarations subsequently.
- 29.** Thus, even prior to submission of Declaration in Form-A, a notice to the remaining owners must be issued, the copies of which have to be filed with the Declaration. By its very nature, such notice has to be given personally to all the remaining owners, since a general notice on the soft-board of the office of the apartment might not suffice as actual notice to the remaining owners. The necessity of a copy/copies of such notice to be filed with the Declaration indicates that the notice has to be a personal notice, since otherwise it would be an illusory notice and the person submitting the Declaration might very well merely file a self-generated copy of a purported notice without satisfying the CA that such notice has been served on the remaining owners.
- 30.** The provision in sub-section (1) of Section 10A that the remaining owners would be allowed to submit a Declaration subsequently clearly

denotes that such subsequent submission would be in consonance with the first Declaration filed by the majority owners. Otherwise, there would be no occasion for issuing a further notice under sub-section (2) of Section 10A, which would be then a futile exercise. Unless the provision of the remaining owners being allowed to submit a subsequent Declaration is construed to mean that such subsequent Declaration has to be in line with the original Declaration, a situation might arise where the subsequent Declarations conflict with the original Declaration, which would require an adjudication on the part of the CA to decide which Declaration(s) to accept and which to not, which is not provided for at the sub-section (1) stage. The first scope of adjudication is only at the stage of Section 10A (2), after notice to parties and an inquiry by the CA.

- 31.** Thus, the provision of allowing the remaining owners to submit a Declaration does not entail that a different and conflicting Declaration than the one first submitted by the majority owners can be filed under sub-section (1). Hence, such provision does not permit the remaining owners to deviate from or challenge the original Declaration filed by the majority owners.
- 32.** Sub-section (2) is the provision which provides for an objection to the original Declaration. It stipulates that on receipt of a Declaration in Form-A, the CA shall issue a notice to the parties concerned and hold an inquiry to ascertain whether the property comes within the purview of the Act and whether the Declaration is in order. It would be a rather absurd proposition to argue that the expression “parties concerned”

only denotes the applicants who submitted the Declaration in the first place, since the Declarants would obviously stand by their original Declaration and there would be no necessity of giving a further notice to them since they themselves have filed the Declaration in the first place. The presence of the original Declarants, thus, would not assist in the inquiry to be undertaken by the CA at all.

- 33.** The argument that the prior notice under sub-section (1) of Section 10A would suffice is belied by the fact that the statute itself provides for two stages of notices, one under Section 10A (1) and the other under Section 10A (2), the first to be given by the Declarants and the second by the CA itself.
- 34.** That apart, the prior notice contemplated under sub-section (1) is only a notice of the intention of the majority owners to submit to the Act and is designed merely to ascertain whether the remaining owners would join with the majority owners in filing the Declaration. The expression “notice of intention to submit to the Act”, used in sub-section (1) clearly signifies that by virtue of getting such notice, the remaining owners would only have an option to join with the majority owners. Such a notice of mere intention would not intimate the noticee the exact date on which a hearing is to be given or even when the Declaration is actually to be filed. Without such knowledge, there would be no occasion or opportunity for the remaining owners to object to the Declaration even if they intended to.
- 35.** The subsequent notice under sub-section (2) of Section 10A is precisely meant to serve such purpose, to ensure that the date of

hearing is notified to the remaining owners so that they can come up and object or agree to the contents of the Declaration, for a fruitful inquiry to be conducted by the CA into the questions as to whether the property comes within the purview of the Act or the Declaration is in order. "Is in order" is a sufficiently wide expression to include all sorts of objections to the Declaration.

- 36.** Not stopping there, clause (b) of sub-section (2) provides that the CA has to either accept or reject the Declaration by a "reasoned order in writing" after the notice is issued and the inquiry is held.
- 37.** Hence, the argument of the respondent no. 4 that "parties concerned" essentially means only the applicant goes against the grain of the statutory scheme and cannot be accepted.
- 38.** Sub-section (3) of Section 10A only permits an appeal within thirty days by an aggrieved person if there is a rejection of the Declaration. However, in case of acceptance, there is no provision of any challenge by way of appeal.
- 39.** Thus, the absence of any provision to further challenge the acceptance of the Declaration furnishes all the more reason for the notice under Section 10A (2)(a) to be served on all parties concerned. The expression "parties" cannot be given a restricted meaning by construing the same to mean only the parties to the application/Declaration but must be liberally construed to signify all parties to the entire process of submission of Declaration, inquiry and hearing, who are concerned with the Declaration, which obviously includes the remaining owners. Section 10A is a self-contained

provision which provides for notice to the remaining owners, who are the most interested parties to the Declaration and in the absence of such notice, the entire process of acceptance of the Declaration is palpably vitiated.

