
(2018) 06 CAL CK 0177
In the Calcutta High Court
Case No : W.P.2362 (W) of 2017

Alok Kumar Roy And Ors.

APPELLANT

Vs

State Of West Bengal And Ors.

RESPONDENT

Date of Decision : 20-06-2018

Acts Referred:

West Bengal Co-operative Societies Act, 2006 — Section 28, 103, 148
West Bengal Co-operative Societies Rules 1987 — Rule 148, 152(2)

Citation : (2018) 06 CAL CK 0177

Hon'ble Judges : RAJASEKHAR MANTHA, J

Bench : Single Bench

Advocate : Rabindra Nath Datta, Ashit Kumar Chakraborty, Sunanda Mohan Ghosh, Pradip Kumar Roy, Raja Saha

Judgement

Rajasekhar Mantha, J.

1. The writ petitioners are seven out of 382 members of the Rail Vihar Cooperative Housing Society Limited (Society). They are aggrieved by an order dated 29th July, 2016 of the Cooperative Tribunal, whereby it was held that the Society was justified in apportioning the maintenance charges to the occupants in accordance with the carpet area of the flat units occupied therein.
2. The facts of the case are that the said Housing Cooperative Society was established primarily for the benefit of housing of railway employees.
3. In or about 11 November, 2003, an award came to be passed by the Deputy Registrar, Cooperative Societies holding that cost of charges of repairing of common areas in the said society had to be shared equally amongst all members. The said order was passed under Rule 152(2) of the W.B.C.S. Rule of 1987. The said order was accepted by all members.

4. The said 1987 Rules came to be replaced subsequently by the WBCS Rules of 2011. The previous Rule 152(2), mutatis and mutandis, came to feature as Rule 148 of the WBCS Rules of 2011. In the 8th AGM of the Society held on 3rd December, 2008, the maintenance charges payable by each unit holder of the 370 units of the said Society came to be fixed on the basis of carpet area of each flats.
5. The said decision to levy maintenance charges proportionately carpet area wise was challenged before the Learned Arbitrator under Section 103 of the 2006 Act in dispute case No.116/KMAH of 2008.
6. By an award dated 16th March, 2012 passed by the Learned Arbitrator it was held that maintenance charges should be levied equally amongst the 370 members and not proportionate to the carpet area of each flat.
7. Challenging the said award, an appeal was preferred by the Society before the West Bengal Cooperative Tribunal. The said appeal was numbered 15 of 2012.
8. By a judgment in appeal dated 29th July, 2016, the said Tribunal set aside the award of the Arbitrator dated 16.03.2012 and held that the annual maintenance charges of the Society are payable in proportion to the carpet area of each of the units of the Society and not equally.
9. Learned Counsel for the writ petitioner would argue that in the earlier award dated 11th November, 2003, the cost of internal repairs having been ordered to be shared equally amongst all flat units, the same principle must also be applied in the case of maintenance charges, too. The next argument of the writ petitioner is that the benefit of user of common areas being the same and equal for all the flat units, there should be no difference in the maintenance charges payable by each flat unit. The third argument of the writ petitioner is that merely because only 7 out of 380 members of the Society having opposed the resolution of the majority an illegality cannot be perpetrated by the majority on them by brute force and sheer numbers.
10. I have heard the arguments of the writ petitioner as also those made on behalf of the Society. For the purpose of determining the dispute in question, it is deemed necessary to first address the third question raised by learned Advocate for the petitioner that a decision supported by a majority would not by itself be conclusive.
11. In this regard it is relevant to set out Section 28 of the WBCS Act of 2006.

28. Final authority of co-operative society.-Subject to the provisions of this Act, the final and ultimate authority of a cooperative society shall vest

in the general body of its members or its delegates or representatives elected under section 29 of this Act and assembled in a general meeting:

Provided that where the by-laws of a co-operative society so provides for representation of self-help group in any meeting of the general body of the co-operative society, such self-help group shall be represented through one of its members elected in a meeting of the self-help group.

12. It is clear from the above that the final and highest authority in a Cooperative Society is the General Body which has the authority to take all decisions for the well being maintenance, running and all affairs relating to the society. It is equally well-settled that the General Body of any organization having multiple members, functions on the basis of majority. Such being the intention of Legislature, to interfere with the decision of the majority would be highly inappropriate and improper.

13. Learned Counsel for the petitioner relied upon a decision of a Single Bench of the Bombay High Court in WP No.1948 of 1997 dated 30th July,

2002 (Venus Cooperative Housing Society & Anr. Vs. Dr.J.Y.Detwani). In the said decision it was held that while the General Body may be

Supreme Authority under the Maharashtra Cooperative Societies Act, 1960, the same does not authorize the General Body to oppress the minority

members (therein being about 30%) by use of brute force and impose improper and irrational charges.

