

(2022) 04 CAL CK 0094
In the Calcutta High Court

Case No : IA No. GA/6/2021, APO No. 101 Of 2015, WPO No. 813 Of 2013

Chandra Kanta Devi Kothari & Ors.

APPELLANT

Vs

Woodburn Park Cooperative Housing Society Limited & Ors.

RESPONDENT

Date of Decision : 29-04-2022

Acts Referred:

West Bengal Co-Operative Societies Act, 2006 — Section 100

Citation : (2022) 04 CAL CK 0094

Hon'ble Judges : Subrata Talukdar, J; Krishna Rao, J

Bench : Division Bench

Advocate : Hirak Kr. Mitra, D. Sen, S. Chatterjee, Suchismita Chatterjee, Malay Kumar Seal, Pratik Dhar, Deepnath Roychoudhury, Hareram Singh, P.K. Roy, Biplab Das, Rajdeep Bhattacharya, Saptarshi Banerjee

Final Decision : Disposed Of

Judgement

Subrata Talukdar, J

This appeal pertains to the affairs of a cooperative housing society namely, the Woodburn Park Cooperative Housing Society Limited (for short the Society or the said Society). The appellants claim to be the original contributory members of the said Society. The appellants trace their link to the said Society from the date of its inception.

Disputes having arisen connected to the management of the affairs of the said Society, a Special Officer, who is a Learned Advocate of this Court, was appointed. Subsequently, with the election of a new Board of Directors (BoD) of the said Society, the Special Officer has handed over charge to the new BoD.

The new BoD is represented at the hearing today. The members of the erstwhile BoD are also represented and have applied to be added as party respondents to this appeal by filing GA 6 of 2021. The election of the new BoD and the role of the Special Officer is opposed by the applicants in GA 6 of 2021. The applicants also oppose any settlement of rights qua the present appellants by the new BoD.

The Department of Co-Operative Affairs, Government of West Bengal, has affirmed the election of the new BoD of the said Society.

The circumstances leading to the election of the new BoD and the stand of each of the abovementioned participants claiming to be connected to the said Society, are reflected from several orders of the Hon'ble Courts passed from time to time. Such Orders are illustratively and chronologically placed below for a biopic view:-

"11.12.2019 W.P. No. 21596 (W) of 2019

The short issue before this Court is the conduct of Election by the Co-operative Election Commission, to elect a Board of Directors to the Woodburn Park Co-operative Housing Society Limited.

It is submitted that a Special Officer being an Advocate of this Court, one Mr. Partha Sarathi Pal, has been nominated in place of the Board of the Society, to functioning until Election process is completed thereat, has been appointed by the Governor.

The petitioner no.3, in whose custody certain documents relating to the Society are available, shall hand over the same to the Special Officer within a period of 48 hours.

Due receipt after an inventory shall be given by the Special Officer in this regard.

The petitioners do not have any objection to the eight persons, who have sought intervention in the writ application, to be added as party respondents to the instant proceeding.

The six persons represented by Mr. Siddhartha Mitra, learned Senior Advocate and two persons represented by Mr. Sunil Singhania, learned Advocate are added as party-respondents to the instant writ application. A copy of such writ petition had already been served on them.

It is submitted that total 13 persons, some of whom are not the petitioners, are entitled to claim Membership of such Society.

Due regard shall be had to the orders passed by the Registrar of the Society, this Court and the Hon'ble Supreme Court of India before preparing a list of members to be circulated amongst all the parties.

Once the list of members are settled, the same shall be handed over to the Returning Officer in terms of the Act being the Deputy Registrar of Co-operative Societies, (KMAH).

The Returning Officer shall follow the Election process as stipulated in the 2006 Act and the 2011 Rules as also the provisions of the West Bengal Co-operative Election Rules.

The Election process shall mandatorily be completed within a period of two months from date. All the parties are expected to co-operate with the Special

Officer as also one and another so that the Election to the Board is held without an hindrance.”

“11.03.2020 W.P. 21596(W) of 2019 with CAN 1482 of 2020

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The instant application has been filed by the Special Officers alleging non-cooperation and hence the order dated 11.12.2019 could not be complied with.

Allegations are also flung by the writ petitioners against the Special Officers and vice versa. This court, at this stage, does not wish to enter into the allegations and counter allegations.

The spirit and purpose of the order dated 11.12.2019 is to ensure that elections are held to the society and the Management shifts to the Elected Board.

In view of the above and with a view to settle the acrimony between the parties and with the specific consent of the parties, the following order is passed.

A list comprising in 17 writ petitioners, persons whose membership has been approved by the decisions of this court and the Hon'ble Supreme Court including those who have been specifically added party respondent members to the instant writ application shall be prepared by the DRCS. The DRCS shall receive membership papers from each of the aforesaid members of the Society and prepare a voters list comprising of all such persons.

There is a dispute with regard to the 7 writ petitioners as regards their membership, induction etc. Without prejudice to the rights and contentions of the Society as a whole, each of the aforesaid writ petitioners including the balance members shall be entitled to vote in the aforesaid election process. The said 7 writ petitioners whose membership is disputed, shall not however be entitled to contest as directors in the election process.

