

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 18719 of 2022
With
IA CAN 1 of 2023

Ayan Samanta & Anr.
Vs.
The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Milan Chandra Bhattacharjee, Sr. Adv. Ms. Sulagna Bhattacharjee, Adv.
For the State	:-	Mr. Srijan Nayak, Adv. Ms. Rituparna Maitra, Adv.
For the respondent no. 6	:-	Mr. Chittapriya Ghosh, Adv. Mr. Kuntal Ray, Adv.
For the respondent nos. 7 & 8	:-	Mr. Mihir Kundu, Adv.
Heard on	:-	29.02.2024
Judgment on	:-	08.03.2024

Amrita Sinha, J.:-

The instant writ petition has been filed seeking a direction upon the respondents not to give any effect and/ or further effect to the order dated 19th July, 2022 and the award dated 28th July, 2022 passed by the arbitrator being the Deputy Registrar of Cooperative Societies inter alia, on the ground that the Deputy Registrar of Cooperative Societies lacks the jurisdiction to pass the award and the jurisdiction lies only with the Registrar of Cooperative Societies.

The award was passed by the arbitrator after hearing all the necessary parties. The arbitrator after consideration of the memorandum of statements and after conclusion of hearing on examination of evidences on record, came to a considered finding that lease of the scheduled property was not in conformity with Sections 28 and 2(2) of the West Bengal Cooperative Societies Act, 2006, herein after referred to as 'the Act' for short and with Rule 53 (1) of the West Bengal Cooperative Societies Rules, 2011, herein after referred to as 'the Rules' and the same was done without maintaining financial propriety. The arbitrator set aside the lease with immediate effect.

After initial hearing of the instant writ petition the Court directed the parties to file affidavit. Further direction was passed to add Nayara Energy Limited, the Company which granted franchise to the petitioner, as the respondent no. 9. In accordance with the direction passed by the Court, Nayara Energy Limited has been added as party respondent and notice served upon the said party. None appeared at the time of hearing on behalf of the added respondent.

During pendency of the writ petition the petitioners and the private respondent nos. 7 and 8 entered into a settlement and jointly filed an interlocutory application for recording settlement and compromise between the disputant parties. In the said application prayer has been made to set aside the award and to restore the lease executed by the Society in favour of the petitioners and to quash the arbitration proceeding.

Learned senior counsel representing the applicants submits that the matter has already been settled in between the parties out of Court after exercise of good offices of friends, accordingly, leave may be granted to withdraw the earlier writ petition being WPA 5322 of 2022 and also the consequent order passed in the said writ petition on 19th April, 2022.

Averment has been made in the application that the respondent nos. 7 and 8 approached the Cooperative Society for settlement and the Society took resolution for settlement and to give effect to the lease already executed and registered by the Society. The respondent nos. 7 and 8 abandoned their claim both against the Cooperative Society and the writ petitioners and they have undertaken to cooperate with the petitioners in running the petrol pump.

In support of their submission regarding permissibility to withdraw the writ petition on settlement of the dispute in between the disputant parties the petitioners relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***M.J. Exporters Private Limited vs. Union of India & Ors.*** reported in **(2021) 13 SCC 543** (paragraphs 13,14 & 15) and the judgment delivered by the Hon'ble Supreme Court in the matter of ***Triloki Nath Singh vs. Anirudh Singh (dead)*** through legal representatives & Ors. reported in **(2020) 6 SCC 629** paragraphs 18 to 22.

Learned advocate representing the State respondents and particularly the Registrar of Cooperative Societies submits that the petitioner may seek withdrawal of the writ petition simpliciter but the award ought not to be

interfered with by the Court. It has been submitted that the award was passed in compliance with the direction passed by the Court upon hearing respective submissions made on behalf of all the parties. As the arbitrator adjudicated the issue on merits, the award cannot be set aside without the same being decided on merits.

In reply to the submissions made by the Registrar of Cooperative Societies it has been submitted by the petitioners that, the arbitrator ought not to stand in the way of any settlement that may be entered into by the disputant parties.

I have heard and considered the submissions made on behalf of the respective parties.

From the documents annexed to the writ petition it appears that the arbitrator decided the issue on merits in compliance with the direction passed by the Court in a writ petition filed at the instance of the private respondent nos. 7 and 8. The Court by order dated 19th April, 2022 in WPA 5322 of 2022 directed the Registrar of Cooperative Societies to decide the issue and/or to assign the same immediately, if not already assigned, to the Assistant Registrar of Cooperative Societies for the purpose of deciding the same upon giving appropriate opportunity of hearing and production of relevant materials to all the contesting parties. The arbitrator, in compliance of the direction passed by the Court, heard submissions made on behalf of the parties and adduced evidence thereon. The arbitrator arrived at a

considered finding that the lease executed was illegal and, accordingly, set aside the same.

The arbitrator was of the opinion that open tender was not invited by the Board of Directors and there was no financial transparency in granting the lease. It was held that the same was against the interest of the Society in particular and public in general. A detailed award has been prepared and published by the arbitrator.

