

S/L 1
19.07.2022
Court. No. 22
*Sourav/
Suvayan*

**WPA 7284 of 2020
With
CAN 1 of 2020**

**Mr. Bikash Chandra Sharma
Vs.
The Union of India & Ors.**

*Mr. Sandip Kumar Bhattacharyya
Mr. Suman Basu
Mr. Gaurab Dutta*

...for the Petitioner.

Ms. Ashima Roy Choudhury

...for the Union of India.

*Mr. Satyendra Agarwal
Mr. Bijoy Bag
Mr. Goutam Malik
Ms. Usha Chakraborty*

...for the respondent no. 2.

Mr. Srijan Nayak

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

*Mr. Kamal Krishna Pathak
Mr. Harish Chandra Talwar*

...for the respondent nos. 5, 6 and 7.

The second respondent for the purpose of development and construction of residential units for the Central Government employees had acquired a land measuring about 9.751 acres in various Dag numbers at Rajarhat (for short, ‘the said land’) as more fully and particularly described in the sale deed dated December 3, 2001, “**Annexure P-2**” to the writ petition.

By virtue of a sale deed executed on December 3, 2001, the second respondent had conveyed the land in favour of the fifth respondent (for short, ‘the co-operative

society') under the terms and conditions mentioned therein. The second respondent, in fact, developed the said land and constructed a total numbers of 576 residential units along with 272 car stilts (for short, 'car parking space') on the said land. The said land along with such construction was conveyed to the fifth respondent on the terms and conditions mentioned in the said sale deed.

A list of 576 numbers of members of the fifth respondent, who are the beneficiaries of such residential units was also attached and made part of the said sale deed at pages 31 to 40 of the writ petition.

A further sale deed dated January 12, 2002 was executed by and between the second respondent and the petitioner, whereby and whereunder the residential unit being **C-o8, Flat No. 128** was conveyed in favour of the petitioner, "**Annexure P-3**" to the writ petition. Diverse schedules were attached to the said sale deed at pages 47 to 52 of the writ petition. **Schedule-B** to the sale deed at page 48 of the writ petition contains a mention of 272 numbers of car stilts against Serial No. 13 thereto.

Subsequently, upon request being made by the petitioner, a car parking space being **CS – 122** (for short, the subject car parking space) was also allotted to the writ petitioner by the second respondent against a valuable consideration as mentioned in the relevant receipt thereto, the same was evident from "**Annexures P-5 and P-6**" to the writ petition.

The fifth respondent, thereafter, on August 30, 2020 issued a quotation call notice, “**Annexure P-12**” to the writ petition, intending to sell eight numbers of car parking spaces which, *inter alia*, included the subject car parking space allotted to the petitioner. Challenging the said impugned **quotation call notice**, this writ petition was filed on the grounds mentioned under paragraph 35 of the writ petition. The reliefs in the writ petition are set out hereinbelow:

“(a) A Writ of and/or in the nature of Mandamus do issue Commending the concerned Respondent Authorities to take steps to immediately allow the registration of the car stilt and/or;

(b) A writ of and/or in the nature of Prohibition do issue commending the concerned Respondent to stop the process of action with immediate effect and thereby not cause hindrance to the Petitioner in availing his legal rights over his property under laws of the land sought to be mischievously derailed by the present incumbents of the management of the Respondent No.5 including the private Respondent Nos.6 and 7 herein and/or;

(c) A writ of and/or in the nature of certiorari do issue commending the concerned respondent No.5 to produce all record and certify them and upon perusal of the same and herein all the parties hereto set aside/quash the letter and Notices for auction being Annexure P-11, P-13 and P-14 herein.

(d) Rule NISI in terms of prayers (a) to (c) above;

(e) An interim order in terms of prayer (b) herein above;

(f) A further interim order be passed mandating the respondent authorities to take necessary steps to register the said car stilt with the provisions of law;

(g) An ad-interim order in terms of prayers (a) and (b) hereinbefore;

(h) Costs pertaining thereto;

(i) Such further order or orders, direction/directions be passed so as to this Hon'ble Court may deem fit and proper in accordance with law."

