

MAT 622 of 2020
With
CAN 1 of 2020

Gobinda Senapati

-Vs-

Kuntal Ghosh & Ors.

Mr. Asit Kumar Chakraborty
Mr. Sunanda Mohan Ghosh

... for the Appellant

Mr. Bikash Ranjan Bhattacharyya
Mr. Soumya Dasgupta
Ms. Sayanti Sengupta
Mr. Jamiruddin Khan

... for the Respondent No.1

Mr. Srijan Nayak
Mr. Partha Sarathi Pal

... for the State

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

Under challenge in this appeal and its connected application is the order dated 16th September, 2020 in the writ petition numbered as WPA 6480 of 2020. The appellant was the private respondent in the writ petition.

The appellant is aggrieved by the impugned judgment and order on the ground that the Hon'ble Single Bench has committed an error by declaring the notice impugned in the writ petition dated 22nd July, 2020 to be a nullity.

The appellant has argued through Mr. Chakraborty, Learned Counsel, that the further

direction of the Hon'ble Single Bench permitting the authorities in the Cooperative Department of the State Government to exercise powers under Section 36 of the West Bengal Cooperative Societies Act, 2006 (for short, the 2006 Act) is also erroneous.

Mr. Chakraborty argues that *vide* notice dated 22nd July, 2020, the Registrar of Cooperative Societies (RCS) has correctly exercised jurisdiction under Section 29(7) of the 2006 Act.

It is submitted that circumstances existed for the exercise of powers under Section 29(7) of the 2006 Act and, in recognition of such circumstances *vis-à-vis* the power to be exercised corresponding to such circumstances, the RCS appointed a nominated Board of Directors (BOD) to the said Cooperative Society in issue namely, Ghatal Co-operative Agricultural and Rural Development Bank Limited.

Mr. Bhattacharyya, Learned Senior Counsel, arguing on behalf of the private respondent no.1 in the appeal/the writ petitioner, draws the attention of this Court to Section 36 of the 2006 Act. It is submitted that the language of Section 36 of the 2006 Act is *non-obstante* and deals with the specific situation in hand connected to the said Cooperative Society.

It is further submitted that the tenure of the *BoD* of the said Cooperative Society expired on 15th February, 2020. It is an admitted position that steps

have to be taken under Section 36 of the 2006 Act on the expiry of the period of 60 months from the date of the election of the last elected *BoD*.

It is also an admitted position that the period of 60 months have long expired. The members of the last elected and constituted Board will be deemed to have vacated the office of the State Government and the State Government shall thereafter take steps under Section 36 of the 2006 Act.

Mr. Bhattacharyya submits and, to the mind of this Court correctly so, that the *non-obstante* language of the provisions of Section 36 of the 2006 Act as well as the specific contingency in respect of which such provisions are contemplated to be exercised, *viz.* on the deemed vacating of their offices by the last constituted *BoD* on the expiry of 60 months from the date of the election, entitles the State to take steps under Section 36 of the 2006 Act.

The position therefore emerging from the exercise of powers in respect of such contingency which has arisen in respect of the said Cooperative Society, overwhelms the provisions under Section 29(7) of the 2006 Act in favour of exercise of powers by the *RCS for any other reasons*. Such reasons are not covered by Section 36 of the 2006 Act and therefore do not arise in the present facts and circumstances.

Mr. Nayek, Learned State Counsel, also assails

the order of the Hon'ble Single Bench on the grounds taken by the appellant.

Having heard the parties and considering the materials placed, this Court at this stage is persuaded to consider the legal applicability of the respective sections as discussed above to the facts of this case as has emerged from the judgment and order impugned of the Hon'ble Single Bench.

This Court is persuaded to hold the view that the Hon'ble Single Bench has not erroneously acted in permitting the parties to take steps under Section 36 of the 2006 Act having regard to the attending facts and circumstances.

This Court is of the further view that having regard to the direction of the Hon'ble Single Bench to take steps under Section 36 of the 2006 Act, the exercise of powers under Section 29(7) culminating in the notice impugned in the writ petition dated 22nd July, 2020 *ipso facto* stands displaced in law. This appeal therefore requires no interference.

Since affidavits are not called for in view of the discussion purely on the legal applicability of the provisions above, both the appeal and its connected application stand **disposed of**.

Since the Hon'ble Single Bench has expressed an opinion at the interim stage keeping the writ petition pending on exchange of affidavits, further steps taken

by the parties shall abide by the outcome of the writ petition.

The Hon'ble Single Bench is thus requested to expedite the hearing of the writ petition on affidavits.

Affidavit-of-service filed in Court today be retained with the record.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

(Saugata Bhattacharyya,J.) (Subrata Talukdar,J.)