

(1989) 03 CAL CK 0006
In the Calcutta High Court
Case No : Appeal No. Not Found in RTF Files
In Re : Sukumar Chakraborty

Date of Decision : 16-03-1989

Acts Referred:

West Bengal Co-operative Societies Act, 1983 — Section 3, 69, 70, 79, 83

Citation : (1989) 03 CAL CK 0006

Hon'ble Judges : K.M. Yusuf, J

Bench : Single Bench

Advocate : M. Bagchi and Mr. N.C. Banerjee, for the Appellant; Alope Ghosh and Mr. B. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

K.M. Yusuf, J.—The writ petitioner has challenged the Memo, dated 28th June, 1988 issued by the Assistant Assessor-Collector, Ward No. 93, Tollygung Tax Department, of the Calcutta Municipal Corporation intimating to the petitioner refusing to mutate his name in respect of Premises No. 1/145, Gariahat Road (345, Jodhpur Park), Calcutta-68. The case of the writ petitioner briefly is that the father of the petitioner, Sudeb Sundar Chakraborty since deceased, was a member of Bengal Secretariat Co-operative Land Mortgage Bank and Housing Society Ltd., a body corporate constituted under the Bengal Co-operative Societies Act, 1940 (now W.B. Co-operative Societies Act, 1983). The Society owned and possessed a big plot of land at Premises No. 1, Gariahat Road, which was sub-divided and distributed amongst its members according to the value of the shares and the father of the petitioner was allotted the Plot No. 345 by the Society whereon he constructed a two-storied building. The father of the petitioner held 20 "A" class shares and interests in the said Plot No. 345. The father nominated his elder son, the petitioner, as his nominee and the name of the petitioner was recorded in the register of nominated persons of the Society. After the death of the father in 1963 it was incumbent upon the Society to dispose of the share or interest of his father in favour of the petitioner and accordingly he applied for the membership of the Society and for transfer of shares and interest in the said Plot No, 345. The Director-Secretary (Hony.) of

the Society informed the petitioner by Letter, dated 11th July, 1984 that the transfer of the aforesaid 20 "A" class shares and the interest in the said Plot No. 345 has been accepted by the Committee of Management in favour of the petitioner: on the terms and conditions under which his deceased father held them. Accordingly his name would be registered in the books of the Society on payment of the requisite fee, and the formalities were eventually gone through and the shares and interest of the petitioner's deceased father devolved upon the petitioner.

2. Then on 19th December, 1983 the petitioner applied to the Calcutta Municipal Corporation for mutation of his name in the Corporation records in respect of the aforesaid plot and also paid all the arrear taxes. Thereafter he produced the Death Certificate of his father, the Affidavit regarding legal heirs of his father, and No-objection letter from his sisters and mother. By a Letter, dated 12th November, 1987 the Corporation once again asked the petitioner to submit an Affidavit stating that he was the only representative of his deceased father. The petitioner again complied with the direction and submitted Affidavit according to the W.B. Co-operative Societies Act. The Director-Secretary of the Society also by a communication dated 30th November, 1987 wrote to the Corporation that the petitioner is now the owner of the premises in question by virtue of the nomination made by his deceased father. Thereafter the impugned Memo of 28th June, 1988 was received.

3. It is submitted by Mr. Bagchi, the Learned Advocate appearing for the petitioner, that the premises in question involved is a property of the Co-operative Society and not an ordinary property and is governed by the provisions of the W.B. Co-operative Societies Act and Rules. The shares and interest of a member of a Co-operative Society devolves on a person nominated by him after his death and, as such, the shares and interest of the deceased father of the petitioner devolved upon the petitioner and he became a full-fledged member enjoying the father's interest in the said Society as a member. It is the duty of the Corporation to mutate the name of the petitioner in respect of the said premises according to the provisions of the said Act and Rules framed thereunder and it is never open to the Corporation to question the provision of law.

