

15.01.2024
Item No.06
Court No.6.
S. De

M.A.T. 2522 of 2023
With
I.A. No. CAN/1/2023
Anup Chatterjee.
Vs
Manika Majumder & Ors.

Mr. Jayanta Mitra, Ld. Sr. Adv.,
Mr. Abhijit Kr. Chakraborty,
Mr. G.F. Hossain,
Mr. Priyanka Mondal,
Mr. Chandra Pal,
Ms. Varsha Roy, ...for the appellant.

Mr. Sandip Roy, ...for the respondent no.1.

Mir Anuruzzaman,
...for the Municipality.
Mr. Kazi Sajjad Alam
...for the respondent no.7.

Leave is granted to the appellant to file supplementary affidavit in court today.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated December 11, 2023, whereby the writ petition of the respondent no.1 herein being WPA No. 16654 of 2023, was disposed of by a learned Judge of this Court, is assailed in this appeal at the instance of the private respondent in the writ petition.

It appears that the appellant carries on business as a promoter/builder under the name and style of Chatterjee Construction. It further appears that a substantial share in a property belonging to Sonarpur Milito Udbastu Samabay Krishi Samiti Ltd., was transferred in favour of the appellant. The appellant has constructed a multi storied building on the land in question. The respondent no.1 herein made a representation to the Assistant Registrar of Co-Operative Societies contending that the construction of the multi storied building is wholly irregular, contrary to law and in particular in violation of the provisions of the West Bengal Co-Operative Societies Act, 2006 and the West Bengal Co-Operative Societies Rules, 2011. No transfer of such land could be effected in favour of a third party.

With the grievance that her complaint/representation was not being considered by the Assistant Registrar of Co-Operative Societies, the respondent no.1 herein approached a learned Judge of this Court by filing WPA 6262 of 2023. That writ petition was disposed of by the learned Judge by a judgment and order dated March 29, 2023, directing the Assistant Registrar of Co-Operative Societies, South 24-Parganas, to consider and dispose of the representation of the respondent no.1 herein.

Pursuant to such order of this Court, the Assistant Registrar of Co-Operative Societies, South 24-Parganas Range, conducted a proceeding and passed an order dated June 14, 2023, the relevant portion whereof reads as follows.

“After careful consideration of the said Inquiry report, it is observed that the transfer of land from Subrata Majumder to Dolly Ghosh, W/O Swapan Ghosh, and subsequent transfer of the said land having holding no.152, AP Nagar (Purba), Ward No.12, Rajpur Sonarpur Municipality, R.S. DAG No.1525, 1526, 1640 from Dolly Ghosh to Chatterjee Construction has not been done in accordance with the provisions of West Bengal Co-operative Societies Act, 2006 and the West Bengal Co-operative Societies Rules, 2011 since allotted plot of land cannot be transferred to a proprietor farm (Chatterjee Construction). Hence both these transfers are illegal. Construction upon the said land is also illegal. The authority of Rajpur Sonarpur Municipality is directed to stop further construction upon the said land. Allotted plot of land of a co-operative society (here Sonarpur Milito Utbastu Krishi Samiti Ltd.) cannot be transferred or used for commercial

purpose. Plot of land of a co-operative society cannot be partitioned or sub-divided as per section 92(3) of the West Bengal Co-operative Societies Act, 2006. Therefore multistoried building cannot be constructed on the plot of the society's allotted land and distributed as the residents/owners of those flats cannot be considered as members of the said society. The flat owners will never get the membership of the said society and there shall be no partition or sub-division of land upon which the multistoried premises are constructed proportionately to the ownership of flat as per said section of the West Bengal Co-operative Societies Act mentioned above.

The claim of Manika Majumder regarding the portion of land owned by Sri Subrata Majumder is not proper as the land, in question, is duly partitioned through a compromising solemnname among the legal heirs of Haribandhu Majumder and went to Subrata Majumder. Hence claim of Monika Majumder particularly of this matter is rejected.

The petitioner may approach the competent authority for cancellation of deed as mentioned in the representation.

