

10.03.2021

Item No.4

Crt.No.11

b.r.

MAT 769 of 2020
with
I.A. No.CAN 1 of 2020
CAN 2 of 2021
CAN 3 of 2021

The State of West Bengal & Ors.

-vs -

Ruma Basu

Mr. Srijan Nayak

Mr. Biplab Das

.... For the appellants/Stater.

Mr. Manas Kumar Ghosh

Ms. Susmita Dey (Basu)

Mr. Arabinda Maji

..... for the Respondent/writ petitioner.

It appears from the record that the respondent was represented by Mr. Arabinda Maji and Ms. Susmita Dey(Basu), learned advocates on February 22, 2021 and February 26, 2021. However, when the matter came up for hearing on March 8, 2021, respondent was unrepresented and the learned advocate for the appellants were directed to communicate the next date of hearing to the learned advocate for the respondent.

Today, when the matter is taken up for hearing, Mr. Arabinda Maji and Ms. Susmita Dey (Basu) are present in Court and submitted that they have no instruction to represent the respondent today. We do not appreciate such conduct of the respondent and as such, we have no other alternative but to proceed with the hearing of the instant appeal and the connected applications on the basis of

submissions made by the appellants. It is also recorded that the Learned Advocate for the respondents were present in Court throughout the hearing of this appeal.

In Re: **CAN 3 of 2021.**

This is an application for condonation of delay of about 328 days in preferring the instant appeal.

After hearing the learned advocate for the appellants and upon perusing the averments made in the application, this Court is satisfied that the appellants were prevented by sufficient cause for not preferring the instant appeal within the prescribed period of limitation.

In view thereof, the delay in preferring the instant appeal is condoned.

Accordingly, **CAN 3 of 2021** thus stands **allowed**.

The **Registry** is directed to formally register the instant appeal.

In Re: **MAT 769 of 2020**

The appellants have challenged the order dated December 5, 2019 passed by a Hon'ble Single Judge in WP 19617(W) of 2019.

By the order impugned, the order dated September 5, 2019 passed by the Special Officer was kept in abeyance upon holding that such order is *ex facie* outside the scope of Section 36 of the 2006 Act. The Hon'ble Single Judge further directed the election process to be completed within the period mentioned in the said order.

Being aggrieved, the appellants have preferred the instant appeal.

The writ petitioner/respondent herein has challenged the authority of the Special Officer appointed for the Prayas Co-operative Housing Society to issue a Notice dated 05.09.2019 regarding reduction of the car parking area and fixation of rent for car parking.

Mr. Nayak, learned advocate appearing for the appellants contended that Section 36(4) of the West Bengal Cooperative Societies Act, 2006 (for short the 2006 Act) provides that the Special Officer shall exercise all the powers and perform all the duties which may, under this Act or the Rules or the by-laws, be exercised or performed by the Board or any officer of the Cooperative Society. He thus submits that the decision for fixing rate of car parking charges vide notice dated September 5, 2019 falls within the jurisdiction of the Special Officer, as the Special Officer is empowered to perform the duties and functions to be performed by the Board or any officer of the Cooperative Society. Mr. Nayak submits that the Hon'ble Single Judge erred in law by holding that the order dated September 5, 2019 was *ex facie* beyond the scope of Section 36 of the Act of 2006.

The other ground of challenge to the impugned order is that the Hon'ble Single Judge directed holding of election in the absence of any such prayer being made by the writ petitioner in the instant appeal.

We have heard the learned advocate for the appellants and have perused the materials on record.

The Special Officer was appointed by a Notification dated June 4, 2019. By the said Notification the Special Officer was directed to take necessary steps under the supervision, direction and control of the Co-operative Election Commission, West Bengal for constitution of an elected management of the society during his tenure and to exercise all powers and perform all the duties of the Board of Directors of the society subject to the control and direction of the Registrar of Co-operative Societies.

The notice dated 05.09.2019 directed the members to pay the rent for car parking space.

After going through the notice dated 05.09.2019 and the provisions of Section 36 of the 2006 Act, this Court is of the view that the decision with regard to fixation of the area of car parking and the rate of rent is akin to a policy decision which does not fall within the jurisdiction of the Special Officer as rightly held by the Hon'ble Single Judge.

It also appears from the notice dated 05.09.2019 that the area of car parking, which was fixed at 672 Sq.ft. per car by the Society was reduced to 500 Sq.ft. per car. No reasons have been disclosed in the said notice for reduction of such car parking area. Furthermore, it appears that separate rates have been fixed for parking of small cars and big cars in the open space when the area of car parking per

car is fixed at 500 Sq.ft. There is no basis for fixing different rates for car parking for small and big cars as indicated in the said notice. Since the said notice is devoid of any reasons, the same is hereby set aside and quashed.

It will, however, be open to the competent authority to take a decision with regard to such issue in accordance with law, if the occasions so arises.

If any decision is taken on such issue, it will be open to the parties to ventilate their grievances, if any, before the appropriate Forum/Court in accordance with law.

Mr. Nayak, learned advocate, files copies of the writ petition in Court today. Let the same be kept with the record.

It appears from the Notification dated June 4, 2019 that the Special Officer was appointed in the said society with a view to facilitating the constitution of the elected Board of Directors therein and to manage all the affairs of the said society. An elected Board of Directors is thus required to be constituted by holding election.

In view thereof, it is expected that steps should be taken for holding election for constitution of a Board of Directors in terms of the Notification dated June 4, 2019 and upheld by the order dated December 5, 2019 passed by the Hon'ble Single Judge in WP 19617(W) of 2019.

The appeal being **MAT 769 of 2020** is thus **allowed in part**. The order impugned whereby the order dated 05.09.2019 was kept in abeyance is modified to the extent

that the order/notice dated 05.09.2019 passed/ issued by the Special Officer is set aside with liberty to the competent authority to take a decision with regard to the issue of car parking in accordance with law. The other portions of the impugned order insofar as it relates to directions for holding election and payment of rent for car parking as per the existing pattern is not interfered with by this Court in the instant appeal.

MAT 769 of 2020 stands thus **disposed of**.

Accordingly, **CAN 2 of 2021** also stands **disposed of**.

The attention of this Court is drawn to the order dated February 22, 2021 whereby the application being CAN 1 of 2020 was allowed to be withdrawn with liberty to file afresh. In view thereof, no further order need be passed in CAN 1 of 2020.

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

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)

(Subrata Talukdar, J.)