

8.2.2023

ks

sl. 23

WPA 28844 of 2022

Rameshwar Prasad Keshari @ Keshri

Vs

The State of West Bengal & Ors.

Mr. Ranojoy Chatterjee,
Ms. Piyeta Bhattacharjee
Mr. S. Halder

... For the Petitioner.

Mr. Srijan Nayak,
Ms. Rituparna Maitra

... For the State.

Mr. T.M. Siddiqui,
Mr. Avisek Prasad

... For the Respondent No.3 & 4.

Heard learned Advocate appearing for the parties.

By this writ petition, petitioner has prayed for direction upon the respondent authority concerned of the society in question to change the tenancy in the name of the father-in-law of the petitioner.

I am not inclined to entertain this writ petition on the ground of maintainability since in my considered view the society against which petitioner has grievance is a private body and not an authority under Article 12 of the Constitution of India and further that the society in question is neither financed by the Government or the Government has any control over the day to day affairs of the society. This issue is covered by a decision of the Hon'ble Supreme Court in the case of S. S. Rana Vs. Registrar, Co-operative Societies & Anr. reported in (2006) 11 SCC 634 particularly in paragraphs 9 to 12 of the said judgment

and for the sake of convenience, the same is recorded hereinbelow:-

“9. It is not in dispute that the society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the society. The State has no say in the functions of the society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr. Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the society, several other relevant questions are required to be considered,

namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the society pertain to statutory functions or public functions? and (4) Can it be characterised as public authority?

11. Respondent no.2, the society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia V. Khalid Mujib Sehravardi*. (See *Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban)*).

12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions.”

The aforesaid judgment has been followed by this court in order dated 31st January, 2023 in the case of *Sri Suman Sengupta & Anr. vs. Union of India & Ors.* in WPA 2173 of 2023.

Furthermore, the dispute involved is purely civil in nature and is between the two private parties relating

to tenancy and the appropriate remedy for redressal of such nature of grievance is before a Civil Court.

In view of the discussion made above, this writ petition being WPA 28844 of 2022 is dismissed.

(Md. Nizamuddin, J.)