

17.06.2022
Court No. 19
Item no.77
CP

W.P.A. No. 2225 of 2022
with
CAN 1 of 2022

Gangesh Kumar Pal & Ors.
VS
The State of West Bengal & Ors.

Mr. Debabrata Saha Roy
Mr. Subhankar Das
Mr. Neil Basu
Mr. Rahul Kr. Singh

... for the petitioners.

Mr. Indradip Das
Mr. Pranit Biswas
Mr. Preetam Majumdar
Ms. Subhashri Chatterjee

...for the respondent no.9.

Mr. Indranil Nandi
Mr. Sayak Konar

....for the respondent no. 8.

Mr. Jahar Lal De
Mr. Benazir Ahmed

..for the State.

The writ petition was originally filed challenging the inaction of the Bengal Pack Cooperative Housing Society Ltd. (hereinafter referred to as 'the society') as also the Registrar of the society, in failing to ensure that the respondent no. 9 rectified the alleged illegal and irregular construction in the premises of the society.

The petitioner complains of the conversion of the parking space allotted to the respondent No. 9, into a shop room.

Reliance had been placed on the decisions of the society as also a decision of the Joint Registrar of the Cooperative Societies dated January 28, 2021.

It appears that the respondent no. 9 had also admitted that the conversion was made inadvertently but on the basis of prior consent of the members.

The Joint Registrar of the Cooperative Societies (Housing Cell), West Bengal had directed the Secretary of the society to rectify the misdeeds. The respondent no. 9 had also undertaken before the Registrar of Cooperative Societies, Cooperation Directorate, that the shop shall remain closed. No commercial activity shall be started. The shop would not be rented out to outsiders.

A letter reveals that the respondent no. 9 had intimated the Registrar that the parking space allotted to the said respondent had been converted to a shop as his learned advocate was not conversant with the Cooperative Societies Acts and Rules.

The Secretary of the concerned society wrote to the Joint Registrar of the Cooperative Societies on April 19, 2021, inter alia stating that the Chairman and the Secretary of the society, would assist the respondent no. 9 in the process of rectification.

The Secretary of the society on an earlier occasion was directed by this court to file a report. A report was filed accordingly. The same was taken on record.

From the report, it appears that when the secretary of the society went to meet the Chief Executive Officer (CEO), New Town Kolkata Development Authority (hereinafter referred to as 'the NKDA'), complaining of for such conversion, the Secretary was informed that the original building plan had been revised and the conversion was allowed by the 'NKDA'. It further transpires that when the plan was revised, the respondent no. 9 was the Secretary of the society.

Both the learned advocate for the petitioners and the learned advocates for the society have submitted that the conversion was not permitted under the provisions of Sub-Section 36 of Section 4 of the West Bengal Cooperative Societies Act, 2006, and even the NKDA did not have any power to permit commercial activity in the premises of a housing cooperative society. The society was governed by a special statute. They further submitted that the respondent no. 9 who was the Secretary of the society at the material point of time, had taken undue advantage of his position and got the plan revised.

Mr. Das, learned advocate appearing on behalf of the respondent no. 9, relies on an application filed by the said respondent in order to substantiate his claim that the conversion was within the knowledge and with the tacit consent of the members. Resolutions of the society have been annexed to the said application in order to support such contention. He further submits that pursuant to a notification of the Government of West Bengal, Urban Development Department dated July 14, 2015, residential premises at New Town were permitted to be used also for non-residential purpose. The list of permissible category of non-residential use of the residential buildings in New Town, has also been placed before this court.

It also appears that NKDA had intimated the revision of the sanction plan to the then Chairman of the society.

Thus, according to Mr. Das the conversion was within the knowledge and with the consent of the society and also the sanction granting authority, namely, the NKDA.

The petitioners and the society deny the contentions of the respondent no. 9.

Under such circumstances, this court is of the view that there is a dispute between members of the society and the society itself has also supported the

petitioner. Such dispute is to be adjudicated by an appropriate forum under the special statute.

Under such circumstances, the petitioners will raise the dispute incorporating all his grievances before the Registrar of Cooperative Societies in terms of Section 102 of the West Bengal Cooperative Societies Act. If such dispute is raised, the same shall be disposed of, upon hearing the petitioners, the society, the respondent no. 9 as also a representative of the NKDA. The dispute shall be adjudicated within a period of four months from the filing of the application

The challenge of the petitioner as also the society with regard to the revision of the plan by NKDA, is left open and has not to be adjudicated in this proceeding.

The petitioners will be at liberty to pray for interim reliefs before the learned Registrar, with regard to operation of the shop, in view of undertaking given by the respondent No. 9, before the Registrar on an earlier occasion.

The observations made in this proceeding by the court, is restricted to the disposal of this case. The observations are tentative and shall not have any impact on the dispute case to be raised before the learned Registrar.

The writ petition is disposed of. Accordingly, the connected application being CAN 1 of 2022 is also disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)