

## VERDICTUM.IN

### Court No. - 1

**Case :-** WRIT - C No. - 7681 of 2023

**Petitioner :-** M/S Alpha Corp Development Pvt. Ltd. Punjab  
Thru. Authorised Signatory

**Respondent :-** State Of U.P. Thru. Prin. Secy. Housing And  
Urban Planning Deptt. Govt. Of U.P. Lko. And Others

**Counsel for Petitioner :-** Aahuti Agarwal, Abhishek  
Khare, Sudeep Kumar

**Counsel for Respondent :-** C.S.C., Shobhit Mohan Shukla

**Hon'ble Attau Rahman Masoodi, J.**

**Hon'ble Om Prakash Shukla, J.**

**(C.M. Application No. IA/2/2023: Application for Extension  
of Time)**

1. The Uttar Pradesh Real Estate Appellate Tribunal (hereinafter referred to as "Tribunal") though constituted by the State has become defunct due to non availability of a Judicial Member, an Administrative Member and a Technical Member. For activating the functioning of the Tribunal, the benches have to be constituted in accordance with Section 43(3) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "Act, 2016") which for ready reference is extracted below:

*"43(3)- Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member."*

2. At present, the meeting of Selection Committee for selection of a Judicial Member has though taken place on 04.08.2023 but the name of the Judicial Member is yet to be recommended for appointment by the Committee constituted in accordance with Section 46(3) of the Act, 2016.

3. Taking note of the current scenario, this Court had passed the following order on 13.10.2023.

*"1. This writ petition raises an important question as to the functioning of Uttar Pradesh Real Estate Appellate Tribunal where the process of law has come to a grinding halt. This petition has come up before this Court under peculiar circumstances. The writ petition was previously decided by an order dated 18.09.2023 which is extracted here-in-below:-*

*"Learned counsel for the petitioner, Shri Sudeep Kumar, after arguing at some length, prays that he may be permitted to withdraw the writ petition with liberty to avail the alternative remedy under section 43 read with*

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section 44 of the Real Estate Regulation and Development Act, 2016.

*Accordingly, the writ petition is dismissed as withdrawn with the aforesaid liberty.*

*In case appeal relating to the subject matter is instituted within a period of two weeks from today, no coercive action shall be taken in furtherance of the order impugned herein subject to the remedy open.*

*The benefit of this order shall be available to the petitioner for a period of two weeks only and the Tribunal on the institution of proceedings shall proceed to consider the application for grant of interim relief on its own merit.*

*It is made clear that the appeal filed by the petitioner shall not be rejected on the ground of delay, if any, provided further that in the event of failure to file the appeal within the time prescribed as above, all the pleas and consequences shall remain open."*

*2. An application for extension of time has been filed on the ground that the Tribunal comprising of four members including the Chairperson has ceased to function due to the retirement of Technical Member on 26.09.2022 and in absence of the Administrative Member since 30.09.2022, the Tribunal on the administrative side is unable to form the bench. It has been informed that at present, apart from the Chairperson, one Administrative Member, namely, Shri M.C. Jauhari, a retired IAS officer, after his appointment on 26.09.2022, has held the Court on a day or two.*

*3. Though the information pertaining to the absence of Administrative Member has been brought to the notice of the State Government, but the State Government has not taken note of it and it is unclear whether any financial benefit is extended to the Administrative Member by the State or not. In any case, the functioning of the Tribunal under such circumstances cannot be left unattended.*

*4. The appointment of an Administrative Member or a Technical Member in the Tribunal is regulated under Section 46 (3) of the Real Estate (Regulation and Development) Act, 2016, which reads as under:-*

*"Section 46 (3) - The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed."*

*5. Rule 26 of The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 applicable in this behalf being significant is also extracted hereunder:-*

*"26-(1) The Appellate Tribunal shall consist of a chairperson and three whole time members.*

*(2) As and when vacancies of a Member in the Appellate Tribunal exist or arise, or are likely to arise, the Government may make a reference to the*

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*Selection Committee in respect of the vacancies to be filled.*

*(3) The Selection Committee may, for the purpose of selection of the Member of the Appellate Tribunal, follow such procedure as deemed fit including the appointment of a search committee consisting of such persons as the Selection Committee considers appropriate to suggest a panel of names possessing the requisite qualification and experience and suitable for being considered for appointment as Member of the Appellate Tribunal.*

*(4) The Selection Committee shall select two persons for each vacancy and recommend the same to the Government.*

*(5) The Selection Committee shall make its recommendation to the appropriate Government within a period of sixty days from the date of reference made under sub rule (2).*

*(6) The Government shall within thirty days from the date of the recommendation by the Selection Committee, appoint one of the two persons recommended by the Selection Committee for the vacancy of the Member."*

*6. The statutory provision makes it clear that a Statutory Committee is provided under law for making necessary selection. The Selection Committee for carrying out its function is empowered to constitute a Search Committee under the Rules.*

*7. Shri Prakhar Mishra, learned Additional Chief Standing Counsel is granted two days' time to obtain instructions as to whether there is any mechanism of inviting applications for being placed before the Selection Committee insofar as the appointment of Judicial/ Administrative Members of the Tribunal is concerned.*