It appears therefrom that the State Government is a major shareholder of the Society and the Society kept the major shareholder, i.e, the State Government in the dark about lease of the scheduled property to a private party. Two of the Directors raised the issue of open tender in the Board meeting but the proposition was nullified by the majority of the Directors. The Board of Directors of the Society failed to conduct business with utmost transparency as laid down in the Rules. The lease of the property was not ratified in the general body of the Society. Financial irregularity has been detected by the arbitrator.

The award has been challenged by the aggrieved party in the present writ petition. The primary ground for challenge is that the Deputy Registrar of Cooperative Societies is not the competent authority to pass the award. It has been contended that it is only the Registrar who can pass such award.

Section 4(56) of the Act, defines 'Registrar' as follows:

The 'Registrar' means the Registrar of Cooperative Societies appointed under Section 12 and includes Additional Registrar, Joint Registrar, Deputy

Registrar, Assistant Registrar of Cooperative Societies and any other officer who is appointed under that Section to assist the Registrar and on whom all or any of the powers of the Registrar under the Act are conferred.

As per the aforesaid provision the Registrar of Cooperative Societies includes the Deputy Registrar. The same implies that the Deputy Registrar enjoys the same power as that of the Registrar of Cooperative Societies or the Assistant Registrar of Cooperative Societies.

The submission made by the petitioners that the Deputy Registrar of Cooperative Societies did not have the competence or the jurisdiction to pass the impugned order, accordingly, cannot stand. The petitioners have tried to impress upon the Court that as the matter was considered in compliance of the direction passed by the Court and as the Court directed either the Registrar or the Assistant Registrar of Cooperative Societies to adjudicate the issue, accordingly, the same could not have been considered by any other authority.

It is clear from the order passed by the Court that the matter was directed to be considered by the Registrar. As by operation of law, Registrar includes the Deputy Registrar, accordingly, it does not appear that there has been any violation in complying with the direction passed by the Court at the instance of the Deputy Registrar of Cooperative Societies. Both the authorities enjoy equal powers. The petitioners cannot claim to be prejudiced in any manner whatsoever by the matter being adjudicated by the Deputy Registrar and not the Registrar or the Assistant Registrar.

It appears from the submission made on behalf of the disputant parties that both are trying to somehow give effect to the lease which has been found to be executed in an illegal manner. The compromise that has been arrived at in between the parties may be prejudicial to the interest of the major shareholder of the Cooperative Society, that is, the State and the public in general.

Any settlement or compromise to validate an illegal act is not permissible in law. The lease deed which the petitioners and the private respondents jointly seek to revive has already been adjudged and found to be executed in an illegal manner. The said illegally executed instrument cannot be ratified by the order of the Court. The same will amount to approving an act held to be illegal. The asset of the Society cannot be permitted to be squandered in any manner prejudicial to the interest of the Society. If at all lease has to be granted, the same can be executed in accordance with the provision of law.

In *M.J. Exporters* (supra) the Court laid down that the principles of constructive res judicata as laid down in the Civil Procedure Code is extendable to writ proceedings. In the present case constructive res judicata is not the issue. The facts of the subject case are completely different to the facts of the present case. The Court is not convinced with the applicability of the ratio laid down in the subject case, in the present case.

The law laid down in *Triloki Nath Singh* (supra) is a time tested one. Compromise decree passed by the High Court in the second appeal would

certainly relate back to the date of institution of the Suit between the parties thereto. In the case at hand there is no existence of any compromise decree. A settlement on compromise has been arrived at in between the disputant parties. The reason as to why the Court is not agreeable to accept the said compromise has been elaborately discussed herein above. The aforesaid precedent does not appear to be applicable in the facts and circumstances of the instant case.

The prayer of the petitioners for withdrawal of the order passed by the Court on 19th April, 2022 does not arise at all as the said order has already been given effect to and acted upon by all the parties. At this stage the clock cannot be put back. The acts of the parties, consequent to the order passed by the Court, cannot be undone in the manner as sought for by the compromising parties. The Court cannot put a seal on any act after the Court has been made aware that the same is illegal and arbitrary.

The parties to a proceeding can always enter into a settlement to resolve the disputes between them, but the settlement cannot be to give effect or to promote an illegal act. To the mind of the Court, it appears that the compromise has been entered in between the parties to achieve an illegal act. The mutual settlement does not appear to be in the interest of the Society. On the contrary, it is clearly evident that the same is to legalise an illegal act.

Since carriage of the proceedings lies with the petitioner, it is the choice of the petitioner whether to proceed with the case or not. If the

petitioner intends not to proceed with the case the same may not be pressed; but the impugned order cannot be set aside mechanically on consent of the disputing parties.

Just as an illegal contract cannot be enforced, similarly a compromise or settlement which is not in the interest of the Society cannot be used to nullify the order passed by the competent authority in compliance of the direction passed by the Court.

In view of the above, no relief can be granted to the petitioners and the applicants in the connected application. The writ petition and the connected application fails and are hereby dismissed.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)