

495. 19.07.2023
bd. Ct.15

W.P.A. 18884 of 2015

Sri Tapan Kumar Mitra

-vs-

The State of West Bengal & Ors.

Mr. Rabindra Nath Dutta ... for the petitioner

Mr. Ankit Sureka

Mr. Biplab Das

Mr. Partha Sarathi Pal ... for the respondent
nos. 2 & 3.

Mr. Ashit Kr. Chakraborty

Mr. Sunanda Mohan Ghosh ... for the respondent
No. 4.

Mr. Arnab Roy ... for the applicant
(in CAN 11086/2015)

Petitioner, inter alia, in the present writ petition has prayed for implementation of the award dated 11th November, 2003 passed by the Deputy Registrar Co-operative Societies but on hearing Mr. Dutta, learned advocate representing the petitioner it appears in effect petitioner is claiming fixation of equal annual maintenance charge in respect of flat owned by the petitioner in Rail Vihar Cooperative Society Limited irrespective of the size of the flats owned by the flat owners being the members of the aforesaid cooperative housing society.

Mr. Dutta, has heavily placed reliance on the award dated 11th November, 2003 in order to substantiate his claim that fixation of annual maintenance charges should be equal so far as the flat owners are concerned irrespective of the size of the flat, since it has been considered by the Deputy

Registrar of Co-operative Societies while passing award dated 11th November, 2003.

Having heard the learned advocate representing the petitioner this Court has posed a query to the learned advocate for the petitioner that whether such direction has been given by the Deputy Registrar of Co-operative Societies while passing the award dated 11th November, 2003 requiring the cooperative housing society to fix annual maintenance charge at the uniform rate.

This Court does not get any satisfactory answer from the petitioner that the award dated 11th November, 2003 contains a finding requiring apportionment of uniform annual maintenance charge irrespective of sizes of the flat. On perusal of the award dated 11th November, 2003 it further transpires that it deals with fixation of charges which are required to be paid by the flat owners at the time of white washing and repairing of the common area.

In view of the aforesaid situation which emanates from award dated 11th November, 2003 it does not appear that the said award cast an obligation on the cooperative housing society to apportion annual maintenance charge uniformly irrespective of the carpet area of the flats.

However, learned advocate representing the cooperative society has drawn attention of this Court to another award dated 16th October, 2012 which has been passed in connection with the

dispute case instituted by the petitioner before the Arbitrator questioning levying of annual maintenance charges in connection with the flat of the petitioner. On considering the findings made by the arbitrator it appears that it was decided that the said society should apportion annual maintenance charge strictly adhering to the award passed in Dispute Case No. 16/KMAH of 2008. It was in effect decided by the arbitrator that the flat owners are required to pay uniform annual maintenance charge irrespective of the carpet area of the flat. Against such decision of the arbitrator an appeal was preferred before the Tribunal and the Tribunal vide order dated 29th July, 2016 had set aside the decision of the arbitrator passed in Dispute Case No. 16/KMAH of 2008. Subsequently flat owners who suffered the order of the Tribunal dated 29th July, 2016 approached this Court with a writ petition being WPA 2362 of 2017; the said writ petition was disposed of by a coordinate Bench vide judgment dated 20th June, 2018 wherein it has been decided by the coordinate Bench that flat owners are required to pay annual maintenance charge in respect of their flats in consideration of the carpet area of the flats as provided under Rule 148(2) of the West Bengal Co-operative Societies Rules 2011. Therefore it has been contended on behalf of the Housing Co-operative Society that the judgment dated 20th June, 2018 passed in WPA 2362 of 2017 (Alok Kumar Roy & Ors. –vs- The State of West Bengal & Ors.) governs the issue which is involved in the present writ petition.

This Court has heard the learned advocates

representing the petitioner and the concerned Housing Society and perused the relevant materials available on record including the judgment dated 20th June, 2018 passed in Alok Kumar Roy (supra).

The issue arises for consideration is whether the award dated 16th October, 2012 passed by the arbitrator which was not interfered with by the Tribunal in connection with the appeal preferred by the housing society against the said award dated 16th October, 2012 since the appeal was time barred should be given effect to or not on the anvil of the judgment delivered by the coordinate Bench in Alok Kumar Roy (supra).

Having heard the learned advocates representing the parties it appears that Alok Kumar Roy and other flat owners who preferred the writ petition being WPA 2362 of 2017 are similarly placed like the petitioner herein and they are staying in same housing complex occupying separate flats. The claim of the flat owners to levy uniform annual maintenance charge irrespective of carpet area of the flats occupied by the respective flat owners has already been decided in the judgment of Alok Kumar Roy (supra). In addition thereto reliance has been placed on Rule 148(2) of the West Bengal Co-operative Societies Rules, 2011 which runs infra:

“ 148.Apportionment of cost of land, house or apartment in housing co-operative society.- (1) The

cost of any land (including its development cost) or the cost of any house or apartment on such land built by a housing co-operative society shall be apportioned in such manner as may be decided by the board.

(2) The cost of maintenance, repair or replacement of common areas and facilities shall be apportioned according to carpet area:

Provided that where apportionment of cost according to carpet area is not considered equitable, the society may with the approval of the Registrar realise the cost in such manner as it may consider fit.”

In consideration of the contemplation as made under Rule 148(2) it appears that maintenance charge, repairing or replacement of common areas and facilities need to be apportioned according to carpet area of the flats.

Since the issue has been decided by the coordinate Bench in Alok Kumar Roy (supra) based on the statutory provision as contained in Rule 148(2) of the West Bengal Co-operative societies Rules, 2011 the prayer of the petitioner for levying

uniform annual maintenance charges cannot be countenanced albeit Court is aware of the fact that the award dated 16th October, 2012 passed by the arbitrator in the Dispute Case lodged by the petitioner was not interfered with by the Tribunal in appeal on technical ground since the appeal was time barred; at the same time court cannot shut its eyes to the issue decided by the coordinate Bench in Alok Kumar Roy (supra). If the award dated 16th October, 2012 is given effect to the consequence would lead to anomalous situation wherein all the flat owners would pay annual maintenance charge as per decision of the co-ordinate Bench dated 20th June, 2018 passed in Alok Kumar Roy (supra) whereas petitioner would go on paying annual maintenance charge as per award dated 16th October, 2012.

In view of the aforesaid facts and in consideration of the judgment delivered by the coordinate Bench in Alok Kumar Roy (supra) and statutory provision as contained under Rule 148(2) of the Rules of 2011 the prayer of the petitioner for levying uniform annual maintenance charge irrespective of carpet area of the flats is negated.

Accordingly, the writ petition stands dismissed. There shall be no order as to costs.

It needs to be recorded herein that since there is no Board of the said housing society being respondent no. 4 at present the said society is represented by the Special Officer.

Affidavit-in-reply filed on behalf of the petitioner is taken on record.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)