

(2015) 01 CAL CK 0003
In the Calcutta High Court
Case No : Writ Petition No. 3412 (W) of 2003

Anjali Chakraborty

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Citation : (2015) 2 CHN 334

Hon'ble Judges : Biswanath Somadder, J.

Bench : Single Bench

Advocate : Indranath Mukherjee, Jiaur Rahaman and Dipak Kumar Bhattacharya, for the Appellant; Pabitra Charan Bhattacharya, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Biswanath Somadder, J.—This writ petition has been pending before this Court since the year 2003. The original writ petitioner died during the pendency of the writ petition. His heirs/legal representatives are now the substituted writ petitioners in terms of the order of the learned Registrar (Administration) dated 27th November, 2008.

2. In the instant writ proceeding, the following principal reliefs have been prayed for:

"a) Writ of and/or in the nature of Madamus commanding the Naba Kailash Housing Co-operative Society and its Secretary and other Respondents particularly Respondent No. 3 and Respondent No. 4 to take steps to allot him a flat of the size, area and price originally allotted to him.

b) A Writ of and/or in the nature of Mandamus commanding the respondent society and its Secretary to forbear from giving any or further effect to the last point of the order of the West Bengal Co-operative Tribunal giving liberty to the appellate society to proceed against the respondent (your petitioner) strictly in accordance with law."

3. The matter has a chequered history. The original petitioner had opted for allotment of a flat by becoming a member of the National Cooperative Housing Society sometime in the year, 1972. The said society undertook two housing projects, one at 58/3 Ballygunge Circular Road and the other at 55/4 Ballygunge Circular Road. It is at the latter project that the original petitioner was allotted a flat measuring an area of 1132 sq. feet on the fifth floor of the project. The said project was named, "Naba Kailash" project. The National Cooperative Housing Society, in the meanwhile, stood dissolved and in its place two separate cooperative housing societies were formed. In respect of 58/3 Ballygunge Circular Road, the cooperative housing society that was formed was named Sapataparni Housing Cooperative Society Limited and so far as 55/4 Ballygunge Circular Road is concerned, the cooperative housing society was named Naba Kailash Housing Cooperative Society Limited (hereinafter referred to as "Naba Kailash"). Naba Kailash, in terms of its letter dated 2nd June, 1983 confirmed the previous allotment granted in favour of the original petitioner with an escalated price and notified the schedule of payment of instalments from 15th June, 1983. However, for reasons stated in paragraph 6 of the writ petition, the original writ petitioner was unable to pay the instalments even though the Managing Committee of Naba Kailash granted extension of time with a provision to pay 24 percent interest on the instalment money, which he agreed to pay. On 16th November, 1985, the Secretary of Naba Kailash cancelled the membership of the petitioner by writing a letter to him enclosing a cheque of 6000/-. The petitioner, thereafter, wrote a letter to the Secretary of Naba Kailash dated 12th December, 1985 returning the cheque of Rs. 6000/- and another letter dated 14th December, 1985 requesting him not to re-allot the flat which was allotted to the petitioner, initially. Thereafter, the petitioner made a representation to the Minister-in-Charge, Department of Cooperation, with a copy to the Deputy Registrar (Housing) with regard to cancellation of his membership. Consequent thereto, the matter was referred for arbitration which commenced from 28th January, 1986. This arbitration proceedings went on for almost fourteen years and ultimately culminated in an award passed on 24th November, 1999, whereby the Arbitrator directed the concerned respondents to take steps for disposal of the representation of the petitioner dated 12th December, 1985 read alongwith the letter dated 14th December, 1985 for reconsideration and restoration of his membership by referring the same to the General Body in a Special General meeting to be summoned by the Naba Kailash for the purpose. It was also observed by the Arbitrator that the General Body was to take decision in the matter strictly in accordance with the provisions of clause 15 of the bye-laws of the society and after giving full opportunity to the petitioner to make his submissions in the matter. The operative portion of the award is set out hereinbelow:--

"Award

The Naba Kailash Cooperative Housing Society (Regd. No. 11/CMAH 1983) 55/4, Ballygunge Circular Road, Calcutta-19, P.S. Ballygunge and the Secretary of the

Naba Kailash Coop. Housing Society being opposite parties No. 1 and 2 respectively shall take steps for disposal of the representation of the plaintiff, Shri N.C. Charkaborty, 21B, Hindustan Road, Calcutta-29, P.S. Gariahat for reconsideration and restoration of his membership dated 12th December 1985 read alongwith letter dated 14th December 1985 by referring the same to the General Body in a Special General Meeting to be summoned by the society for the purpose in terms of provision laid down in clause 15 of the bye-laws of the society. The General Body shall take decision in the matter strictly in accordance with the provisions of clause 15 of the bye-laws and after giving full opportunity to the plaintiff to make his submissions in the matter. The submissions of the plaintiff should be recorded in the minutes of the General Body meeting. In the case the plaintiff approaches the cooperative society through the Secretary with prayers to disclose all the information and minutes of the Board of Directors and General body (if any) held in the matter of reallocation of flat originally allotted to him to Dr. Mira Deb within a period of 2 weeks from the date of passing of the Award, the society shall take steps to hand over all such information and resolutions of the Board/General Body meetings duly certified by the Secretary of the society to the plaintiff within a period of 2 weeks thereafter. The plaintiff shall be entitled to make his submissions before the general body with regard to scope of clauses 11 and 13 of the bye laws as well as Rules 203 and 205 of the West Bengal Cooperative Societies Rules 1974 and also on the information and resolutions of the Board/General Body meetings adopted with regard to reallocation of the flat to Dr. Mira Deb originally allotted to him to be supplied by the cooperative society to the plaintiff within the period stipulated above.

