

14.09.2020
srm

W.P.A. No. 6108 of 2020
CAN 1 of 2020 (Old No. CAN 4364 of 2020)
(Via Video Conference)

Chandan Bardhan & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Prosenjit Mukherjee,
Ms. Madhurima Sarkar,
Mr. Saptarshi Chakraborty

...for the Petitioner.

Mr. Biplab Ranjan Bose

...for the Respondent Nos.9-11.

Despite service none appears on behalf of the respondent Nos.1 to 8 and 12 although other respondents are present. Affidavit of service is taken on record.

The writ petition is taken up for hearing through video conferencing in view of the urgency.

The application being CAN 1 of 2020 (Old No. CAN 4364 of 2020) is disposed of.

The petitioners claim to be the licensees in respect of a flat belonging to Ms. Shelly Bardhan, who is a member of the Maniktala Co-operative Housing Society Limited. The petitioners have challenged a notice dated July 10, 2020 issued by the Honorary Secretary of the said Co-operative Society. By the said notice, it has been notified to all members that Ms. Shelly Bardhan, a member of the co-operative society was going to surrender her membership and all members or relatives

who are interested to take the membership could contact Mr. Prabal Dasgupta, representative of Ms. Shelly Bardhan.

The petitioners submit that they are residing in the said flat and the said notice is nothing but an attempt to evict them. It has been further stated that the petitioners have also filed a title suit which was dismissed on the ground of not being maintainable. The petitioners have preferred an appeal therefrom being Title Appeal No.3 of 2020 which is pending before the learned Additional District Judge at Sealdah.

However, as the petitioners have been unsuccessful in the suit there is no order protecting their possession in respect of the said flat.

Learned Advocate appearing on behalf of the respondent Nos.9 to 11 submits that the writ petition is not maintainable because this is a dispute which is covered by Section 102 of the West Bengal Co-operative Societies Act, 2006. It is next submitted that the petitioner No.1 is the nephew of Ms. Shelly Bardhan, who was entrusted just to look after the lady, so the petitioners do not have any claim to the said flat. It is further stated that if the petitioners are willing and interested to take the membership in respect of the said flat upon payment of usual consideration, transfer fees, etc., as required by the law, the society can consider the question of membership of the petitioners. The learned

Advocate for the petitioners expresses that the petitioners are interested in obtaining the membership.

However, as the dispute has already been raised before the Registrar of Co-operative Society, West Bengal by a letter dated July 16, 2020 by the petitioner No.1, this Court sitting in writ jurisdiction cannot pass orders in view of the existence of an alternative remedy. This Court cannot go into the merits of the claim of the petitioners.

Thus, this writ petition is disposed of with a direction upon the Registrar of Co-operative Society, West Bengal, to consider and dispose of the dispute raised by the petitioners, upon hearing the petitioners, the Manicktolla Co-operative Housing Society Ltd. as also the respondent Nos.9 to 11. In view of the observations made hereinabove, all points are left to be decided by the Registrar of Co-operative Society, West Bengal. The said dispute should be disposed of within a period of one month from the date of communication of this order.

On the submissions made on behalf of the respondent Nos.9 to 11 that no steps have yet been taken for transferring the said flat to other members, I refrain from passing any interim order.

However, as the petitioner No.2 is 92 years old, the dispute should be disposed of within the aforementioned period upon hearing all the interested

parties, *i.e.*, the petitioners, the Secretary of the Co-operative Society as also the respondent Nos.9 to 11 and any other members who may have taken interest in the membership of the said flat.

The writ petition stands disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)