

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 1101 of 2022
Gangesh Kumar Pal & Ors.
Vs.
The State of West Bengal & Ors.

Before: The Hon’ble Justice Arijit Banerjee

&

The Hon’ble Justice Apurba Sinha Ray

For the Appellants	:	Mr. Debabrata Saha Roy, Adv. Mr. Neil Basu, Adv. Mr. Rahul Kumar Singh, Adv.
For the State	:	Mr. Benazir Ahmed, Adv.
For the Respondent No. 8	:	Mr. Indranil Nandi, Adv. Mr. Sayak Konar, Adv.
For the Respondent No. 9	:	Mr. Indradip Das, Adv.
For Orders on	:	09.01.2024

Apurba Sinha Ray, J. :-

1. Briefly, the allegation against the respondent no. 9, a member of the Bengal Pack –Co-operative Housing Society is that he has

converted his car-parking space into a shop after misusing his position as the Secretary of the Society, unauthorizedly and illegally. To such allegation the respondent no. 9 replied that by a majority decision in the meeting of the said co-operative society, he was allowed to convert his car-parking space into a commercial space on the basis of a circular being no. 2287-UD/O/M/HID/5M-36/2014 of Urban Development and Municipal Affairs and further necessary approval from New Kolkata Development Authority (NKDA) was taken and plan was sanctioned showing his car-parking space as shop. The relevant deed and plan show the portion of the car-parking space of the respondent no. 9 as a shop. Therefore, the respondent no. 9 did not commit any illegality in running his shop from the relevant space.

2. The appellants/writ petitioners contend that the majority decision in the meeting of a co-operative society cannot override the law of the land. By section 154 of West Bengal Co-operative Societies Act, 2006, it has been laid down that the said Act shall have overriding effect over all other Acts, or contracts which are in conflict with the provisions of the Act of 2006. Moreover, the definition of 'housing co-operative society' shows [Sec 4 (36)] the primary object for such society is to provide to its members with residential amenities, and not for any commercial purpose. Therefore, when the Act itself lays down the

primary object of a housing co-operative society in an unambiguous manner, no circular of any government body can bypass the same.

3. Another point that has been argued from the side of the appellants is that the illegal and unauthorized acts of the respondent no. 9 for converting his car-parking space into a commercial space have been well established since the respondent no. 3, being the Joint Registrar of Co-operative Societies (RTAH Cell), enquired and found that the respondent no. 9 has committed the illegality. But even after such finding of the Registrar of Co-operative Societies, the concerned authorities remained idle and did not take any step to restore the relevant space to a car-parking space, and as such for commanding the concerned authorities accordingly, the writ petition was filed but the writ court without going into the question of implementation of the findings of the respondent no. 4 totally misdirected the conclusion and directed the parties to agitate the issues before the Registrar of Co-operative Societies in terms of Section 102 of the West Bengal Co-operative Societies Act.

4. Therefore, from the argument of the Learned Counsel of the appellants it appears that the appellants filed the writ petition only to implement the decision of the Joint Registrar of Co-operative Societies

(RTAH Cell) since, according to them, the dispute has already been adjudicated and the result of such decision has also been declared, and, therefore, the direction of the writ court to re-agitate the 'dispute' once again as per Section 102 of Act of 2006 is unnecessary and without any legal basis. The writ petition was filed only to implement the decision of the concerned authority and nothing more than that.

Court's View:-

5. Needless to mention, power and scope of the appellate forum are very limited. The law empowers the Appellate Court to interdict the decision of the writ court when not merely a wrong decision is rendered by the said court but only when the decision is clearly wrong.

6. According to the appellants, the dispute between the parties has already been adjudicated on the basis of clear admission and other materials, and therefore, there is no scope for the writ court to direct the parties to refer the dispute once again to the Registrar Co-operative Societies. So, the appellants, time and again, hammered that there was a 'dispute' and that has been 'adjudicated' by the Registrar of Co-

operative Societies, and the writ petition was filed only to implement the result of such 'adjudication'.

7. Admittedly, the 'dispute' was raised by the appellants. They had sent several letters complaining of the alleged illegal acts on the part of the respondent no. 9 to different authorities. On 17.12.2019 the Joint Registrar of Co-operative Societies (RTAH Cell) was directed to take necessary action and to furnish a copy of action taken report regarding the complaint filed by the appellants regarding illegal registration of the concerned co-operative flat with commercial shop at the instance of the respondent no. 9. Enquiry was held wherein the respondent no. 9 admitted that "such mistake has been inadvertently taken place though the said matter was executed with prior consent of the co-operative society. The Secretary of the Housing Co-operative Society also admitted the fact. Hence, the Secretary of the society is hereby directed to rectify the misdeeds lawfully at the earliest."

