

Present :- Hon'ble Mr. Justice Md. Nizamuddin

Chandan Bardhan & Anr.

Vs

The State of West Bengal & Ors.

**For the State :- Mr. Pradip Kumar Ray, Adv.
Mr. Prabir Kumar Ray, Adv.
Mr. Joydip Ray, Adv.
Mr. Biplab Das, Adv.**

Judgement On :- **23.09.2022**

MD. NIZAMUDDIN, J.

By this Writ Petition petitioners being licensees have challenged the impugned award dated 8th June, 2022 passed by the Assistant Registrar of Co-operative Societies on the claim lodged by one Avijit Bardhan/private respondent no. 10 in respect of a Flat No. F-44, Premises No. 108/8, Manicktala Main Road in a housing complex claiming to be a nominee and a registered member of Manicktala Co-operative Housing Society.

Facts in brief in this case as appear from record are as follows:

One Hemendra Kumar Bardhan since deceased was the registered member of Manicktala Co-operative Housing Societies Limited who was allotted the aforesaid flat died in 1974 and prior to his death he had registered the name of his daughter namely, Ms. Shelley Bardhan as his nominee in respect of the share in the said society. After the demise of the said Hemendra Kumar

Bardhan, in terms of the aforementioned nomination in favour of the said Ms. Shelley Bardhan, she was admitted as the member of the aforesaid society. During her lifetime the said Ms. Shelley Bardhan changed the nomination in respect of her shares held in the said society on several occasions but lastly she nominated her nephew, namely, Mr. Avijit Bardhan/private respondent no. 10.

On 16th January, 2021, the said Ms. Shelley Bardhan expired and after her death, the aforesaid nominee/respondent no.10 was admitted as a member of the said society and share certificate of the said society was issued in favour of him. It is an admitted position as appears from record that the said Avijit Bardhan being the private respondent no. 10 is the nominee of the said Ms. Shelley Bardhan and is registered member of the said society who filed a dispute case for recovery of possession of the aforesaid flat in the Society from the petitioners who themselves are admittedly licensees and are neither members of the said society nor the nominees of the said Ms. Shelley Bardhan, under Section 121 of the West Bengal Co-operative Societies Act, 2006 read with Section 10 (3), thereof, before the Joint Registrar of Co-operative Societies. The said disputed case was heard and disposed of by the order dated 8th June, 2022 directing the petitioners herein to vacate the aforesaid flat and to deliver the possession of the same to the said private respondent no. 10. It is also admitted position that the aforesaid disputed case was contested by the petitioners herein.

It is also admitted position that against the aforesaid award dated 8th June, 2022, passed in the aforesaid disputed case, petitioners themselves have filed an appeal being No. 17 of 2022 and stay petition before the West Bengal Co-operative Tribunal which are still pending as appears from Page – 253 of the Writ Petition.

It also appears from record that at Page – 253 of the Writ Petition that the Tribunal on the 8th July, 2022, has passed an order in the aforesaid appeal and stay petition filed by the petitioners, inter alia, that due to non-posting of

one of the members being Chairman of the Tribunal there is no quorum to hear the aforesaid appeal and stay petition though the next date of hearing was fixed on 26th July, 2022 and after passing of the said order and during the pendency of the aforesaid appeal and stay petition filed by the petitioners, now petitioners have filed this Writ Petition on 25th July, 2022, by initiating this parallel proceeding by filing this Writ Petition challenging the same impugned award on merit as well as on the ground that there is no chance of hearing of the same due to lack of quorum in the Tribunal.

It also appears from the prayers made in the Writ Petition that petitioners have prayed that till the disposal of the pending appeal in question before the Tribunal against the aforesaid impugned award this Writ Court should grant stay on the said award. Petitioners also seek this Writ Court to interfere with the impugned award on merit in this parallel proceedings on the ground that they are living in the flat in the question of the aforesaid Society for the last 50 years and they have taken care of the aforesaid Ms. Shelley Bardhan now deceased but they could not produce any document before this Court to establish that either they are the nominee of the said Ms. Shelley Bardhan or they are the registered members of the said society or any piece of evidence or document as to who has allotted them the aforesaid flat possession of which they are occupying while admitted position is that the private respondent no.10 is a nominee of the said Ms. Shelley Bardhan in respect of the aforesaid flat and he is the registered member of the said society and the aforesaid impugned award is in his favour.