Mr. Sandip Kumar Bhattacharyya, learned Counsel with Mr. Suman Basu, learned Counsel appearing for the writ petitioner submitted that, the subject car parking space was exclusively allotted in favour of the petitioner by the second respondent and the fifth respondent by issuing the said impugned **quotation call notice** sought to infringe the valuable right of the petitioner in respect of its property. He submitted that, under the compelling circumstances, the petitioner was compelled to become a member of the fifth respondent, whose constitution is otherwise illegal and wrongful as a co-operative society.

He submitted that Section 2 of the **West Bengal Apartment Ownership Act, 1972** had not even been given effect by following the due process of law and in absence of such provision, the petitioner had no other alternative but was compelled to become a member of the said co-operative society.

Referring to the relevant schedules to the said two sale deeds mentioned above, he submitted that, an easementary right was also created in favour of the

petitioner and by virtue of the said quotation call notice such valuable right of the petitioner in respect of the subject car parking space was infringed by the fifth respondent. Inasmuch as, he submitted that the respondent no. 5 received the said land with the constructed residential units from the second respondent to a limited extent and not in totality as would be evident from the deed of sale executed by the second respondent in favour of the fifth respondent read with the deed of sale executed by the second respondent in favour of the petitioner.

On the basis of such limited acquisition of right, the fifth respondent could not have issued the said quotation call notice and thereby sought to takeaway the valuable property right of the petitioner insofar as the subject car parking space concerned.

He submitted that by issuing the said quotation call notice, the fifth respondent intended to gain economically which was not permitted and also in violation of **Section 3(IV) of the West Bengal Co-operative Societies Act, 2006.**

Mr. Satyendra Agarwal, learned Counsel appearing for the second respondent referring to the said sale deed dated December 3, 2001, “**Annexure P-2**” to the writ petition submitted that, out of the total car parking spaces of 272 constructed by the second respondent, 265 numbers of car parking spaces were conveyed/transferred in favour of the fifth respondent and the rest seven are still with the second respondent and as such the second respondent holds

the right, title and interest of the same. The fifth respondent could not and cannot exercise any right, title or interest over and above the said seven numbers of car parking spaces.

Referring to the several portions from the said sale deed, he submitted that, the residential units constructed on the said land by the second respondent along with 265 numbers of car parking spaces were transferred in favour of the fifth respondent and nothing more than that. He submitted that, the fifth respondent was also entrusted for maintenance of the common areas of the said entire residential project. He submitted that the car parking spaces mentioned in the quotation call notice do not belong to the fifth respondent and as such the fifth respondent had acted illegally and wrongfully in issuing the said quotation call notice dated August 30, 2020, “**Annexure P-12**” to the writ petition.

Referring to the relevant documents annexed to the writ petition, he submitted that the subject car parking space was allotted in favour of the petitioner by the second respondent subsequently and at a later stage after execution of the sale deed dated January 12, 2002. Referring to pages 31 to 40 of the writ petition, he submitted that it was evident that only 265 numbers of car parking spaces were transferred in favour of the fifth respondent.

Mr. Srijan Nayek, learned Counsel appearing for the State submitted that, it was really a fight between the petitioner and the fifth respondent to which the State has nothing to comment upon. He submitted that even if there

is any involvement of the second respondent then also the State has got nothing to do with it. He further submitted that, from a perusal on the averments made in the writ petition, it appears that the writ petition is not maintainable and liable to be dismissed *in limine*. It is really a dispute, as canvassed in the writ petition, between the fifth respondent and one of its members, namely, the petitioner, which should be agitated in terms of the provisions laid down under the **West Bengal Co-operative Societies Act, 2006** and not in this writ petition.