The aforesaid list shall be handed over to the A.R.O. already appointed by the Election Commission i.e. Ms. Madhuchandra Bhattacharya, shall fix an election schedule immediately thereafter in terms of the prescribed rules.

The dispute as regards the membership of the 7 writ petitioners as also any other persons in the voters' list shall be decided by the DRCS concerned, after calling for necessary records at sittings to be held at the Co-operation Directorate, New Secretariat Building, 4th Floor, Kolkata-700 001. The special officer appointed by the State shall represent the society before the DRCS. All affected persons shall be heard by the DRCS on the question of membership. A reasoned order shall be passed by the DRCS in this regard.

All other persons who claim membership pursuant to orders of this Court and the Hon'ble Supreme Court and whose membership is disputed, even other than the parties to writ petition may also apply before the DRCS for clarification.

Mr. Pradip Dhelia, s/o. Mohan Dhelia who claims to be a member of Society is

added as a party respondent to the instant writ application since the petitioners and the Special Officers do not object to such prayer. Let the cause title of the writ application be corrected by the learned advocate on record on behalf of the petitioner upon details being provided by the learned counsel for Mr. Dhelia.

The A.R.O. & the DRCS shall act with expedition and urgency towards compliance of the aforesaid order.

The Registry shall also submit a report as regards the payment of court fees.

This order and the election programme shall be displayed prominently in the premises of the society.

Liberty to mention after completion of the election process”

“8.9.2021 WPA No. 9164 of 2021

.....

The said appointment has been made in accordance with law. He further assures the Court that as directions had already been passed by the Division Bench to hold the election, steps have been taken and the process shall be completed within November 30, 2021 and any change in the management at this stage shall have an adverse effect on the process of election which has been under taken as the voters’ list has been prepared and will be published on September 15/16, 2021.

Having heard the rival contentions of the parties, this Court is of the prima facie opinion that as the appointment of the Special Officer has not been interfered with either by the Co-ordinate Bench or by the Division Bench but the Co-ordinate Bench directed the parties to co-operate with same special officer, no interim order interfering with the functioning of the special officer until the election is held is necessary. In another proceeding a Division Bench had directed that the society would be represented by the special officer.

The writ petitioners did not raise any grievance with regard to the functioning of the Special Officer either before the Co-ordinate Bench or before the Division Bench even though such issue could have been agitated.

At this stage, when the Division Bench had already directed that the election should be held in accordance with law and has also addressed the issues with regard to the disputes about the memberships, any interference with the appointment of the Special Officer, who has been functioning for the last six months will create further hindrance and as such this Court refuses the interim order restraining the Special Officer from functioning. The special officer shall function up to December 31, 2021 or until the result of the election, whichever is earlier.

Let this matter appear in the list on December 10, 2021 when the State respondents shall file a report with regard to the result of the election.”

"03.01.2022 WPA 9164 of 2021

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Mr. Roy, learned advocate appearing on behalf of the Cooperative Election Commission submits that election has already been held."

"14.3.2022 WPA 20776 of 2021

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CAN 2 of 2022 is an application filed by the writ petitioners, who used to be members of 5B, Woodburn Park Co-operative Housing Society Limited.

The applicants pray for a direction upon the Registrar of West Bengal Co-operation Directorate to take cognizance of various complaints made by the 14 persons, who claim to be members and past members of the society. The applicants have raised various objections against the newly constituted board of the said society. According to the applicants, the affairs of the society are not being carried on in a transparent manner. Funds have been siphoned off. New bank account has been opened in the name of the board. Audit of the accounts have not been done since 2018-2019. The financial picture and financial health of the society have not been disclosed to the members. Above all, third party rights are being created by the Board.

It is alleged that despite having raised such allegations before the Assistant Registrar of Cooperative Societies, the Kolkata Metropolitan Area Housing, the said authority has been issuing notices to individual applicants, without actually showing any inclination to invoke his jurisdiction under Section 100 of the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as the said Act) and to make enquiry and prepare a report on the basis of the allegations raised by the applicants.

It is submitted by the learned advocates on behalf of the respective respondents, that the election was completed and a newly constituted board has been functioning in accordance with law. It is further submitted that the dispute raised cannot be entertained by the writ court and the appropriate remedy of the petitioners would be in terms of the provisions of the said Act.

Having heard the learned advocates for the respective parties, this Court directs the Joint Registrar of the Co-operative Societies, Co-Cooperation Directorate, Kolkata Metropolitan Area Housing Cell, to dispose of the complaints filed by the petitioners dated November 15, 2021 and February 15, 2022 in accordance with the provisions of Section 100 of the West Bengal Co-operative Societies Act, 2006. The provisions of said section is comprehensive and action shall be taken in accordance with law on the basis of the inspection, which is to be conducted and upon the submissions made by the parties in this regard.

It is made clear that the parties and or their representatives shall be present at the time of such inspection and hearing. The parties may be represented by their

learned advocates.

The applicants as also the Board shall be entitled to take assistance of chartered accountants, as the issues relate to financial matters.