It is further ordered that the opposite parties shall convene the special general meeting of the society only after supply of all the information and resolutions of the Board/General meetings if any adopted by the society with regard to allotment of the flat to Mira Deb, to the plaintiff. The proceeding and decision of the General Body shall be communicated to the plaintiff within a week from the date of which general meeting is held.

No order to costs.

Let the gist of the Award be communicated to the parties by post."

4. Naba Kailash, being aggrieved by the award dated 24th November, 1999 decided to prefer an appeal before the West Bengal Cooperative Tribunal. The Tribunal, by a judgment and order dated 22nd April, 2002, set aside the award passed by the Arbitrator, while at the same time setting aside the letter of termination dated 16th November, 1985. In such circumstances, the writ petitioner filed in the instant writ petition, sometime in the year, 2003, essentially praying for allotment of a flat of the size, area and price originally allotted to him.

5. The principal reason for setting aside of the award appears to be the fact that the person who was reallocated the flat subsequently, namely Mira Deb, was not

made a party to the dispute case. It was observed by the Tribunal that "the question whether reallocation in her favour was proper or not should not have been gone through by the Id. Arbitrator." In that context, the Tribunal referred to and relied on a judgment of this Court rendered in the case of Uttara Co-operative Housing Society Ltd. Vs. State of West Bengal and Others, . Strangely enough, this judgment was cited before the Tribunal by the appellant, Naba Kailash, which appears to have taken up cudgels on behalf of Mira Deb. Undoubtedly, if a person likely to get affected by an order of competent forum is not made a party in the proceeding, such a person shall have every reason to feel aggrieved. However, in the instant case, it is not Mira Deb who has come forward, but Naba Kailash. At this juncture, it is necessary to take note of the stand taken by Naba Kailash before the Arbitrator, which is as follows:-

"It has been submitted on behalf of the defendant that the dispute is not at all maintainable and sustainable on facts and has become infructuous for the reason that the flat which was allotted to plaintiff had already been allotted in favour of Mira Deb consequent upon cancellation of the plaintiff's membership. The defendant society claims that it has no such flat left for allotment and the claim and/or the relief has (as) prayed for if granted cannot be executed in view of the subsequent developments."

6. The other contention of taken before the Arbitrator is as follows:--

"The society claims that consequent upon cancellation of membership the flat originally allotted to him was reallocated to Dr. Mira Deb and as no flat was available, the society could and was not in a position to reconsider his case. The society also claims the reconsideration was not possible in view of the provisions contained in the registered Bye-laws." 7. It is noticed that while passing his award, the Arbitrator took note of the fact that an interlocutory application was filed by the plaintiff (being the original writ petitioner) during the pendency of the arbitration proceeding, verified on 21st September, 1995, for an order upon Naba Kailash not to create any encumbrance on the property and to keep the flat in question vacant and free. The Arbitrator, thereafter, took note of the fact that the earlier Arbitrator, namely, Sri S.N. Mitra, refused to issue any interlocutory order as he found that the flat in question had been kept vacant due to an interim order passed by this Court. Thereafter, for reasons stated in the award, the Arbitrator directed Naba Kailash and its Secretary to take steps for disposal of the representation of the plaintiff (being the original writ petitioner) for reconsideration and restoration of his membership dated 12th December, 1985, read alongwith the letter dated 14th December, 1985, by referring the same to the General Body in a Special General Meeting to be summoned for that purpose. It would thus appear that the Arbitrator without setting aside Naba Kailash's letter dated 16th November, 1985, gave the plaintiff (being the original writ petitioner) an opportunity to be heard on the basis of his two representations/applications dated 12th December, 1985 and 14th December, 1985, with a further direction upon Naba Kailash to disclose all information and minutes of

Board of Directors and General Body (if any) held in the matter of reallocation of flat, originally awarded to the plaintiff (being the original writ petitioner), to Mira Deb.

8. It is of significance here to take note of the fact that both the Arbitrator as well as the Tribunal were of the view that the letter of Naba Kailash dated 16th November, 1985 was wrong. The reasons given by both the forums may be different but the effect is the same. While the Arbitrator never expressly set aside the letter dated 16th November, 1985, the Tribunal has gone a step further and actually set aside the same.

