

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/42/2022
Arising out of
WPO/ 470/2022

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

AND

APOT/98/2022
In
RVWO/4/2022
Arising out of
WPO/ 470/2022
IA NO: GA/1/2022
GA/2/2022

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

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : July 18, 2023.

Appearance:

*Mr. Altamas Alim, Advocate
....for appellants.*

*Mr. Arindam Mandal, Advocate
Mr. Paritosh Sinha, Advocate
....for State Respondents.*

THE COURT: These two appeals involve similar questions of law and fact and have accordingly been heard together. The

two appeals are being disposed of by this common judgment and order.

APO 42 of 2022 is an appeal against a judgment and order dated February 25, 2022, whereby the writ petition filed by the appellant Mira Banerjee and her sister Baby Mukherjee, since deceased, was dismissed.

APOT 98 of 2022 is an appeal against a judgment and order dated April 4, 2022, whereby the application of the writ petitioners for review of the order rejecting the writ petition, was dismissed.

One Sikha Chattopadhyay was a founder member of the Cooperative Housing Society in question. She passed away on or about March 7, 2007. She was a spinster. She left behind two sisters being Baby Mukherjee and Mira Banerjee and a brother being Raj Kumar Chatterjee as her only legal heirs.

Upon the demise of Sikha, her said legal heirs wanted to step into her shoes as members of the said Housing Society. Disputes arose between the Society and the said legal heirs of Sikha. A dispute case was initiated in January, 2014.

The appellant maintains that the Succession Certificate that the Society had called for, was supplied to the Society upon such certificate being issued by the learned District Delegate at Howrah Court in CS 5 of 2012. The Society contends that such Succession Certificate was never made available by the legal heirs of Sikha.

The dispute case continued for a long period of time. It appears that in 2019 the Arbitrator, to whom the disputes were referred by the Registrar, expressed his view that the case had been filed before a wrong forum. Accordingly, the case was transferred to the proper forum.

Be that as it may, after a lot of water had flown under the bridge, an Award was made and published on September 28, 2020. By the said Award, the Arbitrator called upon the legal heirs of Sikha to pay approximately a sum of Rs. 66 lacs towards, what according to the Society, was the share of the building costs that was payable by Sikha. This demand was a pre-condition for admitting Mira Banerjee and Baby Mukherjee as members of the Society in the place and stead of their deceased sister Sikha.

Mira and Baby challenged the said Award before the learned single Judge in the present round of litigation. A further claim for compensation was also made before the learned single Judge for the Society having caused inordinate delay in the disposal of the dispute case and for the harassment caused to Mira and Baby.

Several points were urged before the learned single Judge as noted by the learned Judge. The learned Judge rejected the claim for compensation holding that the Writ Court is not the proper forum to claim damages. As regards challenge to the Award, the learned Judge noted that Section 147 of the West Bengal Co-operative Societies Act, 2006 (in short, "2006 Act")

provides an efficacious alternative remedy by way of a statutory appeal against an order, decision or Award passed under Section 103 of the 2006 Act. The learned Judge was of the opinion that the Award should be challenged before the appropriate forum by taking recourse to the statutory appeal. As regards the claim for compensation, the learned Judge relegated the writ petitioners to the appropriate Civil Court. Accordingly, the learned Judge dismissed the writ petition.

The writ petitioners filed an application for review of such dismissal order being RVWO 4 of 2022, which was also dismissed by the learned single Judge by a judgment and order dated April 4, 2022.

Being aggrieved by the order dismissing the writ petition and the order dismissing the review application, the present two appeals have been filed.

During the pendency of the appeals, one of the appellants, Baby Mukherjee, passed away. Accordingly, Mira is presently the sole appellant.

Appearing for the appellant, Mr. Altamas Alim, learned Advocate, has advanced eloquent arguments on various points. He has argued that the arbitral Award is without jurisdiction since the Arbitrator was under a statutory mandate to pass an Award within a year from the reference of the dispute to him. This is required under Section 103 Sub-section (5) of 2006 Act. In the present case, the dispute was referred to the Arbitrator some time in 2014. The Award was

published in 2020. The Award is without authority and a nullity in the eye of law. Mr. Alim submitted that although this point was urged before the learned Judge in the course of hearing of the writ petition, the order dismissing the writ petition does not reflect such argument.