- 40.** It is to be noted that an amendment to a Declaration can only be sought within the contemplation of the 1972 Act by the majority owners who filed the Declaration in the first place and not by the other owners. Thus, the only scope of objecting to the Declaration for the remaining owners is under section 10A (2) of the 1972 Act.
- 41.** Insofar as the present case is concerned, the acceptance of the Declaration is vitiated by non-service of personal notice to the remaining owners of the intention to submit to the jurisdiction of the Act, as contemplated in section 10A (1) of the Act, as well as by non-service of notice under Section 10A (2) of the Act on the remaining owners. Furthermore, no reasoned order in writing has been produced regarding acceptance of the Declaration, as mandated by Clause (b) of Sub-Section (2) of Section 10A, in the present case.
- 42.** Thirdly, the Declaration was submitted by only a miniscule number of apartment owners and not by the majority owners, as contemplated in Section 2, read with Section 10A of the 1972 Act.
- 43.** The next argument with regard to Completion Certificate presents another problem. Surprisingly, although Rule 2A of the 1974 Rules speaks about a Completion Certificate being issued, neither the 1972 Act nor the 1974 Rules provides any modality of issuance of such certificate by the CA. In the 1974 Rules, Rule 2(2) provides that the

words and expressions used in the Rules, but not defined therein, shall have the same meaning as respectively assigned to them in the Act.

- 44.** The Act defines “Competent Authority” as the person authorized to perform the functions of the Competent Authority under the 1972 Act, and does not leave scope for any other usage of the expression “Competent Authority”. Thus, the Competent Authority which has to issue the Completion Certificate under Rule 2A has to be the CA appointed under the Act itself. This is itself a lacuna in the statute and is required to be looked into by the Legislature.
- 45.** Be that as it may, since Form-A provides that a copy of “relevant Completion Certificate” can be filed along with the Form-A, a liberal construction has to be given to the same and it may be construed that any relevant certificate having the effect of a Completion Certificate in respect of the particular portion of the apartment for which Declaration is sought would make do as a Completion Certificate. Also, the Form-A provided under the Rules allows for a copy of a No Objection Certificate to form an association issued by a Local Body to be filed as a substitute of a Completion Certificate.
- 46.** Going by the same, an Occupancy Certificate may be issued for a particular portion of the housing complex, which qualifies as “property and “apartment” under the 1972 Act. Thus, the said ground of objection taken by the writ petitioners cannot be upheld.

- 47.** The bar as to Power of Attorney, as argued by the petitioners, cannot also be accepted, since there is no specific bar in the 1972 Act for a Power of Attorney holder to act on behalf of an owner.
- 48.** Although a Magisterial Certificate is required to verify the signature of an owner within the contemplation of the Act and the Rules, since the Powers of Attorney Act provide that any Act which can be done by the author of the Power Of Attorney can be done by the constituted attorney, in the absence of any specific bar in the 1972 Act, it cannot be held that what an owner can sign cannot be signed by his constituted attorney, provided the other requirements as to Magisterial Certificate etc. are fulfilled.
- 49.** Insofar as the effect of the cited Circular is concerned, the same, as rightly argued by the petitioners, cannot override the law. even the rules framed under the Act cannot override the provisions of the parent Act. Section 17 of the Act provides such rule-making powers on the State Government and also stipulates that the rules shall be framed “to carry out the purposes of the Act”. Thus, the CA does not have the powers of making rules and/or issuing any Circular to override or circumvent the provisions of the statute.
- 50.** In any event, the existence of the Circular relied on by the respondent no.4 does not carry any major significance insofar as the disputes in the present writ petition are concerned, since several provisions of the Act itself have been violated in accepting the impugned Declaration in the present case, as discussed above.

- 51.** In fine, for the reasons stated above, this Court is of the opinion that the acceptance of the Declaration in Form-A, submitted by the private respondents, was in stark contravention of the law.
- 52.** Although the CA might have a point in holding that it did not have powers of reviewing its own orders under the Act, ultimately the acceptance of the Declaration in Form-A by the CA on April 12, 2022 merged into the speaking order dated March 9, 2023, which has been challenged in the present writ petition. Both the contesting parties have, in fact, argued at length on the legality of such acceptance. Thus, the challenge thrown in the writ petition can very well be construed to be a challenge to the acceptance of the Declaration itself.
- 53.** Accordingly, W.P.A. No. 14265 of 2023 with W.P.A. No. 8125 of 2022 are allowed on contest, thereby setting aside the acceptance of the Declaration submitted by the private respondents in Form-A on April 12, 2022 by the Competent Authority.
- 54.** All consequential steps taken on the strength of the said acceptance, including registration of the Declaration, if any, as well as other actions taken on the basis of such acceptance stand hereby revoked and annulled as well.
- 55.** There will be no order as to costs.
- 56.** Urgent certified server copies, if applied for, be issued to the parties upon compliance with due formalities.

(Sabyasachi Bhattacharyya, J.)