The authority of Rajpur Sonarpur Municipality is directed not to sanction any building plan, mutation without prior permission or consent of the said society (Sonarpur Milito Utbastu Krishi Samiti Ltd.) or the competent authority empowered for giving such consent.

The BL & LRO (Sonarpur Dev. Block) is also directed not to make ROR without the permission or consent of the said society (Sonarpur Milito Utbastu Krishi Samiti Ltd.) or the competent authority since the plot of land of a co-operative society cannot be transferred without due procedure under co-operative law or partitioned or sub-divided.”

In the present round of litigation, the respondent no.1 in this appeal approached the learned Single Judge for implementation of the aforesaid order of the Assistant Registrar of Co-Operative Societies. The learned Judge disposed of the writ petition by the order under challenge in this appeal. The relevant portion of the order reads as follows.

“Upon hearing the parties, it appears that the Assistant Registrar has come to a definite finding that the plot of land belongs to the Cooperative Society and the same cannot be transferred or used for commercial purpose.

The Assistant Registrar directed the Rajpur-Sonarpur Municipality not to sanction any building plan or mutate the same without prior permission or consent of the Cooperative Society. The Municipality has submitted before this Court that the construction is already complete.

According to the Assistant Registrar the construction could not have been made over the said plot of land, accordingly, it is for the Assistant Registrar to take steps for implementation of the said order.

The order passed by the Assistant Registrar has not yet been challenged before any appellate forum and the same is binding upon all the parties.

The Assistant Registrar is, accordingly, directed to take necessary steps to deal with the illegalities committed at the time of transfer and at the time of division of the said land in question including unauthorized construction.

Steps shall be taken by the Assistant Registrar of Cooperative Societies at the earliest but positively within a period of twelve weeks from the date of communication of this order.”

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

Mr. Mitra, learned senior advocate representing the appellant says that no opportunity of filing affidavit was granted by the learned Judge before the impugned order was passed. The order of the Assistant Registrar, implementation whereof was sought before the learned Single Judge, is misconceived. The order is passed inter alia on the basis of Section 92(3) of the West Bengal Co-Operative Societies Act, 2006. Section 92 is a part of Chapter VIII of the 2006 Act which contains special provisions for Housing Co-Operative Societies. Admittedly, the Co-operative Society in question, is not a Housing Co-Operative Society. Hence, Section 92 can have no manner of application. That apart, all the concerned authorities have granted permission for raising the construction in question. The concerned Municipality has sanctioned the building plan. The Co-Operative Society has granted requisite permission as also Certificate of Membership in favour of the appellant. Learned advocate for the respondent no.1/writ petitioner however says that such Certificate of Membership is not in accordance with applicable law or rules.

Be that as it may, we are of the view that the nature of the writ petition is such that the same ought

to have been disposed of only after exchange of affidavits, enabling the respondents to bring on record their respective cases. We are also told that the appellant herein has filed a writ petition being WPA 28941 of 2023, challenging the Assistant Registrar's order dated June 6, 2023, which is pending before the learned Single Judge. We are of the view that ends of justice will be served if that writ petition and the present writ petition are heard out and disposed of analogously by the learned Single Judge.

Accordingly, without going into the merits of the case, only for the purpose of permitting the respondents in the writ petition to bring on record their stand by filing affidavit, we set aside the order under appeal and remand the matter back to the learned Judge having determination to hear the writ petition, after exchange of affidavits.

Let affidavits be exchanged in both the writ petitions being WPA 28941 of 2023 and WPA 16654 of 2023.

Let affidavit-in-opposition be filed within a fortnight from date (January 29, 2024). Reply, if any thereto, be filed with a fortnight thereafter (February 12, 2024).

The parties would be at liberty to mention the matter before the learned Single Judge after

completion of affidavits or after expiry of the time granted for filing of affidavits.

Learned advocate for the respondent no.1 herein says that till the writ petitions are disposed of by the learned Single Judge, the appellant herein should be restrained from creating third party interest in respect of the flats/shops in the multi storied building that has come up.

Since we have not gone into the merits of the matter, we are not inclined to pass any such order. It will be open for the respondent no.1 herein to make such prayer before the learned Single Judge.

We make it clear that we have not touched the merits of the case at all.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

MAT 2522 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)