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20.04.2022
TN

WPA No.2517 of 2022

Comet Housing Co-operative Society Limited
and another

Vs.

The State of West Bengal and others

Mr. Aniruddha Mitra,
Mr. Dhilon Sengupta,
Mr. Promod Bagaria

.... for the petitioners

Mr. Lalit Mohan Mahata,
Mr. Radranil De

.... for the State

Mr. P.K. Roy,
Mr. Biplob Das

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

Mr. Aniruddha Chatterjee,
Mr. Iftekar Munshi

.... for the respondent no.5

The petitioners have challenged an order passed by the Arbitrator dated March 30, 2021, whereby the petitioners, that is, the defendants before the Arbitrator, their men, agents, as the case may be, were restrained to take any action as per letter of termination of work issued to the petitioner before the Arbitrator on March 4, 2021 till the next date of hearing as well as directing the defendants and their men/agents etc, not to allow any other party than the

petitioner for the construction job and not to evict the petitioners from the said property in any manner whatsoever and also not to create chaos, disturbances, entering in the premises till disposal of “the maintainability petition”.

It is submitted by learned counsel for the petitioners that the termination, the operation of which has been stayed by the Arbitrator, was well within the authority of the writ petitioners (defendants before the Arbitrator) to do, in view of the terms of the original agreement itself.

Moreover, it is contended that no interim application was made before the Arbitrator at all but only a plaint was filed regarding the main dispute.

It is further contended that as per the contemplation of the law relating to specific relief, the present respondents were at best entitled to claim damages; however, injunction was not a relief sanctioned by law in the facts of the case.

That apart, learned counsel contends that the impugned order merely pays lip-service to the requirement of law to consider the yardsticks for grant of injunction and does not contain any reason whatsoever worth the name.

Learned counsel appearing for the respondent no.5 contends that the present writ petition has been

rendered infructuous in view of the subsequent order dated September 30, 2021, whereby a fresh injunction was granted, although in the form of an extension of the interim order dated March 30, 2021. It is submitted that, in view of the present legal position due to conflicting decisions in the field, there is a cloud as to the proposition that subsequent orders of extension of injunction are mere parcel of the original order and it is further contended that each of the said 'extension' orders is an independent injunction order in its own right.

Upon hearing the preliminary submissions made by learned counsel, it is evident from the impugned order dated March 30, 2021 that the said injunction was passed "till disposal of the maintainability petition". However, learned counsel for both the parties fairly submit that there was no existence of any 'maintainability petition' whatsoever. As such, it is evident from the tenor of the order dated September 30, 2021, which was passed subsequently, although couched in the language of extension of the previous order dated March 30, 2021, that the latter order was passed till disposal of the dispute case itself, which is still pending before the Arbitrator. Moreover, the order dated September 30, 2021 also imposes injunction in similar terms as the order dated March 30, 2021.

As such, one of the appropriate recourses for the writ petitioners would be to prefer a fresh challenge to the subsequent order dated September 30, 2021, which is still in force.

However, such a recourse would not enure to the benefit of any of the parties, particularly in view of the fact that this court has entertained the writ petition on the ground that the regular Tribunal, which is the alternative forum taking up appeals against the impugned order, is not functioning at present. Such situation, it can be legitimately expected, will not be permanent and, subsequently, if the matter has to be relegated to the Tribunal, it will translate into more expenses and time being spent by the parties unnecessarily.

Since the injunction order passed even on September 30, 2021, even leaving aside the order dated March 30, 2021, has subsisted for so long, there could not be any substantial harm caused to the parties in the event the Arbitrator is requested to dispose of the main dispute pending before the said Arbitrator.

As such, instead of granting a fresh liberty to the writ petitioners to prefer a challenge against the order dated September 30, 2021, for which also there is no functioning forum at present apart from this court

under its power of judicial review, it would be much more convenient for the parties if the Arbitrator is so requested as indicated above.

In such view of the matter, WPA No.2517 of 2022 is disposed of by directing the Arbitrator (respondent no.4), that is, the Deputy Registrar of Cooperative Societies, Rajarhat, RTAH Cell to dispose of the main Dispute No.03/RTAH of 2021, pending before the said authority, in accordance with law without being influenced by any of the observations made herein on merits, as expeditiously as possible, preferably within November 15, 2022, upon giving adequate opportunity of hearing to all the contesting parties.

It is further reiterated that this court has not entered into the merits of the respective contentions of the parties at all.

The concerned office of the Tribunal shall take steps to send back the records of the said dispute case, at present before the Tribunal in connection with Appeal No.8 of 2021, to the office of the respondent no.4 as expeditiously as possible, upon being intimated of this order by the learned Advocates for either of the parties.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)