Mr. Kamal Krishna Pathak, learned Counsel with Mr. Harish Chandra Talwar, learned Counsel appearing for the respondent nos. 5, 6 and 7 had placed both the sale deeds extensively. Referring to the various portions of the said two sale deeds mentioned above including diverse schedule attached thereto, he submitted that, it was 272 numbers of car parking spaces which were transferred in favour of the fifth respondent by the second respondent as would be evident from **Schedule – C** (at page 29 of the writ petition) to the sale deed dated December 3, 2001 and as such, the respondent no.5 had all the right, title and interest over the said 272 numbers of car parking spaces and in exercise of such right, the said quotation call notice was issued. He also referred to **Schedule – B** (at page 48 of the writ petition) to the sale deed dated January 12, 2002 and submitted that at the time of execution of the said sale deed, the petitioner was aware of and had sufficient notice that 272 numbers of car parking spaces belonged to the fifth respondent as was

transferred by the second respondent in its favour. Hence, the writ petitioner could not contend anything to the contrary.

Referring to **Schedule – B** (at page 28 of the writ petition), he submitted that “**all lands**” of the relevant mouza on which the said project was constructed was transferred by the second respondent in favour of the fifth respondent. Referring to **Schedule – C** (at page 29 of the writ petition) to the said sale deed, he submitted that the entire easementary right attached to the said land was also transferred in favour of the fifth respondent.

He further submitted that the disputes involved in this writ petition is purely private in nature and if at all, between the co-operative society and its member for which this writ petition is not maintainable.

Mr. Sandip Kumar Bhattacharyya, learned Counsel in reply submitted that his client has an easementary right in respect of the subject car parking space and as such, the fifth respondent could not and cannot deal with the same.

The affidavits filed by the parties are on record.

After hearing the learned Counsel for the parties and upon perusal the materials on record, it appears to this Court that, the issue raised in the writ petition, if required to be adjudicated upon, the same necessarily requires construction and interpretation of the said two sale deeds, namely, the sale deeds dated December 3, 2001 and January 12, 2002.

This Court is of the considered view that, the writ court in exercise of its high prerogative writ jurisdiction should not take the task of interpretation and construction of the said two sale deeds. Inasmuch as, the **quotation call notice** dated August 30, 2020 was issued by the fifth respondent. The petitioner contended that his car parking space (Serial No. 3) was sought to be dealt with and transferred by the fifth respondent under the said quotation call notice.

It is an admitted position that, the petitioner has not challenged the said quotation call notice before the appropriate forum in accordance with law, to receive a judicial declaration that the same was illegal, void or invalid. The writ court cannot adjudicate the same as the same would involve various triable issues. On an overall assessment of the cause of action sought to be agitated through the said writ petition, it appears to this Court that, the same amounts to a dispute between the fifth respondent which is a co-operative society and the petitioner who is a member thereof. An alternative and efficacious remedy is available under **West Bengal Co-operative Societies Act, 2006** for redressal of such dispute. The writ court, on a considered view of this Court, should not encroach or usurp the jurisdiction of another statutory forum, which is otherwise an efficacious remedy.

Insofar as the contention of the writ petitioner is concerned, that Section 2 of the **West Bengal Apartment Ownership Act, 1972**, had not yet been given effect to is of

no assistance to the writ petitioner in the facts and circumstances of this case, as the dispute is purely between a co-operative society and one of its members.

In view of the forgoing discussions and reasons, this Court is of the firm view that, the writ petition is devoid of any merit.

It is, however, made clear that this Court has not gone into the merit of the disputes, if any, between the petitioner and the fifth respondent in any manner. The petitioner, if is entitled in law, will be free to agitate its grievance before the appropriate forum in accordance with law. All points in this regard are kept open for the relevant parties to urge before such appropriate forum.

In view of the above, the writ petition being **WPA 7284 of 2020** stands dismissed.

The connected interim application being **CAN 1 of 2020** stands disposed of.

There shall, however, be no order as to costs.

(Aniruddha Roy, J.)