

13.  
08-09-2022  
debajyoti  
(Ct. no.06)

**MAT 1438 of 2022**  
+  
**IA NO:CAN/1/2022**

**Rupantari Co-operative Housing Society Limited & Anr.**  
**Vs.**  
**The State of West Bengal & Ors.**

Mr. Krishnendu Banerjee,  
Mr. Debasish Kundu  
... For the Appellants.

Mr. Pradip Kumar Roy,  
Mr. Joydeep Roy,  
Mr. Ankit Sureka  
... For the State.

Mr. D. K. Sengupta,  
Ms. Sweta Saha  
... For Respondent Nos.3, 5 & 6.

Affidavit-of-Service filed in Court today be taken  
on record.

By consent of the parties, the appeal and the  
application are taken up together for hearing.

This appeal is directed against a judgment and  
order dated August 10, 2022, whereby the appellants'  
writ petition being WPA 5174 of 2020 was disposed of.

The private respondent no.3 herein, who was  
private respondent no.3 in the writ petition also,  
wanted to become a member of the appellant Co-  
operative Society. Upon his application to the Society  
made sometime in September 2019, remaining  
unattended, he approached the then Deputy Registrar  
of Co-operative Societies, Kolkata Municipal  
Metropolitan Area Housing (KMAH). The said Deputy  
Registrar passed an order dated December 12, 2019,  
directing the Society to grant membership to the

respondent no.3. That order was assailed by the Society before the learned Single Judge.

The learned Single Judge set aside the order of the Deputy Registrar on various grounds and opined that the issue needs to be revisited by the Joint Registrar, KMAH. The operative portion of the order impugned reads as follows:

“ In view of the aforesaid discussions, the order of the respondent no.2 dated 24.12.2019 stands set aside upon directing Joint Registrar, KMAH to reconsider the issue relating to grant of membership in favour of the respondent no.3 after granting opportunity of hearing to the petitioner co-operative society and the respondent no.3 within a period of eight weeks from the date of communication of this order. The decision to be taken by the Joint Registrar, KMAH to be communicated to the petitioner, co-operative society as well as the respondent no.3 within a period of one week thereafter. ”

Although the writ petitioners/appellants herein succeeded to the extent of getting the order of the Deputy Registrar, KMAH, quashed, they are aggrieved by the sending back of the matter to the Joint Registrar, KMAH. The appellants contend that the Joint Registrar does not have jurisdiction to consider the complaint of the private respondent no.3.

Mr. Sengupta, learned counsel, appearing on behalf of the private respondent, and Mr. Roy, learned counsel, appearing on behalf of the State, submit that pursuant to the order of the learned Single Judge, the Joint Registrar has already held a hearing wherein the appellants participated. Tomorrow (September 09, 2022), the second hearing is fixed. Mr. Roy further submits that the Joint Registrar has jurisdiction to entertain the complaint of the private respondent

under Section 100 of the West Bengal Cooperative Societies Act, 2006. In reply, Mr. Banerjee, learned counsel, appearing for the appellants, says that even if the Joint Registrar has jurisdiction under Section 100 of the 2006 Act, the said section has not been properly invoked.

If the Joint Registrar lacks jurisdiction, the mere fact that the appellants participated in the proceedings before him, will not confer jurisdiction on him. It is trite law that parties by consent or agreement cannot confer jurisdiction on an adjudicating authority, who otherwise lacks jurisdiction. However, we are of the opinion that all issues including whether or not the Joint Registrar has jurisdiction or authority to entertain and decide the complaint of the private respondent, may be urged before the Joint Registrar. The appellants will be at liberty to urge all points that may be available to them in law, including lack of authority of the Joint Registrar to entertain the complaint of the private respondent no.3. The Joint Registrar shall decide the point of jurisdiction/authority as a preliminary issue before proceeding with the merits of the case.

We have not gone into the merits of the disputes between the parties. The Joint Registrar shall take a decision in accordance with law observing the principles of natural justice. The order impugned stands modified to the aforesaid extent.

The appeal and the application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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

**(Apurba Sinha Ray, J.)      (Arijit Banerjee, J.)**