The entire exercise shall be completed in accordance with law, within a period of three months from the date of communication of this order.

This Court has not gone into the merits of the claims and counterclaims of the parties and the issues shall be disposed of in accordance with law and independently in terms of Section 100 of the West Bengal Co-operative Societies Act, 2006”

Mr. Hirak Mitra, Learned Senior Advocate appearing for the appellants with Ms. Suchismita Chatterjee, Learned Advocate, takes the stand that audit of the records of the said Society by the newly elected BoD has revealed that the appellants continue to be members/contributories of the said Society. It is submitted that the live membership of the appellants was recognized by the Learned Arbitrator through the Award which was upheld by the Learned Cooperative Tribunal.

It is submitted that the Hon’ble Single Bench had erroneously dismissed the writ petition being WP No. 813 of 2013 with its connected application being GA 297 of 2013 on the ground of delay. It is submitted that now with the recognition of the rights of the appellants upon audit of the records by the new BoD, the said Society is in a position to settle the claims of the appellants which have been long denied by the erstwhile BoD which held power illegally since 2008 without permitting the elections to be held in regular intervals as per law. A prayer is accordingly made to allow the appellants to withdraw this appeal so that their claims can be dealt with and settled by the new BoD in accordance with law.

Both Mr. Pratik Dhar, Learned Senior Counsel appearing for the new BoD and Mr. Ankit Sureka, appearing for the Learned Special Officer, reiterate the stand of the appellants. Mr. Sureka affirms the position that the audit of the records of the said Society has pointed out to the genuineness of the claim of the appellants to be recognized as members/contributories of the said Society.

Mr. Dhar submits that in the event the applicants in GA 6 of 2021, who are associated with the erstwhile BoD, harbor objections to the election, constitution and functions of the new BoD, recourse can be taken by them as Objectors under the provisions of the Cooperative Act and its associated Rules. It is submitted that specific provisions of the Act and the Rules enjoin upon the Objectors to raise such disputes before the prescribed statutory authorities. It is thus argued that the applicants to GA 6 of 2021 are precluded from claiming any relief in this appeal. Furthermore, on behalf of the applicants a batch of writ petitions are already pending adjudication before the appropriate Hon’ble Single Benches although, it is not admitted that such writ petitions can be an alternative to the prescribed statutory remedies.

Per Contra, on behalf of the applicants in GA 6 of 2021, Mr. Rajdeep Bhattacharya appearing with Mr. Saptarshi Banerjee, Learned Counsel, submit that the new BoD is not beyond the limits of exercise of its powers as a Cooperative Society circumscribed by the will of all its members, including the proposed added parties/ the applicants. It is argued that the new BoD should be restrained from dealing with and /or alienating any of the properties of the said Society in favour of the appellants, except in accordance with law. It is submitted that the applicants in GA 6 of 2021 being admittedly the members of the said Society cannot be shut out from raising their objections to the settlement proposed between the new BoD and the appellants qua issues which are of common interest to all members.

The State respondents appearing through Mr. Pradip Roy, Learned Counsel, submit that elections of the said Society was held on 23rd October, 2021 and , on the same date, the results of the elections were declared. The Special Officer handed over charge to the new BoD on 6th November, 2021 with communication endorsed to the Registrar of Cooperative Societies on 8th November, 2021.

Having heard the parties and considering the materials placed, this Court arrives at the following findings:-

A) That the issue of holding fresh elections of the said Society is no more res integra.

B) That by several orders of the Hon'ble Courts in litigation brought by the parties, the Hon'ble Courts have consistently held in favour of holding the democratic exercise of elections of the said Society.

C) It is a fact that elections have been held and approved by the Office of the Registrar of Cooperative Societies. The election has replaced the erstwhile BoD, continuing since 2008, by the new BoD.

D) It is also trite that complaints connected to the election, constitution and functions of the newly elected BoD can be ventilated internally in Extraordinary or Annual General Meetings of the said Society or, brought before the appropriate statutory authorities prescribed under the WB Co-operative Societies Act, 2006, the WB Co-operative Societies Rules, 2011 and also the WB Co-operative Societies Election Commission Rules, 2017 (for short the 2006 Act, the 2011 Rules and the 2017 Rules respectively).

E) Notwithstanding the internal and the statutory remedies illustratively discussed as above, grievances may be ventilated in the Writ Jurisdiction of the Hon'ble Court, subject however to maintainability.

In the backdrop of the above findings, this Court finds no reason why the solemn orders of the Hon'ble Courts (supra) shall not be respected by permitting the new BoD to discharge its functions in accordance with law unless interdicted by strict operation of law.

It is accordingly directed that the newly elected BoD shall be entitled to take all steps qua the appellants in accordance with its records.

The applicants in GA 6 of 2021 shall be entitled to raise their grievances before the appropriate forum, also strictly in accordance with law.

Having regard to the above findings and directions, the appellants shall be entitled to withdraw their appeal.

APO 101 of 2015 stands thus disposed of as withdrawn.

IA No. GA 6 of 2021 stands also disposed of.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.