

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA/13834/2026
MRS. RITA DEV AND ORS.
VS
STATE OF WEST BENGAL AND ORS.

For the Petitioners:

Mr. Chayan Gupta, Adv.
Ms. Arpita Dey, Adv.
Ms. Rishika Goyal, Adv.
Ms. Sonia Das, Adv.

For the KMC:

Mr. Alok Kumar Ghosh, Adv.
Mrs. Sima Chakraborty, Adv.

For Respondent Nos.5,6 & 7:

Mr. Sumit Ray, Adv.
Mr. Jaysankar Mukherjee, Adv.
Ms. Sarda Sha, Adv.

Hearing concluded on:

15.07.2026

Judgment on:

15.07.2026

PARTHA SARATHI SEN, J. : -

1. The writ petitioners, the respondent KMC and the private respondent nos.5,6 and 7 are represented by their respective counsel. By filing the instant writ petition the petitioners have prayed for issuance of appropriate writ and/or writs against the respondent authorities, more specifically against the respondent no.1 to 4 authorities, commanding them to take appropriate steps against the private respondent nos.5 to 7 prohibiting them from carrying on

any commercial activity on plot no.188, Jodhpur, Kolkata-700068 ('plot in question' in short) alongwith ancillary reliefs.

2. At the time of hearing Mr. Gupta, learned advocate appearing for the writ petitioners at the very outset draws attention of this Court to page nos. 99 to 100 of the instant writ petition, being a copy of the order dated 15.09.2022, as passed by a coordinate Bench of this Court in WPA 20475 of 2022 whereby and whereunder in an earlier round of litigation the said coordinate Bench declined to grant relief to the writ petitioners and, thus, disposed of the said writ petition granting liberty to the writ petitioners to approach the appropriate authority under Section 102 of the West Bengal Co-operative Societies Act, 2006 (in short "the Act of 2006"). Materials have been placed before this Court that soon thereafter pursuant to the leave granted by the said coordinate Bench the present writ petitioners approached the Joint Registrar of Co-operative Societies, being a functionary of the office of the respondent no.2 by filing a Dispute Case under section 102 of West Bengal Co-operative Societies Act,2006 ('Act of 2006' in short) wherein the writ petitioners have prayed for the following reliefs:

"a) An order declaring that the defendant no.2 and/or 3 and/or 4 have no legal right for acquiring/occupying the Plot No.188 at Jodhpur Park, Kolkata-700068 for commercial purpose.

b) Appropriate order and/or directions prohibiting Defendant 2 and/or 3 and/or 4 from using the Plot No.188 at Jodhpur Park, Kolkata-700068 for any commercial purpose.

c) An order of injunction restraining Defendant 2 and/or 3 and/or 4 from disturbing the peaceful enjoyment,

possession and right of residence of the plaintiffs, utilizing Plot No.188 at Jodhpur Park, Kolkata-700068.

d) Ad interim orders in terms of prayers above;

e) Such further and/or other order or orders be passed, direction or directions as this Learned Forum may pass.”

3. The said Joint Registrar being an Arbitrator within the meaning of Section 103 of the Act of 2006 disposed of the said Dispute Case by its award dated 21.06.2023 holding that prayers (a) and (b) of the said dispute case are not maintainable before him. However, in the said award a liberty was granted to the parties to approach the appropriate forum for adjudication of the dispute. For better appreciation, this Court proposes to quote the ordering portion of the award dated 21.06.2023 in verbatim and the same is as under :

“On examination of evidence on record and on consideration of arguments-written and oral as advanced by the parties, it is hereby awarded in accordance with justice, equity and good conscience that the prayers (a) and (b) of the plaintiffs is not maintainable in this forum.

However, the parties are at liberty to approach proper forum for adjudication of the same.

It would be a travesty of justice if the petitioners are left in the lurch.

Hence in accordance with justice, equity and good conscience it is directed that the Defendants No.1 to 4 must make sure that there is no nuisance near the vicinity of the premises of the petitioners 1 to 6 in terms of the provisions of section 92 sub-sections (4) & (5) of WBCS Act, 2006.”

4. In course of his submission Mr. Gupta took me to the written statement of the private respondents as filed before the said Joint Registrar a copy of which has been annexed at page no.121-129 of the instant writ petition. It is submitted by Mr. Gupta that from the written statement of the private

respondents as filed in the said dispute case, it would reveal that it was the candid admission of the present private respondents that they were not the members of the respondent no.4 co-operative society herein. At this juncture, Mr. Gupta took me to the supplementary affidavit as filed today in this writ petition. It is argued that from the copy of the scheme of the housing co-operative society as has been annexed with the supplementary affidavit today it would reveal that the objective of the scheme is to provide homes for the members of the said co-operative society and from other clauses of the said scheme it would reveal further that it has been decided by the members of the said co-operative society in a special general meeting that the members would not allow to defeat the purpose of creation of the said housing society.