14. I am of the view that the said decision cannot be applied in the instant case. Only 7 out of the 382 members have raised objection against the said decision of the General Body.

15. There are 5 categories of flats units in the said Society. Namely C-1, C-2, C-3, C-4, C-4A. Each category has a different carpet area. C-1 being

the smallest and C-4A being the highest. The petitioners are under the C4A category. The writ petitioners herein are less than 1% of the entire

members of the said Society. Hence, the decision of the Bombay High Court is distinguishable, on facts.

16. In any event, the provisions of the Cooperative Societies Act of Maharashtra and Rules thereunder are not applicable to West Bengal. The State of

West Bengal is its own WBCS Act of 2006 and Rules of 2011 that is specific to

the State of West Bengal. Hence, Section 28 of the WBCS Act of

2006 must be applied to give primacy to the decision of the majority of the General Body. The said argument of the writ petitioner cannot succeed.

17. Let us take the first and second arguments of the petitioner now. To appreciate the same, it is necessary to set out Section 148 of the WBCS

Rules of 2011.

148. Apportionment of cost of land, house or apartment in housing co-operative society.-

(1) The cost of any land (including its development cost) or the cost of any house or apartment on such land built by a housing co-operative society

shall be apportioned in such manner as may be decided by the board.

(2) The cost of maintenance, repair or replacement of common areas and facilities shall be apportioned according to carpet area:

Provided that where apportionment of cost according to carpet area is not considered equitable, the society may with the approval of the Registrar

realise the cost in such manner as it may consider fit. Explanation : Common areas shall mean staircase, stair cover, stair room, lift or

any other easement and its connected areas, lobby, open terrace, roof, external wall, lawn, garden, playground, water tank, boundary wall, parapet,

driveway, residual area of car parking, security room, generator room, fire fighting tank and similar other service areas as would be decided by the

general body.

Explanation : Facilities Facility shall mean water supply arrangement, lighting arrangement in common areas, security arrangement, intercom

arrangement, generator arrangement, fire fighting arrangement, lift service, roof treatment, safety tank treatment and similar other facilities as would

be decided by the general body.

18. A plain reading of the aforesaid Section would indicate that all charges towards maintenance are to be apportioned in accordance with carpet area

occupied by the member. The same is the ground Rule. Any deviation or exception therefrom requires the consent and approval of the Registrar. The

decision of the General Body in the instant case cannot be faulted as it is in harmony with the statute itself. The writ petitioner would argue that since

in the year 2002, the Registrar had ordered the expenses to be borne equally between the members, the same rule should apply even in the year 2008.

19. The argument may not be sustainable for the following reasons. That in the year 2002 the issue before the General Body and the Registrar was

repairs and upkeep of the common area of the Society. In the year 2008, the issue was maintenance charges alone. Hence, the Registrar and Tribunal

were always entitled to assess the propriety of the decision of the General Body with different criteria and in changed circumstances. In any event

assuming that the same issue of repairs and maintenance arose in the year 2008, the General Body was always entitled to apply a different formula

and or rationale depending both on the prevailing circumstances as also the will of the General Body.

20. Since the General Body in the 2008 by majority decided to apply the provisions of statute i.e. Rule 148 hereinabove, the Registrar ought not to

have interfered. The view of 373 members as opposed to 7 members, must prevail in the facts of the case. It is for the members to decide what is in

fact appropriate for them even if the same may not sustain the test of reasonableness in a generic sense. Such is the object and purpose of the WBCS

Act of 2006. The Tribunal was therefore justified in passing the impugned order.

21. There is yet another fact that needs to be noticed here. The different categories of flats in occupation in the said society i.e. C-1, C-2, C-3, C-4

and C-4A have different carpet areas in ascending order. If at all a uniform maintenance charge was warranted, a grievance would have been raised

by each of the category of flat owners differentiated by carpet area against a higher maintenance charge based on a higher carpet area. Categories

C-2, C-3 and C-4 did not raise any such grievance. There is no reason therefore that the views of category C-4A would prevail upon the views the

Categories C-1, C-2, C-3 and C-4.

22. For the reasons stated above, the writ petition must fail.

23. Before parting with case I am constrained to notice that the representation of the C-4A Flat Holders is unequal and in appropriate. The root cause

of the unequal treatment of the C-3, C-4 and C-4A flat owners is this. I am therefore in agreement with the views of the Arbitrator to the extent that

there is need to amend the Bye laws of this Society to ensure equal representation for all category of Flat Owners in the Board of Directors. This

would address the authority of the Board and the General Body's power to deviate from the pre-formation decision of the Society to share all

charges equally and equitably.

24. There will be no order as to costs.

25. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties at an early date.