

30.06.2026
Item No.1
Court No.37
CHC

In The High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

MAT 2489 of 2023
IA NO: CAN/1/2023

Arnob Das & Ors.
Vs.
EGV Association of Apartment Owners & Anr.

Mr. Aniruddha Chatterjee, Senior Advocate
Mr. Rahul Karmakar, Advocate
Mr. Abir Lal Chakroborty, Advocate
Mr. Sounak Mukherjee, Advocate
...for the appellants

Mr. Rajarshi Dutta, Advocate
Mr. Shounak Mukhopadhyay, Advocate
Ms. Pooja Chakrabarti, Advocate
Ms. Arti Bhattacharyya, Advocate
Mr. Chiraag Agarwal, Advocate
...for the respondent nos.1 and 2

Mr. Abhrajit Mitra, Senior Advocate
Mr. Saptarshi Datta, Advocate
Mr. Satadeep Bhattacharyya, Advocate
Ms. Sriparna Mitra, Advocate
Ms. Srinjita Ghosh, Advocate
Mr. Pourush Kanti Pal, Advocate
Mr. Debdut Hore, Advocate
...for the respondent no.5

1. Appeal is at the behest of persons who claim themselves to be the owners in respect of apartment lying and situated in Tower No.8 of Elita Garden Vista, Unit Premises No.IIIE-0004, Plot No. IIIE-4 and IIIE-4/1, Police Station – Techno City, Kolkata- 700135.
2. Learned Senior Advocate appearing for the appellants submits that, the appellants purchased units in Tower No.8 of Elita Garden Vista. He submits that, Elita

Garden Vista is a housing complex consisting of several towers. One of such towers is T-8.

3. Learned Senior Advocate appearing for the appellants submits that, disputes and differences arose as to the constitution of the owners association in respect of the housing complex. The competent authority exercising powers under the provisions of the West Bengal Apartment Ownership Act, 1972 by a writing dated September 27, 2023 held that, the owners of Unit of T-8 would be entitled to vote in the ensuing election of the owners association along with other existing owners. He submits that, such writing dated September 27, 2023 was assailed by way of writ petition which resulted in the impugned judgment and order.
4. Learned Senior Advocate appearing for the appellants submits that, the learned trial Judge erred in not considering the appellants as owners who are entitled to vote under the Act of 1972. He submits that, by dint of their purchase of the respective units, the appellants purchased if nothing else at least proportionate share in the immovable property over which, the Tower 8 was erected. He submits that, it is immaterial as to whether or not Tower 8 was erected illegally for the purpose of consideration of the voting rights and occupants of the Tower 8 such as the appellants.

5. Learned advocate appearing for the writ petitioners/respondent nos.1 and 2 herein who are writ petitioners filing the writ petition in which the impugned judgment and order was passed submits that, the appellants were not included in Form-A filed in terms of Act of 1972. In any event they cannot be considered as owners entitled to vote in a election of the apartment of the housing complex. He submits that, learned trial Judge correctly held that, the appellants were not entitled to vote in the ensuing election and correctly set aside the letter dated September 27, 2023 of the competent authority.
6. Learned advocate appearing for the writ petitioners submits that, the immovable property concerned will include not only the legally erected towers but also the common area appertaining to such towers.
7. Learned Senior Advocate appearing for the respondent no.5 submits that, his client is the sole owner. He submits that, his client is anxious to make over the management of the housing complex to the duly elected body.
8. A housing complex, consisting of several towers, came up under the name Elita Garden Vista. Initially some towers came up. Thereafter, apparently, on a modified plan sanctioned another 8 Towers came up.
9. In respect of the modified sanction, there are disputes with regard to the erection of Tower 8 therein.

10. The housing complex requires an association. Formation of the association is governed under the provisions of the Act of 1972. Act of 1972 contemplates filing of Form-A and Form-B. Essentially Form-A under the Act of 1972 specifies the owners of the respective units in the housing complex.
11. The composition of the persons entitled to vote in the formation of the association in terms of the Act of 1972 is decided by the competent authority. Competent authority took a decision as contained in the writing dated September 27, 2023.
12. The decision of the competent authority as contained in its letter dated September 27, 2023 was challenged by way of a writ petition in WPA 24556 of 2023 resulting in the impugned judgment and order.
13. The respective contentions of the parties, as to whether or not, the owners of the units in the disputed Tower 8 are entitled to vote in the formation of the owners association in respect of the housing complex namely, Elita Garden Vista apparently, were not considered in the order of the competent authority as contained in the letter dated September 27, 2023. Such contentions are also not dealt with by the competent authority in such letter.
14. It would be appropriate to set aside the judgment and order under appeal as also the decision of the competent authority dated September 27, 2023 and

- remand the parties to the competent authority for fresh hearing. All points raised by the respective parties are kept open to be decided by the competent authority. Competent authority is requested to afford reasonable opportunity of hearing to all stake-holders including the parties before this Court. Competent authority is at liberty to arrive at its decision without being influenced by any decision or observations made either by the learned trial Judge or by us in this order.
15. Learned advocates for the respective parties invite the Court to lay down a time bound manner for consideration and decision by the competent authority.
16. Since the maintenance of the housing complex is one of the functions of the housing association that is required to be formed, it would be appropriate to request the competent authority to decide the issue as expeditiously as possible and preferably within eight weeks from date of communication of this order to the competent authority.
17. Court is informed that, there are subsisting orders governing the election process between the parties. We clarify that our order should not be read and construed to mean that we interfered in any manner whatsoever or varied the process as laid down by the coordinate Bench.

18. **MAT/2489/2023** along with connected application are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)