5. In his next limb of submission Mr. Gupta submits before this Court that before the Joint Registrar in the said dispute case it was the specific case of the writ petitioners that the private respondents, who are not the members of the co-operative society, rather claiming their interest through a deceased member of the said society, have established a school on the plot in question which is contrary to the scheme of the housing society and with the establishment of the said school the peaceful enjoyment and possession of the writ petitioner is being hampered since the private respondents are using the said plot in question for commercial purpose that is for running a public school.

6. In support of his contention Mr. Gupta took me to Section 72 of the Act of 2006 which deals with restriction of transfer of possession of interest in land

held under the co-operative society. It is argued by Mr. Gupta that it is the legislative mandate under section 72(b) of the Act of 2006 that in the event a member of the co-operative society dies, the property as stood in the said society in the name of the said deceased shall vest in his heir, executor and administrator or in the person nominated by him if such heir, executor, administrator or person is willing to be admitted as a member of the co-operative society. It is further submitted by Mr. Gupta that Section 72(c) of the Act of 2006 further postulates that in the event the heir, executor, administrator or person(s) nominated does not become member of the said co-operative society, the property of the deceased member shall vest in the co-operative society and the co-operative society shall pay such heir, executor, administrator or person as the case may be a sum equal to the value of the land including the structure as per the market rate. For better appreciation this Court proposes to quote Section 72 of the Act of 2006 in verbatim and the same is also quoted hereinbelow.

“72. Restriction on transfer of possession of, and interest in land held under co-operative society.-
Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force:

- (a) a member of a co-operative society, the object of which is the reclamation or acquisition of land and leasing thereof to its members, shall not be entitled to transfer his possession of, or intercept to the co-operative society or with its previous approval in accordance with its by-laws, to a new member thereof.*
- (b) when the membership of a member of a co-operative society referred to in clause (a) terminates by reason of death, expulsion, resignation, insanity or any other cause, his possession of interest in, and land held by*

him under the co-operative society shall vest in his heir, executor or administrator or in the person, if any, nominated by him under section 76, if such heir, executor, administrator or person is willing to be admitted as a member of the co-operative society and is eligible for membership under section 64;

- (c) if the heir, executor, administrator or person referred to in clause (b) does not become a member of the co-operative society, the possession of, and interest in, the land including structure thereon, if any, of the deceased, expelled, resigned or insane member shall vest in the co-operative society and the co-operative society shall pay to such heir, executor, administrator or the land including the structure, if any, as determined on the basis of prevailing market price;*
- (d) no land held by a member under the co-operative society referred to in clause (a) or vested in his heir, executor or administrator or the person under clause (b), shall be attachable in any suit or proceedings for recovery of any debt other than a debt due to the co-operative society.”*

7. It is contended by Mr. Gupta that it is the specific case of the writ petitioner before the Joint Registrar in a dispute proceeding under Section 102 of the Act of 2006 that prior to transfer of the plot of land in question of the said co-operative in favour of the private respondents no compliance of Section 72 of the said Act of 2006 has been done and despite placing sufficient materials, the said Joint Registrar passed the said award holding that he cannot entertain prayers (a) and (b) of the present writ petitioners being not maintainable.

8. It is submitted by Mr. Gupta that though in the instant writ petition the writ petitioners have not challenged the said faulty award, however, since the said Joint Registrar has miserably failed to act in accordance with law, he has

approached this Court in its writ jurisdiction for issuance of appropriate writ or writs against the respondent authorities, who are admittedly the authorities under Article 12 of the Constitution of India.

