

OD-2

ORDER SHEET

WPO/470/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MIRA BANERJEE & ANR.
Versus
STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 25th February, 2022.

[Via Video Conference]

Appearance:
Mr. Tapas Dutta, Adv.
Mritunjoy Halder, Adv.
For the petitioners.

The Court :- The writ petition has been filed for setting aside the award passed by the Joint Registrar of Co-operative Societies, RTAH Cell and for payment of compensation of Rs.40,00,000/- (forty lakh) by the respondents on the ground of delay in disposal of the proceedings by the sole arbitrator.

It is submitted that the said proceedings was disposed of at a belated stage by directing that the share of late Sikha Chattopadhyay shall be transferred to Baby Mukherjee on payment of Rs.66,72,329/.

Learned Advocate for the petitioners submits that the petitioners are aggrieved because the Joint Registrar of Cooperative Societies kept

the arbitration proceedings pending for a long time. It appears that the dispute case was registered sometime in 2014 and disposed of by an order dated September 28, 2020.

The contention of the petitioners is that such delay of the authority has deprived the petitioners' right to own, possess and enjoy the property. The petitioners have claimed compensation of Rs. 40 lakh for the delay.

The prayer of the petitioner for a direction upon the respondent to pay a sum of Rs.40 lakhs as compensation for the delay caused due to the pendency of the arbitration, cannot be granted by a writ court for the reasons discussed hereunder.

The records reveal that the dispute case No.1/KMAH of 2014 was first filed without the signature of the plaintiffs /petitioners before the Joint Registrar of Co-operative Societies, Kolkata Metropolitan Housing Cell and the same was dismissed on the ground of such defect. Thereafter, one of the plaintiffs died and the Joint Registrar, Cooperative Societies, KMAH directed the plaintiffs/petitioners to submit a succession certificate or letters of administration from a competent court in respect of their brother Sri Raj Kumar Chatterjee (since deceased), who was also a petitioner in the dispute case.

On March 8, 2019, the Registrar, Cooperative Societies, KMAH appointed a new arbitrator to hear the said dispute case. It was then found that the plaintiffs/petitioners had filed the dispute case in a wrong forum and the same was transferred before the Joint Registrar of

Cooperative Societies, Cooperation Department, RTAH Cell, Government of West Bengal. The arbitration case was disposed of on September 28, 2020. Thus, the Court does not find that the arbitrator being a quasi-judicial authority was in anyway responsible for the delay in the disposal of the proceeding. The petitioners' contention that because of such delay, the petitioners have suffered irreparable loss and injury and were deprived of their rights to property, is also not accepted by the Court in view of the finding of the learned arbitrator.

The learned arbitrator has recorded that the proportionate cost to be borne by the deceased member under whom the petitioners claim membership of the Cooperative Society to the tune of Rs.66,72,329/- ought to have been paid by the late promoter-member during the construction of the housing society. The said sum was not paid and the other 31 members had to pay off the said amount for the completion of the project. It also appears that the death news of the promoter-member was given to the respondent society much later than one year from the date of death, or else the society could have taken advantage of the provisions of law Section 70(1)(b) and the other members would have been saved from incurring huge expenses. It also appears that the promoter member since deceased, whose share the petitioners are claiming did not nominate anybody. Thus, a succession certificate from a competent court of law indicating that the petitioners herein were legitimate claimants to be inducted as members, was necessary. It also appears that the said succession certificate was not produced before the

society, as a result of which, the dispute case arose. The learned arbitrator also found that had these documents been submitted before the society by the petitioners or the claimant, the dispute would not have arisen and the society itself would have settled the matter in accordance with law. The learned arbitrator also did not find any illegality in the actions of the society. Thus, such findings of fact, by a quasi-judicial authority, cannot be gone into by the writ court in the absence of any evidence to the contrary. The claim for compensation for the delay in disposal of the dispute case does not hold good in view of the facts narrated hereinabove. The society has not been found to be guilty of any statutory non-compliance. The findings by the learned arbitrator also reflect that several irregularities had cropped up in the proceeding, as the petition filed by the plaintiffs therein suffered from several irregularities including one of jurisdiction. It also appears that the petitioners were never interested in disposal of the dispute, expeditiously.