Mr. Alim also argued that the Writ Court has the power to entertain disputed questions of fact and also to award damages for gross dereliction of duty on the part of public officers resulting in infringement of fundamental rights of citizens. He argued that damages can be awarded by the High Court in the exercise of its high prerogative writ jurisdiction for Constitutional Tort or, if one may loosely use the phrase, “statutory tort”, committed by the officers of the Government. According to him, this is a fit case where in view of the unnecessary harassment caused to the legal heirs of Sikha, compensation should be directed to be paid to the sole surviving legal heir Mira.

Mr. Alim has relied on three decisions, two of the Hon’ble Supreme Court and one of a learned single Judge of Chhattisgarh High Court. The decisions are as follows:

- (1) (1970) 1 SCC 582 [*Century Spinning and Manufacturing Company Ltd. and Another vs. The Ulhasnagar Municipal Council and Another*]
- (2) (1994) 6 SCC 205 [*N. Nagendra Rao & Co. vs. State of A.P.*] and

(3) 2021 SCC OnLine Chh 1636 [Nitin Aryan vs. State of Chhattisgarh through Secretary and Others]

Learned Advocate has also relied on a passage in *Clerk and Lindsell on Torts* [14th Edition].

The aforesaid decisions of the Supreme Court and *Clerk and Lindsell on Torts*, are no doubt very high authorities laying down the proposition of law that in appropriate cases where infraction of fundamental rights is involved, damages can be awarded in the exercise of writ jurisdiction.

Learned Advocate finally submitted that because of the complete indifference and inefficiency on the part of the Society, the appellant herein, who is presently 80 years of age, had to run from pillar to post over a long period of time. This has not only caused her agony, anxiety, loss of mental peace and harassment but has also adversely affected her health.

We have not called upon the State to argue. In spite of notice having been served upon the Housing Society, the Society has not been represented before us.

We have duly considered the submissions made by the learned Advocate for the appellant. The principles of law put forward by the learned Advocate are unexceptionable. We have not doubt that if statutory functionaries act in dereliction of duty, causing undue harassment or loss/damage to a citizen, the Writ Court has the power to compensate such citizen by way of damages. We are also in agreement with Mr. Alim that

as laid down by the Supreme Court in the case of *Whirlpool Corporation* if an order challenged before a Writ Court is without jurisdiction, the Writ Court is at liberty to entertain the writ petition in spite of an efficacious alternative remedy being available to the writ petitioner. Indeed, existence of an alternative remedy is not a bar to the maintainability of a writ petition. This proposition of law is so well-established that no authority need be referred to in support of the same. However, it is entirely the discretion of the High court to be exercised judiciously as to whether or not in a particular case a writ petition should be entertained although the writ petitioner has an alternative remedy available to him.

In the present case, we find that Section 147 of the 2006 Act provides the appellant with an adequate alternative remedy by way of a statutory appeal against the Award of the Arbitrator. Factual disputes involved in the case would be adjudicated more conveniently and efficiently in a statutory appeal than before the Writ Court. We find nothing wrong with the approach of the learned single Judge relegating the writ petitioners to such statutory forum for challenging the Award.

We are also in agreement with the learned Judge that in the facts of the present case, which involves factual disputes, the Writ Court is not the proper forum for adjudicating the writ petitioners' claim for damages for alleged harassment suffered by them due to dereliction of duty on the part of the officers of the respondents as also the Society. The learned

Judge has left it open for the writ petitioners, out of whom only the appellant survives, to approach the appropriate civil forum claiming damages.

In fine, we find nothing in the judgment of the learned Judge which warrants interference. It is clear that the learned Judge has not dwelt on the merits of the dispute between the parties and nor have we done so either. All grounds for challenging the Award including the ground of the Award being without jurisdiction will be available to the appellant herein, if she chooses to avail of the remedy of statutory appeal under section 147 of the 2006 Act. Similarly, she will be at liberty to approach the appropriate civil forum claiming damages to compensate her for the alleged hardship caused to her by the respondents herein. If the statutory forum under section 147 of the 2006 Act or the competent civil Court is approached by the appellant, those fora are requested to decide the case of the appellant in accordance with law without being influenced by any observation made in this order or in the order of the learned single Judge which is assailed before us, as expeditiously as possible, in view of the advanced age of the appellant.

The appeal against the order dismissing the writ petition is, accordingly, dismissed. There will be no order as to costs.

Since we have affirmed the original order of the learned single Judge dismissing the writ petition, the other appeal

against the order dismissing the review application is also dismissed without any order as to costs.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

sm