

18. 28.11.2022
Ct. No.6
Tanmoy

FMA 862 of 2019

**Sri Virendra Kumar Arya
-Versus-
The State of West Bengal & Ors.**

Mr. Indranil Nandi, Adv.,
Mr. Sayak Konar, Adv.

...for the appellant.

Mr. Raja Saha, Adv.,
Mr. Amit Kr. Ghosh, Adv.

...for the State.

Mr. Swaraj Shaw, Adv.

...for the respondent nos. 2, 3 & 4.

A Judgment and order dated July 9, 2018, whereby the appellant's writ petition being WP 15657 (W) of 2016 was dismissed by a learned Single Judge, is under challenge in this appeal.

The dispute between the appellant and the private respondent pertains to a car parking space in the concerned Co-operative Society complex. Both the appellant and the private respondent are owners of flats in the said complex.

A dispute arose between them pertaining to car parking space marked as 'C-22'. Each of them claimed that such space had been allotted to him.

The aforesaid dispute was referred by the private respondent for arbitration under the West Bengal Co-

operative Societies Act, 2006. The Arbitrator, who was the Co-operative Development Officer, passed an Award on December 15, 2014. The Arbitrator came to a finding that the Deed of Conveyance that exists in favour of the private respondent is prior in point of time compared to the Deed of Conveyance that was executed in favour of the appellant. Both the Deeds in the relevant Schedule appear to mention the same car parking space i.e. 'C-22'. There appears to be some overwriting in the allotment letter issued in favour of the appellant. However, the Arbitrator observed that she was not in a position to decide such anomalies. The Arbitrator ordered that the private respondent herein will be entitled to possess car parking space no. C-22. The appellant will hold possession of car parking space no. C-21 till further arrangement is made by the Society in his favour.

Being aggrieved, the present appellant challenged the Award before the West Bengal Co-operative Tribunal by way of Appeal No. 02 of 2015. By an order dated July 1, 2016, the learned Tribunal dismissed the appeal and affirmed the Award of the Arbitrator.

Being aggrieved by the order of the learned Tribunal, the appellant approached a learned Single Judge of this Court by filing WP No. 15657(W) of 2016. By the judgment and order impugned in this appeal, the said writ petition was dismissed.

The learned Judge recounted the factual background of the case. Ultimately, the learned Judge came to the following conclusion:-

“It has come to light from the different documents and from the pleadings specially the pleadings of the Respondent No.5 in the fora below that forceful possession of the disputed car parking space, which the petitioner wanted to relinquish, because of his inconvenience in parking his car, in the year 1991 through a letter (at page 123 of the writ application) has been taken by the petitioner with the help of some outsiders. Similar thing has been reported by the Housing Co-operative Society before the Appellate Authority. The petitioner has only evasively denied the allegation of taking forceful possession of the car parking space with the help of 50-60 outsiders; he has not specifically denied the allegation that forceful possession of the said car parking space was not taken by him with the help of outsiders.

It is found from the pleadings of the parties and documents that the dispute is between the two members of the Housing Co-operative Society and such dispute as was adjudicated first by the Arbitral Tribunal and then by the Appellate Authority which has passed an order in the appeal (wherein the award of the Learned Arbitrator has merged) cannot be brought to this writ Court as, to interfere with the order of the said Tribunal a number of disputed questions of facts are to be gone into but such disputed questions of facts cannot be adjudicated by the writ Court. For deciding disputes of such nature evidence are required to be taken.

Therefore, this writ application is dismissed, as it involves disputed question of facts for adjudication whereof writ Court is not the appropriate forum.”

Being aggrieved, the writ petitioner is before us.

We have heard Mr. Indranil Nandi, learned Advocate appearing for the appellant. We have not called upon the State or the Co-operative Society to make submission.

In our view, the learned Judge has rightly refused to interfere. The dispute is between two members of a Co-

operative Society pertaining to a car parking space. The Arbitrator has come to a factual finding, good, bad or indifferent. The learned Tribunal has affirmed the Arbitrator's Award by a speaking order. The learned Judge was correct in not entertaining the writ petition since disputed questions of fact are involved. The view taken by the learned Judge is a plausible view. A Division Bench hearing an intra-court appeal against the order of a learned Single Judge would not interfere with the order impugned only because the Division Bench may have a different view. Unless the order of the learned Single Judge is perverse or "Wednesbury unreasonable", the appeal Court should not interfere. We see no apparent infirmity in the order under appeal.

The appeal fails and is dismissed without any order as to costs.

However, dismissal of this appeal shall not prejudice any right that the appellant may have to approach any other forum to challenge the Arbitrator's Award as affirmed by the learned Tribunal, in accordance with law.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)