It appears to me that the nature of issues raised in this Writ Petition are highly disputed questions of fact as to who is the owner of the flat in question, whether possession of the petitioners is valid and legal or not, has the nomination of the respondent no. 10 by Ms. Shelley Bardhan is legal or valid or not which according to me cannot be enquired and investigated and decided by this Court in exercise of its constitutional writ jurisdiction under Article 226 of the Constitution of India and furthermore, this Court cannot act as an

Appellate Authority over the impugned award passed in the aforesaid disputed case and findings therein in favour of private respondent no. 10 and moreso, when the very said impugned award is subject matter of challenge in the aforesaid pending appeal before the Tribunal which have been filed by the petitioners themselves. In my considered view the main dispute as appears on perusal of the Writ Petition is between the petitioners and private respondent no. 10 and it is with regard to possession, title and nomination of private respondent no. 10.

Learned Advocate appearing for the petitioners have relied on a decision of this Court in the case of Jenson and Nicholson (India) Ltd. -Vs- Assha Co-operative Housing Society Limited & Ors. reported in 1994 (II) CHN Page - 241 which is distinguishable both factually and legally and is not applicable to this case in view of facts and circumstances and discussion made hereinabove.

It has been held in the said decision on the basis of a judgment of the Hon'ble Supreme Court that once the status of a tenant was found to have been acquired by an occupant of a flat on the strength of a privity of a contract with the allottee of the flat under the co-operative society, the society was not entitled to evict the said tenant without a proceeding in Civil Court while in the present case status of the petitioners is not a tenant and here their claim is as licensees and petitioners could not produce any contract or allotment documents in respect of the aforesaid flat in their favour and furthermore in the instant case it is not the society who has filed the dispute case for eviction or that the society has been making any attempt to evict the petitioners rather in the present case it is the private respondent no. 10 who has filed a dispute case against the petitioners and got the award in his favour for eviction and recovery of possession and the allegation of collusion against the Society is merely on surmises and conjectures and without any piece of evidence. Even in earlier Writ Petition filed by the petitioners being WPA No. 6108 of 2022, in the order dated 14th September, 2022, it has been recorded that petitioners themselves have claimed to be a licensee in respect of the flat in question

which belonged to the said Ms. Shelley Bardhan now deceased who was the member of the said co-operative society.

Considering the facts and circumstances of the case as appears from record, prayers made in this Writ Petition and submission of the parties I am not inclined to entertain this Writ Petition for the following reasons:

I) Petitioners have initiated two parallel proceedings challenging the same impugned award dated 8th June, 2022, one by filing appeal and stay petition before the Tribunal which are still pending and one by way of filing this Writ Petition.

II) Highly disputed questions of facts with regard to the legality of the title and nomination of private respondent no. 10 and legality of the possession of the flat in question which petitioners are occupying are involved in this Writ Petition.

III) Petitioners themselves as appear from record that they are neither the nominees of the said Ms. Shelley Bardhan nor they are the registered member of the society nor they could produce any piece of evidence to show any allotment of flat in question in favour of the petitioners and it is admitted position that they are mere licensees in respect of the flat in question according to them as recorded by this Court in the aforesaid earlier Writ Petition filed by the petitioners.

IV) This Court in exercise of its constitutional writ jurisdiction under Article 226 of the Constitution of India cannot act as an Appellate Authority over the impugned award and substitute the findings in the said award.

In view of the discussion made above this Writ Petition being WPA No. 16785 of 2022 is dismissed. No order as to costs.

It is clarified that observations and finding made in this judgment and order is confining to invoking constitutional writ jurisdiction of this Court under Article 226 of the Constitution of India against the impugned award and

it will not have any impact or influence over the pending Appeal and stay petition in question against the impugned award and same will be decided by the Tribunal independently in accordance with law.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)