

13.07.2023
Item No.05
Court No.11
Avijit Mitra

MAT 769 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023

Dr. Mrs. Reba Ray
-versus-
The State of West Bengal & ors.

Mr. Sayak Chakraborty
...for the appellant
Mr. Pradip Kumar Roy,
Mr. Joydeep Roy,
Mr. Tirthajit Roy Chowdhury
...for the State
Mr. Srijan Nayak,
Ms. Rituparna Maitra,
Mr. Biplab Das
...for the Co-operative Election Commission

Mr. Chakraborty, learned advocate appearing for the appellant submits that in the penultimate paragraph of the order dated 26th April, 2023 passed in the writ petition being WPA 8510 of 2023, the learned Court directed the Co-operative Election Commission (in short, the said Commission) to take steps for holding election of the Society in question and to complete the whole process within six months with a further direction upon the said Commission to take all necessary steps to protect the interest of the Society in question and to take proper steps against any malfunctioning and mismanagement by the *de facto* members of the Society.

According to Mr. Chakraborty, the said Commission has no jurisdiction to take steps against any malfunctioning and mismanagement by the *de facto* members of the Society and a Special Officer needs to be appointed with a direction upon the said Officer to take such steps. Such steps cannot be taken by a defunct Board and the order needs to be modified accordingly.

Mr. Roy, learned advocate appearing for the State submits that earlier a proposal was sent for appointing a Special Officer in the said Society *vide* memo dated 20th January, 2023, as would be explicit from the order dated 28th February, 2023 passed by the Joint Registrar of Cooperative Societies and that subsequent thereto, the Special Officer was appointed on 24th April, 2023 and as such the grievance of the appellant to that effect stands redressed.

He further submits that the Society's election has already been conducted and the office bearers' election is scheduled on 14th July, 2023 and after the new Board is constituted, the said Board would be under an obligation to take proper steps against alleged malfunctioning and mismanagement by the *de facto* members of the said Society.

Mr. Nayak, learned advocate appearing for the Co-operative Election Commission submits that the said Commission has already complied with the order dated 26th April, 2023 by appointing the Assistant Returning Officer and by holding the election of the said Society and

as such the allegations levelled against the said Commission are not sustainable.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that the writ petition was preferred challenging *inter alia* an order dated 20th February, 2023 passed by the Joint Registrar of Cooperative Societies alleging *inter alia* that no election had been conducted in the said Society for a substantial period of time and a defunct Board was illegally operating but the State did not take steps towards appointment of any Special Officer. Considering such grievances, the writ petition was disposed of with a direction upon the said Commission to take steps for holding the election of the Society in question with a further direction that necessary steps should be taken against any malfunctioning and mismanagement by *de facto* members of the said Society. As the said Commission has no jurisdiction to take any steps against malfunctioning and mismanagement by the *de facto* members of the Society, such direction ought to have been issued upon the newly elected Board.

In view thereof, the order dated 26th April, 2023 is modified to the effect that the new Board of the said Society shall take necessary steps to protect the interest of the Society in question and shall take proper steps against any malfunctioning and mismanagement by *de facto* members of the said Society.

With the above observations and directions the appeal and the connected applications are disposed of.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)