With regard to the decision cited by the learned Advocate for the petitioners in the matter of ***Meghashyam Sadashivrao Vadhave*** reported in ***(2017) 13 SCC 681***, the Court finds that the said judgment does not help the petitioner as there is a clear finding by the learned arbitrator that the petitioners had not proceeded with the dispute case in accordance with law and expeditiously. The said petition was also pursued in a wrong forum for a considerable period of time. The findings of facts, negate the applicability of the above decision.

The decision in ***ABL International Ltd. and Anr. vs. Export Credit Guarantee Corporation of India Ltd. and ors.*** reported in ***(2004) 3 SCC 553***, does not apply in this case as the same relates to enforceability of government contracts and contractual obligation of the state and its instrumentality. The question in this case is not whether a writ petition under Article 226 of the Constitution in India is maintainable to enforce the contractual obligation of the state or its instrumentality. It is also not a writ petition for grant of consequential relief of monetary claims.

This writ petition arises out of an award passed by an arbitrator in accordance with the provisions of law. There is an alternative remedy available and unless the award is found to be defective and palpably illegal and in breach of fundamental rights of the petitioners, the question of compensating the petitioner does not arise. Moreover, the award goes against the petitioner and there are findings with regard to the reasons for the delay in disposal of the matter.

This is a simple case of a dispute with regard to induction of a member in accordance with the provisions of the West Bengal Cooperative Societies Act, 2006. The dispute case has been disposed of by the arbitrator in accordance with law. There are findings against the petitioners with regard to their conduct. The findings of fact are against the petitioners. This Court does not find any illegality or arbitrariness in the proceeding which would warrant a direction for payment of Rs.40 lakh as compensation to the petitioners. The ratio of the decision in ***Hari***

Krishna Mandir Trust vs. State of Maharashtra and ors. reported in **(2020) 9 SCC 356**, does not help the petitioner as the issues decided therein are completely distinguishable from the issues involved in the present case. In the said decision, the Hon'ble Apex Court held that the authority could not deprive a person from a rightful claim and enjoyment of a property and the writ court must exercise its jurisdiction in such cases on sound judicial principles, to ensure that the arbitrary actions of the authorities do not amount to wrongful deprivation of the right of an owner to his property.

In the decision of ***Rahul Sah Vs. State of Bihar, reported in AIR 1983 SC 1086***, The Hon'ble Apex Court for the first time was faced with a dilemma as to whether or not to award compensation for violation of right to life and personal liberty guaranteed under Article-21. The stand taken on behalf of the State, was that the petitioner should be left entirely to claim damages under the ordinary civil law, by filing a suit. This contention was, however, rejected by the Apex Court as it would have amounted to robbing Article 21 of its "Significant Content". The Court felt that it was necessary to award monetary compensation of Rs. 30,000/- without impairing the right of the petitioner to claim damages under the ordinary law through civil courts. The Court held that the petitioner could be relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial in the sense. However, as the Apex Court already found in the said case, that the petitioner's

prolonged detention in prison even after his acquittal, was wholly unjustified and illegal, monetary compensation was awarded.

In the facts of this case, the writ court cannot grant compensation to the petitioners. The writ court can grant compensation in cases where the State is responsible for violation of fundamental rights of citizens by acts and/or omissions of their officers. The Apex Court held that in case a tort is committed by an officer of the State in exercise of its sovereign function, the defense of sovereign immunity can be successfully taken by the State, but the said plea will not be available in case of violation of fundamental rights, specially right to life and personal liberty guaranteed under Article 21 of the Constitution.

In this case, the Court does not find that the petitioners have made out a case of wrongful deprivation of their rights to life and property either against the society or the arbitrator. Thus the decisions relied upon by the petitioners do not help the petitioner and as such, the writ petition is disposed of without any order.

The petitioner is at liberty to challenge the correctness of the award passed by the arbitrator in accordance with law, before the appropriate forum by filing a statutory appeal.

Neither the state respondents nor the society can be made responsible to pay such compensation. The award passed is also liable to be challenged before an appropriate alternative forum.

The observations in this case are only with regard to the maintainability of the writ petition and grant of the prayers made

therein. They are tentative and shall not influence the proceedings which may be initiated by the petitioner against the award before the appropriate forum.

The writ petition is, thus, dismissed.

(SHAMPA SARKAR, J)

snn.