

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 12562 of 2022

***Bhudeb Mukherjee & Anr.
Vs.
State of West Bengal & Ors.***

For the Petitioners

: Mr. Biswaroop Bhattacharyya
: Mr. Bijoy Bag
: Mr. Sumitava Chakraborty
: Ms. Bratati Pramanick

For the Respondent No. 3

: Mr. Ankit Sureka
: Mr. Biplob Das

For the Respondent No. 9 & 10

: Mr. Dibyajyoti Raha

For the Respondent No. 1-3

: Mr. Sk. Md. Galib
: Ms. Jyotsna Roy Mukherjee

Judgment on

: 25/07/2025

Rai Chattopadhyay, J. :-

- (1) The writ petitioners are the erstwhile Chairman and the Assistant Secretary in the previous Board of the Co-operative Housing Society namely "Digantika Samabay Abasoni Limited" (in short "The Society") (formerly known as "Bidhan Co-operative Housing Society Limited) and the residents of the said Housing Society. The previous Board of

the Society has operated from the year 2010 to the year 2015. During the said period, the petitioners have functioned as the Chairman and the Assistant Secretary of the said Board.

- (2) Now that when the subsequent Board has taken the resolution to expel the petitioners from the membership of the Society on charges of corruption, allegedly done by the petitioners during the period when they were at the helm of affairs of the said Society, the petitioners have filed the instant case seeking redress. The petitioners have prayed for two-fold reliefs inter alia that the resolution of the subsequent Board of the Society dated January 13, 2020 may be set aside/quashed and that the letter issued by the respondent no. 6/the Special Officer dated May 12, 2021 may also be set aside and/or quashed. It is pertinent to note that the reliefs prayed for by the petitioners are against the respondent/Co-operative Housing Society.
- (3) Therefore, before entering into the discussions as regards minutes of challenge put forth by the writ petitioners in this case, the argument relating to the non-maintainability of the instant case as advanced by the respondents, be dealt with first, as the same touches the very root of the case. In case it is a dispute between the parties private in nature as claimed by the respondents and does not really involve any public element in the same, the Court has to refrain to entertain and maintain the writ petition due to inherent lack of jurisdiction. As a matter of fact, in that event none of the other points argued by the parties respectively, is required to be gone into by the Court.
- (4) It is argued that the Co-operative Housing Society as above was formed with an objective primarily to establish on co-operative basis, settlements of housing schemes for members by affording each the facilities for having a house or a tenement and ultimately to develop the settlements so established into self-sufficient communities. That

the objective, functioning and management of the said Housing Society are meant to serve the personal and private purposes, that being managed by the Board selected by the members and rendering service to the individuals in their private capacity only. The Bye-laws of the Society dated January 12, 1982 is referred to, which lays down the objects of the said Housing Society. That in the instant writ petition the petitioners have sought for relief against the said Co-operative Housing Society, functioning of which does not involve any public element. Hence, that the petitioners could not have moved the writ petition before this Court and the writ petition would not be maintainable.

- (5) A judgment of Division Bench of this Court in ***Amar Kumar Malick Vs. State of West Bengal*** reported in **2023 SCC Online Cal 842**, has been relied on to buttress the respondents' argument regarding non-maintainability of the present writ petition. The Court in the case of ***Amar Kumar Malick (supra)*** has held that a member of the co-operative housing society cannot escape the Bye-laws thereof to govern him and that he would be subject to the same.
- (6) The other point to challenge the maintainability of the instant writ petition is the efficacious and alternative remedy being available to the petitioners under the statute. It has been submitted that several disputed questions of fact are imminent in the present dispute between the parties. Determination of those is necessary for the proper adjudication of the case. The writ Court would not have the jurisdiction to enter into those, over and above that it would not be competent to interfere into a dispute of private nature having no public element ingrained in the same. Thus, the respondents would plead the inherent lack of jurisdiction of this Court to maintain the instant writ petition.

- (7) The point raised by the respondents as regards maintainability of the instant writ petition has been denied, disputed, objected to and argued against by the writ petitioners. According to them availability of the alternative remedy is not a total bar as to maintainability of a writ petition in so far as where the writ petition is filed for enforcement of any fundamental right and/or there is a violation of the fundamental right or principles of natural justice and/or where the orders and proceedings are wholly without jurisdiction or the vires of the Act is challenged. That the above is the settled law now in view of the judgments of the Supreme Court in ***State of Rajasthan & Others versus Lord Northbrook & Others reported at (2021) 16 SC 400.***
- (8) A recent decision of the Supreme Court in ***A.P. Electrical Equipment Corporation versus Tahsildar & Others reported at 2025 SCC online SC 447*** has been mentioned and referred to in support of the proposition that a writ petition under Article 226 may not be rejected simply on the ground that the issues cannot be decided without determining the disputed questions of fact. It is stated that the Court therein has held that such a proposition is not warranted by any provisions of law or by any decision of the Court. That the Court has held further that a rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective.
- (9) Lastly, another judgment of Supreme Court has been relied on by the writ petitioners while arguing against the point raised by the respondents regarding non-maintainability of the writ petition, that is in ***Godrej Sara Lee Limited versus Excise and Taxation Officer-cum-Assessing Authority, reported at 2023 SCC Online SC 95,*** in which the Court has held that mere fact that the petitioner has not pursued the alternative remedy available to him cannot mechanically be