4. Mr. Bagchi has placed Section 183 of the Calcutta Municipal Corporation Act, 1980 relating to transfers of properties and mutation of names, and in particular he refers to sub-section (5) of Section 183 of the Act. He refers to Section 79 of the W.B. Co-operative Societies Act, 1983 relating to the nomination of a person in whose favour the Co-operative Society shall dispose of the share or interest of a member upon his death. He further cites sub-section (3) of Section 87 of the said Act where the right of ownership of a plot of land or a house or an apartment in a multi-storied building shall constitute a heritable and transferable immovable property within the meaning of any law for the time being in force. Section 88(1) of the said Act says that a plot of land or house or apartment in a multi-storied building shall constitute a separate unit for the purpose of

assessment of rates and taxes to be realised by a Municipality or a notified area Authority or a Competent Authority. On the basis of the aforesaid provisions of the W.B. Co-operative Societies Act he submits that the Corporation is duty bound to mutate the name of the petitioner in respect of premises No. 1/345, Gariahat Road, according to the provisions of Section 183 of C.M.C. Act. To further strengthen his arguments he cites the decision reported in The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, and the decision reported in Daman Singh and Others Vs. State of Punjab and Others, .

5. Mr. Ghosh, the Learned Advocate appearing for the Calcutta Municipal Corporation, submitted that the provisions of the Calcutta Municipal Corporation Act, 1980 are binding upon all transfers of properties and mutations of the transferees' names in the Corporation Register and in particular the provisions of Section 183 of the said Act is bound to be followed at the time of such mutation. Contradicting the submissions of Mr. Bagchi, Mr. Ghosh cited the case of Sujata Maitra v. State of West Bengal reported in 1989(1) C.L.J. 80 wherein Mahitosh Majumdar, J. held on the basis of Section 70 read with Section 69 of the W.B. Co-operative Societies Act, 1973 that it is not appropriate to treat the nominee as being equivalent to an heir. But Mr. Bagchi strongly refuted the contention of Mr. Ghosh by submitting that the case cited by the Learned Advocate for the Corporation is actually based upon a decision reported in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, which, in fact, related to life insurance policy and not to a Co-operative Society. The Corporation produced the records showing the opinion of its Learned Lawyer on the subject.

6. While delivering the judgment this Court discovered some discrepancies in the affidavit filed by the petitioner before the Corporation Authorities in support of mutation. The Affidavit is affirmed by Sukumar Chakraborty wherein he stated that his father, the late Sudeb Sundar Chakraborty, died leaving six persons as his whole legal heirs and representatives of which one is the widow, two sons including himself and three daughters. In paragraph 5 of the said Affidavit the petitioner says that his sisters "have no objection to your mutating the names of myself and my brother, Susanta Chakraborty the only two male heirs of Late Sudeb Sundar Chakraborty". In paragraph 6 of the said Affidavit he states "it is urgently necessary to have the names of myself and my younger brother mutated in the records of the Calcutta Corporation". Again there is a Letter of disclaimer annexed with the writ application signed by three sisters relinquishing claim in favour of the mother and two brothers to which the matter made further endorsement. When this matter was pointed out by the Learned Advocate appearing for the petitioner, at the time of further hearing, the petitioner filed an Affidavit by his younger brother, Susanta Chakraborty, paragraph 6 of which is as follows: "That only to expedite the mutation of the premises in favour of my said elder brother so that on that score the Municipal Authorities cannot create any obstruction, my mother and sisters gave their No-claim endorsement in respect of the premises in question and as I have already been nominated in the Society

by my said elder brother there was no point in making no-claim endorsement on my part. Being the nominee of my father my said elder brother is the only person who is entitled to the premises in question".

7. Two minor defects come out in the writ application apart from the main question in issue. No Affidavit by the mother, sisters and brother Susanta Chakraborty was affirmed in favour of the petitioner expressing their no-objection before the Corporation. The Affidavit, dated 16th December, 1987 being Annexure "G" on page 24 of the writ petition is alarmed by the petitioner himself stating all the facts but with discrepancies and the next annexure on page 26 of the writ petition collectively marked as Annexure "G" being the Letter of Disclaimer is signed by three daughters as well as endorsed by the mother.

8. Mr. Bagchi making further arguments on the point submitted that a statement made under misapprehension of legal right is not estoppel. He further submitted that where there is a statutory provision there can be no estoppel against a statute. In support of his above contention he cited two decisions reported in Shanker Lal and Another Vs. Narendra Bahadur Tandon, and A.C. Jose Vs. Sivan Pillai and Others, . The Learned Advocate for the Corporation did not make any substantial submission on this point.

9. I have considered the facts of the case and the submissions made by the counsels of the respective parties. The undisputed facts are that the father of the petitioner, Sudeb Sundar Chakraborty, since deceased, had a number of "A" class shares and interests in the said plot No. 345 at Premises No. 1, Gariahat Road which was allotted to him by the Bengal Secretariat Co-operative Land Mortgage Bank and Housing Society Ltd. And that the said Sudeb Sundar in accordance with the provision of the W.B. Co-operative Societies Registration Act nominated his elder son as his nominee and this nomination was duly recorded in the register of the said Society. The said Sudeb Sundar Chakraborty died on 19th December, 1983 when the W.B. Co-operative Societies Act, 1973 was in force. The Act of 1983 came into force on 1st August, 1987 and according to sub-section (2) of Section 3 of the W.B. Co-operative Societies Act, 1983 notwithstanding the repeal of the W.B. Co-operative Societies Act, 1973 any right or tide accrued under the Act of 1973 shall be deemed to have taken under the W.B. Co-operative Societies Act, 1983 as if, the provisions of this Act of 1983 were in force at all material times when such thing was done or suffered or such action was taken. On the death of Sudeb Sundar Chakraborty his shares and interests in the said Co-operative Society devolved upon the petitioner according to the provisions of the Act. The letter being No. 63/87-88, dated 30th November, 1987 written by the Director-Secretary (Hony.) of the said Co-operative Society to the Calcutta Municipal Corporation, Tollygunge Tax Department, clearly stated that after the, death of Sudeb Sundar Chakraborty the son of the deceased was admitted into the membership of the Society by virtue of nomination made by the deceased in his favour and accordingly he is now the owner of Plot No. 345 at Premises No. 1, Gariahat Road. The text of the

letter is reproduced below:

This is to inform the Calcutta Municipal Corporation that Plot No. 345 of the Tollygunge Scheme (Jodhpur Club Lands) at Premises No. 1, Gariahat Road now known as Jodhpur Park was allotted to Sri Sudeb Sundar Chakraborty (Regd. No. 367), a member of this Society and the possession of the said Plot No. 345 was made over to the said member with permission to build house thereon in terms of the agreement, dated 26th November, 1955 by the Society and the alias. Subsequently, after the death of the member, Sri Sukumar Chakraborty, the son of the deceased was admitted into the membership of the Society by virtue of nomination made by the deceased in his favour in respect of the said premises. The said Sri Sukumar Chakraborty is now owner of the said premises and liable to pay all taxes and rates payable to the Calcutta Municipal Corporation in respect of the aforesaid premises.

10. I have carefully considered the case of Sujata Moira v. State of West Bengal reported in 1989(1) C.L.J. 80. This case is basically based on the case of Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, . The facts of the case is totally based on a nominee of a life insurance policy and the question was whether he or she would get absolute right to the amount due to which the Supreme Court answered that upon the death of policy holder the amount payable under the policy becomes part of the estate which has to be governed by the Law of Succession and the nominee does not get absolute right in it. In the case of Sujata Maitra (supra) decided by Mahitosh Majumdar, J. the deceased Tapan Maitra. nominated his relation Ranjan Kumar Maitra as a nominee but when Tapan died he left behind a widow and mother and they contested the claim of the nominee and this Court decided about succession in which the Award of the Arbitrator u/s 86 of West Bengal Co-operative Societies Act, 1973 was under challenge. I do not think this particular case helps the Corporation in any way as the facts are totally different. Here there is no dispute about the nomination and no legal heirs and representatives of the deceased Sudeb Sundar Chakraborty has come out in open to claim the property left behind by the deceased. On the contrary we have the Affidavits and writings on record both before the Corporation and in this Court of all the legal heirs and representatives of the deceased that they have no objection if the property in suit is mutated in the name of the petitioner and they waived their right in respect of the said property. In this view of the matter I need not discuss the case of Syed Mohedeen v. Government of Tamil Nadu & anr. reported in 1985 LAB.I.C. 917 cited by Mr. Bagchi in support of his contention that the Court is not bound to follow a decision which is given per incurium.

11. On the point of the Affidavit submitted to the Corporation wherein the petitioner stated that he has no objection in mutating the names of himself and his brother, Susanta Chakraborty, the only two male heirs of their deceased father, I am in agreement with Mr. Bagchi that a statement made under misapprehension of legal right is not estoppel. The Division Bench of Allahabad

High Court in the case of Shandar Lal & anr. v. Narendra Bahadur Tandon (supra) has held that any act done under misapprehension of legal right does not create estoppel, nor does the knowledge of the parties about their correct position. This view is further reinforced by a Supreme Court decision in the case of A. C. Jose v. Simon Pillai & ors. (supra) that there can be no estoppel against a statute.

