

Court No. 2
13.6.2024

(Item No. ML-
970)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 11267 of 2024

Debjani Banerjee
VS
The State of West Bengal & Ors.

Mr. Soumya Mazumder
Mr. Nilratan Banerjee
Mr. Prasanjit De
Mr. Victor Chatterjee
Mr. Aniruddha Mitra
.... For the petitioner
Mr. Srijan Nayak
Mr. Ankit Sureka
.... For respondent Nos. 2 to 4
Mr. Dhiman Kumar Sengupta
Ms. Sweta Saha
Ms. Farhin Mustaque
.... For respondent Nos. 5 to 7

Mr. Nilratan Banerjee, learned counsel appears
for the petitioner.

Mr. Dhiman Kumar Sengupta, learned counsel
appears for respondent Nos. 5 to 7.

Mr. Srijan Nayak, learned counsel appears for
respondent Nos. 2 to 4.

Affidavit of service filed in Court today is taken
on record.

The writ petitioner is a member of the
concerned Co-operative Society where she has a flat.
The land of the Co-operative Society comprises of
several houses and individual flats. The grievance of
the petitioner is that, the quantum of maintenance
charges fixed by the Board of the Co-operative Society
in its general meeting held on **April 16, 2023** at **page**

39 to the writ petition is arbitrary, wrongful and disproportionate. The said decision of the Co-operative Society was approved by the respondent No. 3 in its order dated **September 27, 2023** at **page 36** to the writ petition. Through the instant writ petition the petitioner has challenged both the said resolution of the Co-operative Society dated **April 16, 2023** and the resultant approval thereof under the said order dated **September 27, 2023** passed by the respondent No. 3.

Learned counsel for the petitioner submits that, the said disproportionate and arbitrary fixation of quantum of maintenance charge by the Co-operative Society in its resolution dated **April 16, 2023** is not tenable in law and is liable to be set aside.

Both the learned counsel appearing for the respondents as recorded above jointly raise the point of maintainability of this writ petition. They submit that, even if, the order of the respondent No. 3 dated **September 27, 2023** is set aside, then also the decision of the Co-operative Society dated **April 16, 2023** shall remain in force. They further submit jointly that, it is really the decision of the Co-operative Society dated **April 16, 2023** is under challenge and the said decision of the Co-operative Society was merely approved by the respondent No. 3. Referring to **Section 102** of the **West Bengal Co-operative**

Societies Act, 2006 the counsel for the respondents submit the appropriate forum to challenge the said decision of the Co-operative Society dated **April 16, 2023** is the **Registrar**. Hence, this writ petition is not maintainable.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, it appears to this Court that, unless the said decision of the Co-operative Society dated **April 16, 2023** exists, the question of existing the order of the respondent No. 3 dated **September 27, 2023** would not be there. The decision of the Co-operative Society is the basis of the issue involved in this writ petition. Thus, the resolution of the Co-operative Society dated **April 16, 2023** requires an adjudication.

To fix the quantum of maintenance charge, several factors are already taken into consideration by the Co-operative Society and the same are required to be tested by examining various factual components. This is not the job of a Writ Court. A detail fact finding enquiry is not within the domain of this Constitutional Court in exercise of its power under Article 226 of the Constitution of India.

Section 102 of the said **2006 Act**, *inter alia* provides that, any dispute concerning the management or business or affairs of a Co-operative Society other than the dispute relating to election in a

Co-operative Society can be settled before the Registrar. The disputes raised by the petitioner with regard to the fixing of quantum of maintenance charge squarely comes within the meaning of the expression disputes concerning the management and affair of the Co-operative Society and hence the same can be settled following the provisions laid down under **Section 102** of the said **2006 Act**. A conjoint reading of **Sections 102** and **103** of the said **2006 Act** would show that the Registrar has the authority under the law to cause all the necessary fact finding enquiry required for settlement of disputes raised before it.

It is made clear that, if an application is made by the petitioner within **two weeks** from date raising the disputes before the Registrar as discussed above, the Registrar shall take cognizance of that and shall come to its logical conclusion after granting opportunity of hearing to the relevant parties and strictly following the rules and procedures laid down in the relevant law by passing a reasoned decision.

The entire exercise as directed above shall be carried out completed by the Registrar by passing a final reasoned order positively within a period of **six months** from the date of receiving such application, if submitted by the petitioner. The reasoned order then shall be communicated to the petitioner and the relevant parties by the office of the Registrar.

It is further clarified that, in the event, the reasoned decision will be otherwise from or contrary to the decision of the Co-operative Society dated **April 16, 2023** then the said **reasoned decision** would have a **prevailing effect** on the said order of the Registrar dated **September 27, 2023, Annexure P-6** at **page 86** to the writ petition and the same shall lose its force automatically and will be of no further effect.

It is made clear that, this Court has not gone into the merits of the writ petition in any manner. The parties before the Registrar shall be at liberty to urge whatever points they wish to urge by relying upon whatever records, documents and evidence they wish to rely upon and adduce before the Registrar.

It is further clarified that, in the event, no application is filed by the petitioner within the time framed above, the decision of the Co-operative Society dated **April 16, 2023** and the order of the respondent No. 3 dated **September 27, 2023** shall hold the field with full effect.

Pending disposal of the proceeding by the Registrar, the petitioner shall go on paying the quantum of maintenance charge as decided by the Co-operative Society in its decision dated **April 16, 2023** without any default and the petitioner shall pay the arrear, if any, positively within a period of **two weeks** from date to the Co-operative Society without prejudice to her rights and contentions. The fate of

such payment shall abide by the reasoned order to be passed by the Registrar including adjustment and appropriation of the same, if situation so arises.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition **W.P.A 11267 of 2024** stands **disposed of**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)