construed as a ground for its dismissal. Therefore, according to the writ petitioners this objection of the respondents regarding non-maintainability is only misconceived and baseless whereas the writ petition is maintainable in this Court.

- (10) The Court has respectfully and meticulously gone through the judgments of the Supreme Court as relied on by the writ petitioners and discussed above. In the case of **Godrej Sara Lee (supra)**, the appellant's challenge was with regard to the power and jurisdiction of the Deputy Excise and Taxation Commissioner (ST)-cum-Revisional Authority to suo motu exercise the revisional power conferred by section 34 of the VAT Act and pass a final order.
- (11) In the case of **A.P. Electrical Equipment Corporation (supra)**, the appellant company was aggrieved by the alleged inaction of the State to compensate it in terms of the statutory provisions.
- (12) In the other case that is of **Lord Northbrook (supra)**, the dispute was with regard to whether the provisions of the State Escheat Act stood properly complied with by the State or not.
- (13) The core distinguishable fact in the instant case, vis-a-vis the judgments as referred to by the writ petitioners and mentioned above is that there, the dispute was raised either against the State or any instrumentality of the State, within the meaning of Article 12 of the Constitution of India. Here it is pertinent to mention the provision under Article 226 of the Constitution, which is as follows:-

"226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32"

- (14)** Writ jurisdiction is primarily available against the State or its instrumentality or entities performing public functions or discharging public duties. Private entities without any public element or without discharging any public function do not fall within the scope of writ jurisdiction under Article 226 of the Constitution. The inherent jurisdiction of the writ Court is limited to disputes involving public law elements. When the dispute is solely against a private entity with no public element, the jurisdiction of the writ Court is fundamentally lacking or severely restricted. A Division Bench of Telangana High Court in the case of **Gowripaga Albert Lael Vs. Joseph D'souza** in **Writ Appeal No. 227 of 2025** dated **23rd April, 2025** has held that a writ petition is maintainable against a private entity only if it discharges public functions or affects public rights; that judicial

review under Article 226 is limited to public law matters and cannot be invoked for private disputes. The Court ruled that the absence of a public law element has rendered the case in the writ Court as not maintainable, and reaffirmed that writ jurisdiction is not for personal disputes.

- (15) The law is now well settled that the act complained must have a direct nexus with the discharge of public duty. Writ petitions against private entities are maintainable only if they discharge public functions or affects public rights. The petitioner has to demonstrate that the respondent against which he has grievance and seek redress functions with involvement of public law element therein, to render the respondent amenable to writ jurisdiction of the Court. While performing a public duty by a private body if any individual right is infringed then the Court shall consider the writ of mandamus and restore the right. If an entity operates in the public field touching the lives of public at large, its acts and omissions should be amenable to judicial review on the usual grounds of arbitrariness, unreasonableness, breach of natural justice etc.
- (16) Findings of the Supreme Court in the case of **Ramesh Ahluwalia Vs. State of Punjab** reported at **(2012) 12 SCC 331** is apt and worth mentioning in this regard:-

*"12. ** ** ** ** In our opinion, in view of the judgment rendered by this Court in **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust [(1989) 2 SCC 691]** there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State authorities."*

- (17) Thus private entities if regulated or receive some form of Government aid does not automatically rendered to be amenable to writ jurisdiction. The public law element, such as statutory obligations (not merely regulatory in nature), public duties or State control - is a pre-requisite for the exercise of writ jurisdiction against private entities.
- (18) The functions of housing co-operative society, such as allotment of flats or sale of land are generally contractual or private in nature and do not involve statutory or public duties. Housing co-operative Societies, in general, do not discharge any public duty or public function, nor do their functions inherently involve any public law element, unless they are characterised as instrumentalities of the State or perform functions of a public nature. Their activities are primarily private in nature and governed by individual Bye-laws and private law principles, with limited or no direct public law implication. The Courts have time and again held that unless a co-operative society is performing statutory or public functions, it cannot be regarded as discharging a public duty or involving a public law element. Co-operative societies are held not to be a public authority inherently but to be an entity governed by private law principles unless they perform functions that are akin to or closely related to sovereign or public functions. In **Sooraram Pratap Reddy -vs- District Collector, Ranga Reddy District** reported in (2008) 9 SCC 552 the Supreme Court has held that Bye-laws of Societies do not have the force of law and functions of the Society governed by the Bye-laws are private in nature. In **Supriyo Basu -vs- W.B. Housing Board** reported at (2005) 6 SCC 289 the Supreme Court has held that co-operative societies are generally private and their activities do not involve public law unless they are statutory authorities or perform statutory duties.