9. Now, the question that comes up for consideration is whether Mira Deb's presence was required at the time of hearing before the Arbitrator or not. Even if one cursorily glances at the operative portion of the Award passed by the Arbitrator it would be clear therefrom that there was no direction upon Mira Deb which affects her rights in any manner. That stage had not yet come. As observed earlier, the Arbitrator simply directed Naba Kailash to refer the two representations/applications made by the petitioner dated 12th December, 1985 and 14th December, 1985 to its General Body in a Special General Meeting to be summoned by the society for the said purpose. The General Body was directed to take decision in the matter strictly in accordance with the relevant provision of the bye-laws of the society, after giving full opportunity to the petitioner to make his submissions in the matter. The Arbitrator also directed that the submissions of the plaintiff (being the original writ petitioner) should be recorded in the minutes of the General Body meeting in case he approached Naba Kailash through its Secretary with prayers to disclose all information and minutes of the Board of Directors and General Body (if any) held in the matter of reallocation of the flat in favour of Dr. Mira Deb, which was originally allotted to the petitioner, within a period of two weeks from the date of passing of the award. The society was to take steps to hand over all such information and resolutions of the General Body meetings, duly certified by the Secretary of the society to the petitioner within a period of two weeks, thereafter.

10. It is, thus, quite clear from the Award that none of the directions contained therein affect the rights of Mira Deb in any manner. It merely directs Naba Kailash to supply relevant information to the petitioner, including resolutions of the Board/General Body with regard to reallocation of the flat to Mira Deb - which was originally allotted in favour of the petitioner. As such, it would have been premature on the part of the Arbitrator to have made Mira Deb a party to the arbitration proceedings. As observed earlier, that stage had not yet come. Mira Deb's rights, if any, would have been affected only if there was any direction given by the Arbitrator asking Mira Deb to vacate the flat which was in her possession ever since it was reallocated to her by Naba Kailash. A significant observation made by the Arbitrator - upon consideration of the documents placed before him - with regard to Mira Deb not admitted as a member of the society and allotted the flat of plaintiff (being the original writ petitioner) consequent

upon his expulsion from the society, but being an existing member and a Director on the Board of the society when the society proceeded against the plaintiff, cannot be lost sight of. It is, as if Mira Deb's case was sought to be espoused by Naba Kailash for some covert reasons. It is also noticed that Mira Deb has not come forward at any stage - either before the Arbitrator or before the Tribunal or before this Court - to stake her claim for the purpose of being added as a party to the proceedings. The Tribunal completely lost sight of the fact that the consequence of setting aside the award only on the ground of Mira Deb not having been made a party to the dispute and at the same time setting aside the letter dated 16th November, 1985, issued by Naba Kailash expelling the petitioner as a member, has resulted in a situation where the wrongful act of Naba Kailash - in expelling the petitioner from its membership - is sought to be condoned without any justifiable reason. The reference to and reliance upon the judgment of this Court (supra) by the Tribunal was utterly misplaced. The only contention urged by the Uttara Cooperative Housing Society Ltd. before the Court in that matter was that both the Arbitrator as well as the Tribunal exceeded their jurisdiction in reappraising the evidence and in assessing the order that should have been passed on the evidence. While dealing with this issue, the Court took into consideration that an application for addition of party in the main matter was made by one Ashoke Kumar Bhattacharya who was allotted the disputed flat by the concerned cooperative society. Although that application was not before the Court, it allowed the learned advocate appearing on behalf of Bhattacharya to address it and it was submitted by the learned advocate appearing on behalf of Bhattacharya that the Award under challenge could not by any stretch have gone so far as to invalidate the allotment of the flat made to Bhattacharya. It was in that factual background the Court observed to the effect that the Award overstepped the permitted limits of jurisdiction in making "adverse orders" (emphasis supplied by this Court) against Bhattacharya without impleading him. In the facts of the instant case it is noticed that no Award has been passed by the Arbitrator which has resulted in any invalidation of allotment of the flat by Naba Kailash to Mira Deb. Rather, that question was not gone into by the Arbitrator who observed that how, when and under what circumstances the flat of the plaintiff was reallocated in favour of Mira Deb had not been made clear in the written statement or oral submission made on behalf of the society. The Arbitrator merely directed Naba Kailash to supply certain information and minutes of the Board of Directors and General Body regarding reallocation of flat - which was originally allotted to the petitioner - in favour of Mira Deb. Directions for supply of information and resolutions adopted by a Board or General Body of a cooperative society regarding reallocation of a flat cannot, by any stretch of imagination, be construed as passing of any "adverse order" against the person in whose favour the flat was reallocated. That apart and in any event, as stated earlier, Mira Deb never came forward to be impleaded, either before the Arbitrator or the Tribunal or before this Court, in spite of the significant fact that she had full knowledge of the proceedings, since she happened to be one of the office bearers of Naba Kailash at the material point of time when action was

initiated against the original writ petitioner by Naba Kailash.

11. In such circumstances as stated above, this writ petition is disposed of by upholding the Award dated 24th November, 1999 and with a direction upon Naba Kailash Cooperative Housing Society, being the respondent No. 5, to ensure that the directions contained in the said Award for supply of information and minutes of the meetings held by the Board of Directors and the General Body of the society regarding reallotment of the flat - originally allotted to Narayan Chandra Chakraborty @ N.C. Chakraborty - in favour of Mira Deb, are complied with positively within a period of four weeks from date of communication of a photostat certified copy of this order.

12. Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis.