

(2023) 06 CAL CK 0067

In the Calcutta High Court

Case No : MAT No. 748 Of 2023, CAN 1 Of 2023

Debkanta Chakrabarti

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 28-06-2023

Acts Referred:

West Bengal Co-operative Societies Act, 2006 — Section 64, 70, 70(1)(b), 72, 72(b), 79, 90(3), 92(3)

Citation : (2023) 06 CAL CK 0067

Hon'ble Judges : Arijit Banerjee, J; Rai Chattopadhyay, J

Bench : Division Bench

Advocate : Saptansu Basu, Shibnath Bhattacharyya, Abhishek Bhattacharyya, Srijan Nayak, Rituparna Maitra, Kamal Krishna Pathak, Souvik Maji

Final Decision : Disposed Of

Judgement

Rai Chattopadhyay, J

1. This appeal is directed against the order of the Hon'ble Single Bench dated April 5, 2023 in WPA 6335 of 2023. The relevant portion of the said order may be extracted, as herein below:-

"Considering the facts and circumstances of this case and submission of the parties this writ petition being WPA 6335 of 2023 is disposed of by directing the respondent co-operative society to allot membership to the petitioner if he makes application in proper form and complies the formalities under Section 70 (1) (b) of the aforesaid Act. If the petitioner does not make any application within a month from date, in that event the respondent society will not be bound to allot membership to the petitioner and if petitioner complies the formalities under the aforesaid Section the respondent society shall issue membership certificate to the petitioner.

In the meantime there will be an order of status quo with regard to the plot of land in question."

2. Appellant/writ petitioner's challenge as to the said impugned order dated April 5, 2023 would be on the premises inter alia, that, the appellant being the only legal heir and successor of the erstwhile member of the respondent/Co-operative Society (respondent no.5), shall be entitled to own and possess the land allocated by the Society to his deceased father, as the member and share holder of the Society. His further grievance is that by not considering the statutory provision as to the right of the appellant in the property of the Society, which was earlier held by his deceased father on lease, the respondent no.5 has acted in defiance of the statutory provision and illegally, by relegating him for compliance of provisions under Section 70 (1) (b) of The West Bengal Co-operative Societies Act, 2006, (in short "the said Act") in order to be the owner of the share of the Society as well as the leasehold property. The appellant has alleged gross arbitrariness in the said act of the Society directing him to comply with the afore stated statutory provisions, in as much as, according to the appellant the statute itself has bestowed right upon him being the legal heir of the deceased member of the said Co-operative Society, to be the owner of the property earlier held by his father, now deceased. His specific case is that the statutory right vested in him has thus been grossly violated.

3. Mr. Basu, Ld. Senior Advocate while arguing on behalf of the appellant has drawn this Court's attention to the relevant statutory provision under Section 64 of the said Act. He points out that certain 'eligibility criterion' has been stipulated in the statute itself for membership of a co-operative society. His client/writ petitioner having fulfilled all those and being interested for admission as a member thereof, could not have been called upon, to comply with any other provision of the statute, excepting that under section 64 of the Act. Otherwise, as has been done in case of his client, the said action of the respondent Society would be illegal as well as detrimental to the valuable statutory rights of his client.

4. By referring to various other provisions, Mr. Basu has tried to impress upon the Court that the right of the present appellant is imbibed in the statutes itself, to inherit and be transferred with the immovable property held by his deceased father in the said Co-operative Housing Society. He says that the provision of law having been clearly and unambiguously laid down as above, any action on the part of the respondent/Co-operative Society to call for due compliance by the present appellant of the provision under Section 70 (1) (b) of the said Act, is only an exaggerated and unauthorised exercise of the statutory power vested in the same. Mr. Basu has referred to the letter of the Additional Registrar of Co-operative Societies (Housing Cell), West Bengal dated September 20, 2022 and informs that the said letter was impugned in the writ petition, that is, WPA 6335 of 2023. By referring to the text of the same he says that the direction of the authority upon the respondent no.5/Co-operative Society, that the share or interest of the deceased member, i.e, the father of the present appellant, namely, Kuntal Kanta Chakrabarty, shall be disposed of in accordance with the provisions laid down in Section 70 of the West Bengal Co-operative Societies Act,

2006 and the rules framed there under, is only jeopardising the statutory right of the present appellant in acquiring the transferrable and heritable right to the leasehold property of the Co-operative Society earlier held by his predecessor/father. It is Mr. Basu's contention on behalf of the appellant that, the proper legal course of action for the respondent no.5 would be to comply with the provisions of Section 72 of the Act of 2006, to vest the right to the shares and property of the deceased member/father of the present appellant, automatically in the appellant, upon his fulfilling the statutory criteria as regards the eligibility of membership of the said Society. By specifically referring to section 72 (b) of the said Act, it is stated that the appellant/writ petitioner, being a person willing to be admitted as a member of the respondent co-operative society and eligible for membership under section 64 of the Act, could not have been denied admission to the same, as a member and could not have been subjected to fulfilment of any other provision of the said statute.

5. Thus, Mr. Basu has argued about the illegality, arbitrariness and non-maintainability of the impugned direction of the authority, vide letter dated September 20, 2022 and has also challenged the propriety of the order of the Hon'ble Single Bench dated April 5, 2023. He has prayed for setting aside of the order dated April 5, 2023 as well as issuance of necessary order in conformity with law, so as to vest the heritable and transferrable right of his father's share and interest in the said Co-operative Society, to the appellant.

6. The contentions and grounds so argued on behalf of the appellant is however vehemently contested by the respondent Co-operative Society/respondent No.5. Mr. Pathak, who has represented the respondent no.5, has emphatically justified the stand taken by his client to relegate the appellant for due fulfilment of the provisions under Section 70 of the said Act. As a matter of fact, however, Mr. Pathak has admitted that in terms of Section 92 (3) of the said Act, the appellant, as the legal heir and successor, would be vested with the right to the leasehold property held by the deceased member of the Co-operative Society, that is, the father of the appellant, after death of such member/father. However, he differs with the contention on behalf of the appellant, that such vesting of the right in the property of the Co-operative Society upon the appellant, in the event of death of his predecessor, shall not be automatic, in terms of the scheme of the said statute. Mr. Pathak has pointed out that in this particular case, the erstwhile member of the Society, that is, the father of the appellant had not nominated the appellant, to inherit the rights in the said property or to the shares of the society. According to the Mr. Pathak, in absence of any such nomination by the member (now deceased) there would be no automatic vesting of rights of the Society's property and share, upon the appellant. By referring that the scope of operation of the Co-operative Society being commensurate with benefits and welfare of the public at large, Mr. Pathak has emphasized that provisions under Section 72 of the West Bengal Co-operative Societies Act, 2006, would be mutually inclusive with Chapter VIII thereof. He says that a person willing to be admitted as a member of the respondent no.5, after death of his predecessor and in absence of

his name being nominated to the Society, for inheritance of the rights of the property, earlier held by the said predecessor, must compulsorily go through the provisions laid down under Section 70 of the said Act, to establish and confirm his absolute rights as the legal heir and successor of the deceased member. In absence of the same his induction as the shareholder or property holder under the respondent Society, as a legal heir and the successor of the erstwhile member, shall not be permissible under the provisions of the said Act. On these grounds Mr. Pathak has contested the appeal and has prayed for dismissal of the same. Mr. Pathak has emphasized that under provisions of Section 92 (3) of the Act of 2006, the right of the property held by the deceased member is inheritable by all his legal heirs. Therefore, the appellant has to satisfy after undergoing a legal and proper course of action, about his absolute heritable right in exclusion any other person in the world.

7. Mr. Basu on behalf of the appellant has relied on the following judgments:-

(i) Gayatri De vs. Mousumi Cooperative Housing Society Ltd. & Ors. reported in (2004) 5 SCC 90,

(ii) Atanu Ranjan Ghosh vs. Arup Ranjan Ghosh reported in AIR 2009 Calcutta 76,

(iii) Bibhash Chandra Ghosh vs. Michael Samabaya Upanibesh Samity (Sasim) & Ors. (unreported judgment)

8. Mr. Pathak on behalf of the respondent/ Co-operative Society has relied on the following judgment:-

(i) Indrani Wahi vs. Registrar of Co-operative Societies & Ors. reported in (2016) 6 SCC 440.

9. In Gayatri De's matter, the Hon'ble Supreme Court was pleased to held in paragraph 39:-

"39. While disposing of the appeal, the learned Judges of the Division Bench of the High Court laid much stress on sub-section (3) of Section 85 of the Act as also Rule 135 of the Rules taking the present case to be a case for admission of membership which is not in the instant case. In the present case, the question of admission of membership becomes absolutely immaterial; the real question, however, is of transfer or devolution of interest of a deceased member. The appellant being one of the heirs of the deceased member was and still is entitled to succeed to the estate of the deceased member as per the mandatory provisions of the statutes and that being so, the right, title and interest of the deceased member in the apartment of the society devolves upon his heirs."

The next case relied on by the appellant is a Division Bench judgment of this Court, that is, of Atanu Ranjan Ghosh, (supra), where a co-ordinate Bench held and reiterated the statutory principle that membership in a Co-operative Society is heritable like any other property, that the interest of a deceased devolves upon his heirs and legal representatives.

Thereafter on behalf of the appellant the Single Bench judgment of this Court of Bikash Chandra Ghosh (*supra*), has been referred, to reiterate the same proposition that in absence of any nominee the interest of the deceased member in a Co-operative Society shall vest in the legal representatives of the deceased member, automatically.

10. In Indrani Wahi's judgment of the Hon'ble Supreme Court, which has been referred to on behalf of the respondent no.5, it was held that the Co-operative Society is mandated to transfer the share and interest of a deceased member to a recorded nominee of him. The Court held that, it is also essential to notice, that the rights of others on account of inheritance or succession is a subservient right and is only exercisable in absence of any nomination made under Section 79 of the said Act.

11. It is necessary that the factual background of the case may be jotted down, in a nut shell. Respondent no. 5, is a co-operative housing society, registered under the Bengal Co-operative Societies Act, 1940. Father of the appellant was inducted therein as a shareholder/member on June 16, 1975. A deed of lease was executed between them on September 20, 1990, to grant lease hold right of the piece of land, mentioned in the schedule therein, to the said member. His name was mutated in the government record of right. He had since been possessing the land, by constructing residential house and staying therein. The said person died on July 18, 1997. Appellant's claim is that he and his mother, being the son and wife of the said deceased person, are the only legal heirs and successors of the deceased. Therefore mother of the appellant, made an application to the Society, on November 5, 1997, for transfer of the share of her deceased husband in the Society, in the names of herself and the appellant, so that they may be inducted as the members in the Society, in place of the said deceased member. However, before they could know the fate of the said application, appellant's mother died on January 10, 2018. It is the further case of the appellant that since the death of his father, he has duly remitted all the expenses and charges payable to the Society, in a manner, similar to an existing member. Appellant's next letters to the Society are dated March 2, 2019 and June 22, 2022, respectively. By dint of the same he requested to record his name as a member of the Society, by virtue of his being the only legal heir of the erstwhile member, since deceased. His letters not being acted upon by the respondent No. 5, the appellant resorted to lodging his grievance to the registrar and assistant registrar of the co-operative societies, vide his letter dated September 5, 2022. Response to the same is the letter dated September 20, 2022, by the respondent No.4, which is impugned in the writ petition, before the Hon'ble Single Judge. Fact remains that the respondent authority has determined for the due compliance by the appellant of the provision under section 70 of the West Bengal Co-operative Societies Act, 2006, before he may be inducted as a member of the respondent housing society, in place of the deceased member, that is his father, as the next and nearest kin of the said deceased member. We also understand from the pleadings and the submissions made, that appellant's

name was not recorded as a nominee of his father, with the respondent No.5.

12. The issue this appeal Court has to adjudicate and decide here would not encompass anything more than a very precise spectrum of the answer to the question if the appellant, being the legal heir of the deceased member and not being his nominee, would be admitted as a member of the respondent society, only on fulfilment of the eligibility criterion as provided under the Act or shall have to comply with the provisions under section 70 thereof, as a mandatory precondition of his such induction.

13. Chapter VIII of the Act of 2006, provides for the housing co-operative society, like the present respondent No.5. Relevant here would be the provision enumerated under section 92 (3) thereof. Let the same be extracted, as herein bellow :-

"92. Rights of member.

(1) *****

(2) *****

(3) A plot of land or a house or an apartment in a building (including the undivided interest in the common areas and facilities) shall constitute a heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that notwithstanding anything contained in any other law for the time being in force, such heritable and transferable immovable property shall not be partitioned or sub-divided for the purpose whatsoever:

Provided further that notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, an heir who is a nominee in respect of a share and interest in a flat or house or plot in a Co-operative housing society shall be eligible to be admitted as a member of the Co-operative housing society irrespective of the fact whether he owns any property by his own right or inheritance or by marriage provided he declares, that he has requirement for such residential accommodation:

Provided also that membership of a person in a Co-operative housing society shall not cease if the member himself or any member of his family becomes owner of any land, house or flat through inheritance and if he still continues to have genuine need of accommodation in the project of the society."

14. We would, more precisely concentrate on the first and second proviso to sub-section (3) of section 92 of the said Act, as mentioned above. A legal heir of the deceased member, who is a nominee too, derives his rights from the said provision. It is his statutory right that he shall be considered eligible to be admitted as a member irrespective of certain criterion, which otherwise would have been necessary to be fulfilled, in order to be inducted as a member of a housing co-operative society. It is also a mandate of this section, that a plot of

land or a house or an apartment in a building (including the undivided interest in the common areas and facilities), in a housing co-operative society, shall constitute a heritable and transferable immovable property. Therefore, appellant's right by way of inheritance, as regards the share and leasehold property of the respondent No.5, after death of his father, who was a member of the said Society, cannot be denied and as a matter of fact, has not been denied in this case.

15. The very design of this specific chapter of the said Act, would imply that in absence of any nominee, all the legal heirs would inherit proportionately, the right of their predecessor in the shares and property of the Society, being its erstwhile member. Therefore, it is necessary that legal heirship of a person be determined specifically and categorically through a statutorily stipulated process. And here comes the requirement of compliance of the provision under section 70 of the Act. On this point, we accept and place concurrence with the submissions made by Mr. Pathak, that section 70 and chapter VIII of the said Act are mutually inclusive and have to be read together.

16. This Court finds that, in absence of the appellant being nominated by his father, during his life time, to the respondent No.5, the question of his automatic induction, as a member thereof, does not arise. It is noticeable in this case that appellant's claim for membership of the respondent No.5 is not only on the basis of his willingness as a member of the public at large. But his demand is based on the fact that his predecessor has been a member shareholder of the Society and after his death he claims rights, in place and stead of his deceased father. This places him on a different footing than an ordinary person, who being desirous to be a member, has to fulfil certain criteria and formalities, as per the statutory stipulations. It's the right of an erstwhile member, to be vested in him, which if not done in this particular way, would have been extended to some other member of the civil society, upon fulfilment of the statutory criterion. In other words, the broad principles on which the respondent Society has been established and is functioning, that is, catering to the needs of the members of civil society, to obtain land, for the purpose of housing, by following statutory provisions as well as certain other equitable principles, would turn out to be applied restrictively, while inducting the appellant as a member thereof, he being the legal heir of a deceased member, to straight away replace his predecessor. The public policy and the public purpose, for which the Society performs and delivers service, would see an exception, in introducing the appellant as a member of it, the criterion being distinctively featured in the statute itself. Therefore, his automatic induction, after death of his father shall not facilitate and fructify the public policy and the public purpose for which the Society is functioning.

17. Relevant provision of Section 70 of the West Bengal Co-operative Societies Act, 2006 would be of sufficient importance and may be extracted as herein below:-

"70. Disposal of deceased member's share or interest.-(1) On the death of a person who is a member of Co-operative society, his share or interest in the Co-operative society shall, subject to the provisions of section 58 and 72 and to the further provisions of this section, be transferred—

(a) to the nominee, if any; made under section 76; or

(b) if there is no nominee or if the existence or residence of the nominee cannot be ascertained by the board or if the nominee does not claim possession of such share or interest or if for any other reason, the transfer cannot be made within one year from the date of death, to the person who (subject to the production by such person of probate, letter of administration or succession certificate issued by a competent court having jurisdiction) appears to the board to be entitled to the possession of such share and interest as per of the estate of the deceased member; or

*****"

Therefore, a clear distinction has been made by the statute itself, to a nominated legal heir and otherwise, regarding disposal of share or interest of a deceased member. The provision under section 70 (b) of the Act, as mentioned above is restrictive, firstly, from the time's point of view, that is, transfer cannot be made within one year from the date of the death. Secondly that the satisfaction as to the entitlement of a person as a legal heir of the deceased member shall be subject to his production of probate, letter of administration or succession certificate, from a competent Court. As it has been held in the case of Gayatri De (supra), in absence of nominee, satisfaction of Board as to the entitlement of a person to the rights and shares in the Co-operative Society, would be the necessary pre condition. Such satisfaction must be based on some objective considerations. The legislature, though having provided for the heritable nature of the immovable property in a case like this, has also provided, according to its wisdom, for production of probate, letter of administration or succession certificate, in case of a legal heir not nominated by the original member of the Society, the reason for which is clearly understandable. The said instrument/s will facilitate ascertainment of the heritable right of a particular person, in absence of any nomination being made for him and to the exclusion of any other person. The rights conferred under section 92(3) of the said Act, shall finally be ascertained in favour of a particular person, by dint of obtaining probate, letter of administration or succession certificate, from a competent Court.

18. Therefore, the submissions as made on behalf of the appellant, as discussed above, would not be acceptable. Though the property of the Society is heritable, yet, the appellant shall have to, for his induction as a member thereof in place of his deceased father and claim his inheritance as regards the share and property held by his deceased father in the respondent society, produce either probate or letter of administration or succession certificate, from a competent court of law, as per section 70 of the said Act.

19. Therefore, no illegality can be found as regards the letter of the respondent No.4 dated September 20, 2022 and the order impugned dated April 5, 2023. However, we do away with the requirement on the part of the appellant to make application for membership of the society within a month as was directed by the learned Single Judge. As and when the appellant makes an application in compliance with Section 70 of the aforesaid Act, the same shall be acted upon by the society in accordance with law. The order under appeal is modified to the aforesaid extent.

20. The appeal being MAT 748 of 2023 with CAN 1 of 2023 is accordingly disposed of.

21. Urgent certified photostat copy of this judgment be given to the parties, if applied for, upon compliance of all the formalities, as per usual terms and conditions.

I Agree,