9. It is further submitted by Mr. Gupta that from the materials placed on record before this Court it would reveal that there was violation of the provisions of the said Act of 2006 with regard to transfer of the plot in question, being plot no.188, Jodhpur Park, Kolkata-700068. It is, thus, submitted by Mr. Gupta that appropriate relief or reliefs may be granted to the writ petitioners in accordance with law.
10. Per contra, Mr. Ray, learned advocate appearing on behalf of the private respondents no.5, 6 and 7 submits before this Court that the writ petitioners have not challenged the said award as passed by the Joint Registrar in this writ petition and without availing the alternative, suitable, efficacious, effective and statutory remedy the writ petitioners have approached this writ Court for ventilating their grievances and on this score alone the instant writ petition may be dismissed.
11. Mr. Ghosh, learned advocate duly assisted by Mrs. Sima Chakrabarty, learned advocate appearing on behalf of the respondent KMC supports the contention of the private respondents.
12. On careful perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties it appears to this Court that admittedly pursuant to the leave granted by a coordinate Bench of this Court in WPA 20475 of 2022 the writ petitioners have approached the

Joint Registrar of Co-operative Societies by raising a dispute within the meaning of Section 102 of the Act of 2006. After a contested hearing the said Joint Registrar disposed of the said dispute case by the aforementioned award holding that the prayers (a) and (b) of the said dispute case are not maintainable before him and, thus, granted liberty to the writ petitioners to approach the proper forum for adjudication of the same.

13. At this stage, this Court proposes to look to Sections 146 and 147 and third schedule of the Act of 2006. Section 146 of the said Act of 2006 is quoted hereinbelow in verbatim.

“146. Tribunal.-(1) *The State Government shall, by notification, constitute one or more Tribunals which shall consist of a Chairman and not less than-*
(i) *one Judicial Member; and (ii) one administrative Member.*
(2).....
(3).....
(4)(a) *A Tribunal shall exercise all the powers conferred upon an Appellate Court by Order XLI in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).*
(b).....
(c).....
(d).....
(e).....”

14. Section 147 of the said Act of 2006 is quoted hereinbelow in verbatim:

“147. Appealable orders, appellate authority and period of limitation.—(1) *An appeal shall lie from an order shown in column (2), to the authority shown in column 4, within the period shown in column (5), of the Third Schedule to this Act.*”

15. Relevant portion of the third schedule of the said Act of 2006 is as under:

THIRD SCHEDULE

Appeals

[See Section 147]

Sl. No.	Appeal lie4s against	By whom appeal may be preferred	Authority to whom appeal shall lie	Period of limitation
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
8.	An order, decision or award under section 103.	Any person aggrieved.	The Co-operative Tribunal.	One month from the date on which the certified copy of the order, decision or award is supplied provided that the period of delay in filing an application for certified copy shall be taken into account in computing the period of one month.

16. On careful perusal of Section 146 and 147 of the Act of 2006 read with the aforementioned third schedule thereof it appears to this Court that the Legislature while enacting the said Act thought it fit to constitute one or more Tribunals for the purpose of the said Act and it has been indicated categorically in Sub-Section 4 of Section 146 that a Tribunal shall exercise all the powers conferred upon an Appellate Court by Order XLI in the First Schedule to the Code of Civil Procedure, 1908. It is needless to mention that Order XLI of the Civil Procedure Code, 1908 deals with appeals from the original decrees. At this stage, if I again look to Section 147 of the Act of 2006 read with its third schedule it appears that the award as passed in the said dispute case was passed under section 103 of the Act of 2006 and thus an appeal shall lie

challenging such an award to the co-operative tribunal as has been constituted under section 146 of the Act of 2006.

17. In course of his submission Mr. Gupta could not substantiate as to what prompted the present writ petitioners to approach this High Court in its high prerogative writ jurisdiction for the self same relief as has been prayed for in the said dispute case before the joint registrar despite availability of alternative, efficacious, effective, statutory remedy.

18. Mr. Gupta, however, contended that though the writ petitioners have not challenged the award in question in the instant writ petition and prayed for independent reliefs and, thus, the instant writ petition is maintainable. In considered view of this Court, the argument of Mr. Gupta is not at all tenable in view of the fact that on comparative study of the prayers made in the said dispute case before the Joint Registrar of Co-operative Societies and the prayers made in the instant writ petition it appears that the writ petitioners' basic prayer is to prohibit the private respondents from carrying on commercial activity on the plot in question.

19. Such being the position, this Court is constrained to hold that the instant writ petition is not maintainable and, with the aforementioned observation the instant writ petition being WPA No. 13834 is dismissed.

20. There shall be, however, no order as to costs.

21. Since the writ petitioners are perusing their remedies before a wrong forum, may be under wrong advice, this Court before parting with grants liberty to the present writ petitioners to approach the Tribunal within the

meaning of Sections 146 and 147 of the Act of 2006 in appeal impugning the award dated 21.06.2023 and in the event such an approach is made within thirty (30) working days from today, the said Tribunal shall treat the said appeal within the period of limitation.

22. Since while dismissing the instant writ petition, affidavits have not been called for, the pleadings of the writ petitioners are deemed to have been denied.
23. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)