8. Be it mentioned here that West Bengal Co-operative Societies Rules 2011 (Rules of 2011 in short hereinafter) have clearly laid down how a 'dispute' can be raised and how the said dispute can be 'adjudicated'. Rule 166 of the Rules of 2011 and subsequent Rules, under Chapter XI lay down the provisions regarding how a 'dispute'

can be referred to and adjudicated upon. The relevant rules are quoted hereunder:-

“Rule 166. Reference of a dispute –

A dispute to be filed before the Registrar shall be made in writing to be called the plaint and shall, inter alia, contain –

- (a) the names, description and addresses of the parties,*
- (b) a statement of the subject of disputes along with copies of documents to be relied upon,*
- (c) the facts constituting the cause of action and when it arose,*
- (d) the relief prayed for, and*
- (e) in a dispute relating to recovery of money, a statement of the subject matter of the dispute for the purpose of determination of fees for filing a dispute:*

Provided that the plaint shall be accompanied by as many its copies as the number of defendants.

Rule 167. Filing of dispute - *For filing a dispute under section 102 the petitioner shall in addition to the provision contained under rule 166 have to follow the procedure under that section.*

Rule 168. Persons qualified to be appointed as Arbitrators –

(1) *An arbitrator or Arbitrators may be nominated or appointed from –*

(a) *officers and retired officers of Department of Cooperation, Government of West Bengal,*

(b) *officers of apex and Central Co-operatives,*

(c) *members of local body,*

(d) *chartered engineers,*

(e) *chartered accounts or cost accounts,*

(f) *advocates,*

(g) *any Co-operator having experience of holding office of the Director of any Apex or Central Co-operative Society.*

Rule 169. Disposal of Disputes –

The disputes required to be disposed of under chapter XI of the Act shall be decided as per the provisions contained in these rules subject to the provisions contained in the Act.

Rule 170. Procedure for disposal of disputes –

(1) *For settlement of a dispute, under sub-sections (1), (2) and (3) of section 103, the Board of Arbitrators or the forum of Arbitrators or the arbitrator, as the case may be, shall –*

(a) *fix the date, hour and place of hearing of the dispute and*

(b) have power to allow representation by agent, guardian or next friends.

(2) The Board of Arbitrators, forum of Arbitrators or the Arbitrator, as the case may be, shall issue summons or notice, at least, 15 (fifteen) days before the date fixed for hearing of the dispute to the plaintiff and the defendant requiring them to attend with all relevant books, documents, witnesses and evidence relating to the dispute.

Provided that the summons or notice which shall be served upon the defendant shall contain a copy of the plaint.

(3) First and subsequent summonses or notices may be served on a party to the dispute or his agent or any, adult member of the family –

(a) by registered post with acknowledgement due or

(b) by affixing a copy of the summons or notice on the outer door or some other conspicuous part of the last known place of residence or business of the party, when he refuses to sign the acknowledgement or he cannot be traced out even after adequate search.

(4) Service of summon or notice on the Chairman, the Secretary or the Chief Executive of the Co-operative Society by whatever designation known, shall be regarded as service on the Co-operative.

(5) Where the serving officer delivers or tenders a copy of the summons or notice personally to the addressee or to an agent or other person on his behalf, he shall require the signature of the person to whom

the copy is so delivered or tendered, endorsed on the original summons or notice as an acknowledgement of service.

(6) The serving officer shall, in all cases in which the summons or notice has been served under clause (b) of sub-rule (3), cause to be endorsed on, or annexed to, the original summons or notice, return stating the time when and the manner in which the summons or notice, was served, and the name, signature and address of the person, if any, identifying the person concerned and witnessing the delivery or tender of the summons or notice.

(7) The sufficiency of proof of service of the summons or notice shall be decided by the person who issued the same.

(8) (a) After summons or notice has been duly served, if on the date of hearing the plaintiff is absent, the case shall be dismissed for default and if the defendant is absent, the case may be decided ex parte.

(b) Where both the parties are present, the case shall proceed and the defendant shall submit on the first date of hearing written statement alongwith copies of documents to be relied upon. A copy of the written statement shall be served upon the plaintiff on or before the date of appearance and hearing.