12. Returning back to the main point of mutation by the Corporation, sub-section (3) of Section 87 of the W.B. Co-operative Societies Act, 1983 runs as follows:

A plot of land or a house or an apartment in a multi-storied 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 subdivided for any purpose whatsoever.

13. Sub-section (1) of Section 83 of the said Act further reinforces the aforesaid quoted section when it reads thus: "Notwithstanding anything contained in any other law for the time being in force each plot of land or house or apartment in a multi-storied building (including the undivided interest in the common areas and facilities) shall constitute a separate unit for the purpose of assessment of rates and taxes to be realised by a Municipality or a Notified Area Authority."

14. Section 183 of the Calcutta Municipal Corporation Act, 1980 relates to transfer and devolution of title and mutation. Sub-section (1) of Section 183 of the said Act enjoins a transferee in whose favour a transfer is effected to give notice of such transfer in writing to the Municipal Commissioner after the transfer is effected even if no instrument is executed. Sub-section (5) of this Section is quite explicit on the point which I quote "The Municipal Commissioner shall, on receipt of a notice of transfer or devolution of title under this Section, record such transfer or devolution in a book in such form and in such manner as may be prescribed and also in the Municipal Assessment Book." It is clear from Section 183(5) of the Act of 1980 that the Corporation has no other alternative but to act in accordance with Section 87(3) of the W.B. Co-operative Societies Act, 1983 because the transfer of the immovable property in question has already taken place in favour of the petitioner on the death of his father in accordance to the provisions of W.B. Co-operative Societies Act, 1983. The Supreme Court in the case of Daman Singh and Others Vs. State of Punjab and Others, has very clearly held that "once a person becomes a member of a Co-operative Society, he loses his individuality qua the Society and he has no independent rights except those given to him by the statute and the bye-laws". The Supreme Court further emphasises that "he must act and speak through the Society or rather, the Society alone can act and speak for him qua rights or duties of the Society as a body." Here as I have stated while describing the case history that with the nomination of the petitioner by his father and consequent upon the death of his father all the shares of the Co-operative Society absolutely vested in the petitioner including the 20 "A" class shares and the interest in the said Plot No.

345 at Premises No. 1, Gariahat Road, Calcutta. This has been duly recorded in the Register of the Society and an intimation to this effect was given to the Corporation Authorities by the Director Secretary (Hony.) of the Co-operative Society that the petitioner has become the owner of the premises in question and he is now liable to pay all taxes and rates as payable to the Corporation. Thus the question of inheritance or transfer by instrument is closed once for all and now the Corporation Authorities are bound to act strictly in accordance with the provisions of the W.B. Co-operative Societies Act, 1963. The provisions of Section 183(1) and 183(5) of the Calcutta Municipal Corporation Act, 1980 cannot override the provisions of W.B. Co-operative Societies Act, 1983 but enjoins upon the Corporation Authorities in the facts and circumstances of the case to carry out the mutation of the petitioner's name in keeping with sub-section (5) of Section 183 of the C.M.C. Act of 1980 without investigating his title any more which is certified to be genuine and legal by the Bengal Secretariat Co-operative Land Mortgage- Bank and Housing Society Limited by virtue of the provisions of the Co-operative Societies Act in the absence of any rebuttal and claim from any quarters whatsoever. It is further made clear that there is no dispute of any nature by the legal heirs of the. deceased Sudeb Sundar Chakraborty relating to the title of the. property and all of them have given their consent and/or no objection and even waived their right and title in favour of the petitioner for the mutation of the petitioner's name in the records of the Corporation.

15. I also make it clear that the legal opinion given by the Learned Lawyer to the Calcutta Municipal Corporation as intimated to the petitioner by the Assistant Assessor-Collector, Ward No. 93, by his Memo, dated 28th June, 1988 is wrong and illegal and violative of the provisions both of the Calcutta Municipal Corporation Act, 1980 and the W.B. Co-operative Societies Act, 1983.

16. In that view of the matter I quash the Memo, dated 28th June, 1988 issued by the Assistant Assessor-Collector of the Calcutta Municipal Corporation, Tollygunge Tax Department, and direct the Authorities of the Calcutta Municipal Corporation including the respondents Nos. 1, 2 and 3 to forthwith mutate the name of the petitioner in respect of Plot No. 345 at Premises No. 1, Gariahat Road, Calcutta-68 (also known as 345, Jodhpur Park).

17. The writ application is accordingly allowed. There will be no Order as to costs.