- (19) Likewise in **Binny Limited & Another vs. V. Sadasivan & Ors** reported at **AIR 2005 SC 3202** and **Rajasthan State Industrial Development and Investment Corporation vs. Subhash Sindhi Corporation Housing Society, Jaipur** reported at **(2013) 5 SCC 427**, the Supreme Court has reinforced that unless the society is an instrumentality of State or performs public functions, it remains a private entity, not amenable to writ jurisdiction, as its activities do not involve any public law element.
- (20) The expulsion of a member of a co-operative housing society on charges of corruption is generally considered a private function of the society, unless such expulsion involves or is connected to a public function or duty. In absence of a public law element, such internal disciplinary actions are regarded as private matters not involving public functions. The Supreme Court in **Binny Limited (Supra)** has held that a body is performing public function when it seeks to achieve some collective benefit for the public or a section of public and is accepted by the public as having authority to do so. For example, providing utilities or conducting functions mandated By-law could be deemed public functions. Conversely, internal disciplinary actions, such as expulsion of a member on charges of corruption are typically regarded as private functions falling within the internal management of the society. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. The scope and extent of the expression 'public function' has been more succinctly explained by the Hon'ble Supreme Court in the case **Ramakrishna Mission Vs. Kago Kunya** reported at- **(2019) 16 SCC 303**, in the following terms:-

"27. In Binny Ltd. v. V. Sadasivan , a two-Judge Bench of this Court noted the distinction between public and private functions. It held thus : (SCC pp. 665-66, para 11)

“11. ... It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.”

Before an organization can be held to have discharged a public function, the function must be of a public character that is closely related to functions which are performed by the State in its sovereign capacity.

- (21)** The act of expelling a member for corruption, without any concomitant public law element, remains an internal and private matter of the society, governed by its Bye-laws, rules and regulation, none of which has a statutory force. Such actions are primarily private functions unless the society's conduct or decision making process involves a public law element - such as breach of statutory duty, violation of constitutional rights or actions affecting public interests.
- (22)** Now, coming back to the facts of the present case, it can be noted that it is not even the case of the petitioners that the respondent Co-operative Housing Society is a public entity or ‘a State’ or an instrumentality of the State. The object and functions of the respondent Co-operative Housing Society as enumerated in the Bye-laws thereof has been discussed above. The Court is constrained to hold on the basis of such discussion that the respondent Society is not discharging any public function or is not concerned with any public law element. It is a conglomerate of the purchasers of land who desire to set tenements thereupon for their personal purposes. The functioning of the respondent Society does not involve any action affecting public interests. Therefore, the Court is constrained to find

that the respondent Co-operative Housing Society of which the petitioners were office bearers from 2010 to 2015, is essentially a private body and governed by its own Bye-laws, Rules and regulations. As it is already seen from the discussion as made above, that a private entity may also be amenable to jurisdiction of this Court under Article 226 of the Constitution of India but only when they discharge public functions or work within the domain of public law element. This would however, be not applicable to the present respondent Co-operative Housing Society. To whatever extent the Society discharges obligation, by complying with the statutory requirements, are only necessary for regulatory purposes, which do not bring the same within the purview of a public body working towards public purpose or involved with public law element by any means. At the cost of reiteration it is stated again that the petitioners have sought for reliefs against the respondent Co-operative Housing Society. In such circumstances, the Court is of considered opinion that the petitioners cannot successfully maintain their writ petition under Article 226 of the Constitution of India, before this Court. Grievance or dispute of the petitioners with respect to the expulsion of their membership is necessarily an issue inter se between the petitioners and the said Co-operative Housing Society which is a private entity, having not clothed with any public law element. As per the settled law this Court is constrained to hold that the writ petition is not maintainable before this Court.

- (23)** The writ petitioners have pleaded the ground of violation of the principles of natural justice by the respondent in their case, allegedly by conducting one sided enquiry and giving no scope of hearing to them. In support of their such contention the judgments which they relied on, have been dealt with earlier, to specifically show that the subject matter of the litigation there were directed against action/inaction of the State or its instrumentality. The Court finds that even if the petitioners have put forth a point that the action of

the respondent is violative of the principles of natural justice, to maintain a writ petition, the petitioners have to positively plead and show that the respondents are the public entity. The Court is constrained to find that any such fact is established by the petitioners in the instant case.

- (24) For the reason as above, it is not found necessary to go into the other points argued on behalf of the respective parties and the writ petition No. **WPA 12562 of 2022** is dismissed.
- (25) Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)