(9) Each party may inspect the documents of the other party for verification with the original.

(10) The Board of Arbitrators or forum of Arbitrators or the Arbitrator as the case may be, may, at any time, during pendency of the dispute, order the production by any party of such of the documents in his

possession or power relating to any matter in question in such dispute.

(11) The Board of Arbitrators or forum of Arbitrators or the Arbitrator, as the case may be, may permit to call, either by summoning or otherwise, any witness to give evidence or produce documents. A party may cross-examine witnesses of the other party.

Provided that the Board of Arbitrators or forum of Arbitrators or Arbitrators shall also have power to recall any witness to give further evidence or to produce any specific documents.

(12) The Board of Arbitrators or Forum of Arbitrators or the Arbitrator, as the case may be, may invite any technical expert or any Audit officer to give opinion on any technical matter.

(13) Where an Arbitrator, due to transfer, retirement or other cause is prevented to conclude the settlement of a dispute, the Successor-Arbitrator may deal with the case from the stage at which his predecessor left it.

(14) The Board of Arbitrators or Forum of Arbitrators or the Arbitrator, as the case may be, shall give the parties to the dispute due opportunity of hearing and shall make a memorandum of the statements of parties who attend and such witnesses as are examined and cross examined and such opinion of the technical experts and record the proceeding in writing.

Rule 171. Award or decision –

(1) After conclusion of hearing of the case, the Board of Arbitrators or Forum of Arbitrators or the Arbitrator, as the case may be, on examination of evidence on record and on consideration of arguments – oral or written, if any, as advanced by the parties, shall make a reasoned award in writing under his signature with date in accordance with justice, equity and good conscience.

(2) The award shall contain the number of the reference, the names and description of the parties and particulars of the dispute, and shall specify –

(a) the relief granted;

(b) the amount decreed;

(c) the interest including future interest, if any, allowed; and

(d) the cost awarded, if any, indicating the party or parties liable to pay the decretal amount or the cost or both and the manner of payment of thereof.

(3) An award may be made at once or on a date to be fixed within 15 (fifteen) days from the date of conclusion of hearing with due notice to the parties, It shall be communicated to the parties –

(b) by pronouncement of the award before them and taking their signatures on the order sheet as acknowledgement or making endorsement himself about the communication when a party refuses to sign;

(c) by registered post with acknowledgement due to a party who may be absent on such date.

Provided that it shall be sufficient if the particulars at clauses (a), (b), (c) and (d) of sub- rule (2) are read out and it shall not be necessary to read out the whole award.

Rule 174. Execution of decision or award –

(1) For sums payable under an award in any dispute, recovery shall be made in the manner specified under section 143 and the Second Schedule as a Public demand upon requisition of the awardees.

(2) Decision of award in a dispute not involving any sum, shall, upon application by the awardee, be enforceable by any civil court having local jurisdiction in the same manner as a decree of such court as if it were a decree of such court.”

9. In this case, it appears that on the basis of a complaint, the Registrar of Co-operative Societies conducted an enquiry and from enquiry it was found that there were some illegalities and irregularities committed by the respondent no. 9. The Secretary of the Bengal Pack Co-operative Society was directed to rectify the misdeeds lawfully.

10. The Secretary of a Co-operative Society has enough power to take appropriate action in view of such direction, but the said direction, by no stretch of imagination, can be said to be or described

as an 'award' as per Rule 174 of the Rules 2011, and therefore, the writ court very rightly refused to enter into such arena, and gave liberty to the parties to move the appropriate forum for adjudication of the relevant dispute and to obtain an 'award' under Rule 174 of the Rules 2011.

11. Had it been an 'award' under Rule 174 of the Rules 2011, and if the same was not being implemented, the jurisdiction of the writ court may have been availed of. But when the Secretary of the Co-operative was merely directed to rectify the alleged misdeeds lawfully, his/her failure cannot be a ground for invoking the high prerogative writ jurisdiction of this court.

12. So, neither any 'dispute' in terms of Rule 166 of the Rules 2011 has been raised nor the same has been adjudicated upon or decided following the procedures laid down in Rule 167 to 172 of the Rules 2011, and therefore, the result of an enquiry and its recommendation cannot partake the status of an 'award'.

13. Accordingly, the Appeal is dismissed on contest. No order as to costs. The impugned judgment and order passed in WPA No. 2225 of 2022 on 17.06.2022 is hereby affirmed.

14. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)