*8. List/ put up on 26.10.2023.*

*9. In the peculiar facts and circumstances of the case, the interim protection granted by order dated 18.09.2023 shall continue till the next date of listing.*

*10. Shri Shobhit Mohan Shukla, learned counsel for the Tribunal shall apprise the current status of the Administrative Member on the next date of listing.*

*11. Learned counsel for the State shall also apprise the Court as to whether any Search Committee for the purpose of recommending the members for appointment was constituted or not.*

*12. The Registrar, Appellate Tribunal, in the meantime, shall also inform the Administrative Member if there is any genuine difficulty to resume office and obtain clear instructions in this regard.*

*13. A copy of this order shall also be communicated to the administrative member by the Registrar, Appellate Tribunal forthwith. The Registrar, Appellate Tribunal shall be present before the Court on the next date with*  
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4. Insofar as the status of the Administrative Member is concerned, Shri Shobhit Mohan Shukla, learned counsel appearing for the Tribunal, has informed that the order passed by this Court was communicated to the Administrative Member, in response to which, he has submitted his reply on 18.10.2023 and a copy thereof has been placed before this Court and the same is taken on record.

5. The Administrative Member appointed in the Tribunal ever-since the date of his appointment and joining i.e. on 26.09.2022, has not worked for more than a single day. The reasons spelt out for non working, appear to be the ailment of his son who is stated to be suffering from cancer. There may be genuine reasons for absence but functioning of the Tribunal and public interest of a judicial organ, cannot be allowed to suffer, on account of personal difficulties faced by a Member. The Administrative Member certainly has been appointed after his retirement from Indian Administrative Service. Any appointment for manning such posts, is primarily aimed at to make the judicial process active and its functioning cannot be brought to a grinding halt on account of any personal difficulty whatsoever. The availability of an Administrative Member is an essential concomitant of making the whole procedure as functional without which a Bench cannot be formed.

6. Shri Prakhar Mishra, learned Additional Chief Standing Counsel for State, at this stage, has informed that the State has already proposed to forward a proposal to the High Court under Section 49(1)(e) of Act, 2016 in the matter. It is further informed that the reference so proposed has already been processed and shall reach to the High Court within a day or two. The fact remains that the Office of Administrative Member also continues to be vacant and some arrangements is bound to be made by the State Government.

7. This Court may take note of the fact that vacancies occurring for the reasons other than temporary absence are regulated to be filled up under Section 52 of the Act, 2016 and the same reads as under:

*"52. Vacancies- If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the*

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*proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled."*

**8.** In the present case, the State Government has proposed an action under Section 49(1)(e) of Act, 2016. It is certainly a situation other than the temporary vacancy and the procedure for appointment is bound to follow as per the mandate of Section 52 extracted above.

**9.** We also take note of the fact that the Technical Member who has also retired recently on 26.09.2023 is also to be filled up as per the procedure prescribed. It is informed that a request for constituting of the search committee has been forwarded to this Court so that necessary steps for selection of the Technical Member are also proceeded with and the selection made as per the procedure prescribed under law.

**10.** Shri Prakhar Mishra, learned Additional Chief Standing Counsel for the State, has also pointed out that as soon as the recommendations by the selection committee, in so far as the appointment of Judicial Member is concerned, reaches to the State Government, the appointment shall be made expeditiously and not later than a period of 30 days from the date of recommendations so made.

**11.** We, however, expect the State to make the appointments at the earliest.

**12.** We make emphasize that in view of the prevailing situation, the statutory committee prescribed under the Act, 2016 may make an endeavour to proceed with the selection of Administrative Member as well as Technical Member in the meantime so that the functioning of the Tribunal is effectuated to serve the purpose of law.

**13.** The Senior Registrar of this Court is directed to place a copy of this order before Hon'ble the Chief Justice, who is the Chairman of the Statutory Committee by virtue of Section 46(3) of the Act, 2016. The Senior Registrar shall also apprise this Court about the outcome of any further proceedings taken up by the Selection Committee or search committee in the meantime.

**14.** Shri Shobhit Mohan Shukla, learned counsel for the Tribunal, has also informed that for an effective functioning of

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the Tribunal, the State Government has not allocated the funds as per the sanctioned budget and failure to allocate and release the funds timely goes to effect the smooth functioning of the Tribunal in terms of payment of salary to the staff and otherwise.

**15.** The State Government is also directed to apprise the Court as to the manner in which the sanctioned budget is allocated and released to the Tribunal so that functioning of the Tribunal does not suffer on that count. A personal affidavit may be filed by Additional Chief Secretary/Principal Secretary in this regard.

**16.** List/put up this matter on **08.11.2023**.

**17.** Ms. Tahreem Khan, Registrar, Uttar Pradesh Real Estate Appellate Tribunal, is present in person and shall apprise the Court about the outcome of this order on the next date of listing.

**18.** Interim order, if any, shall continue to operate till the next date of listing.

**(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)**

**Order Date :- 26.10.2023**  
Shubhankar