
(2022) 09 PAT CK 0051

In the Patna High Court

Case No : Letters Patent Appeal No. 135 Of 2019 In Civil Writ Jurisdiction Case No. 1075 Of 2016

Patliputra Cooperative House Construction Society Ltd

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 26-09-2022

Acts Referred:

Bihar Co-Operative Societies Act, 1935 — Section 6(2), 48

Citation : (2022) 09 PAT CK 0051

Hon'ble Judges : Ashutosh Kumar, J; Jitendra Kumar, J

Bench : Division Bench

Advocate : Amit Shrivastava, Girish Pandey, Ashok Kumar Dubey, Rajendra Narayan, Shashank Shekhar Sinha, Ranjan Shrivastava

Final Decision : Allowed

Judgement

Heard Mr. Amit Shrivastava, learned Senior Advocate for the Patliputra Co-operative House Society Construction Limited and Mr. Rajendra Narayan, learned Sr. Counsel for the Respondent No. 5 (A. M. Prasad), who is the son of the original allottee.

Mr. Ranjan Shrivastava has appeared on behalf of the widow of one of the sons of the original allottee.

Mr. Ashok Kumar Dubey, learned counsel for the State is also present.

The Patliputra Co-operative Housing Society Limited has preferred the present appeal against the judgment and order dated 21.12.2018, passed by a learned Single Judge of this Court, whereby the order dated 02.09.2014/10.12.2014, passed by the District Co-operative Officer, Patna as also the order dated 30.09.2015/08.10.2015, passed by the Deputy Registrar (Headquarters), Co-operative Societies, Bihar has been upheld.

Before the learned Single Judge, the Co-operative Society had pleaded that the

orders in question were passed without taking into consideration the relevant provisions of the bye-laws of the Society as also the ratio laid down by the Division Bench of this Court in *Patliputra Co-operative House Construction Society vs. State of Bihar & Ors.* [1972 PLJR 481].

It was urged on behalf of the Co-operative Society/Appellant that only the Registrar could have entertained the dispute of the nature raised by Respondent No. 5 under Section 48 of the Bihar Co-operative Societies Act, 1935. In that view of the matter, any order passed by the District Co-operative Officer was *coram non judice* and, therefore, was void and a nullity.

Be it noted that Respondent No. 5, who is one of the sons of the late allottee, had approached the concerned authority for seeking a share in the membership of the society by virtue of the late allottee having been allotted 5 shares and he being one of the 5 heirs of the late allottee.

The objections of the Co-operative Society with respect to the forum agitated by Respondent No. 5 was rejected on the ground that the "Registrar" means a person appointed to perform the duty of Registrar and since the State Government, in exercise of its power under Section 6 (2) of the Bihar Co-operative Societies Act, 1935, had conferred the powers on various officer to exercise specific powers of Registrar and had issued notification in that regard, all the District Co-operative Officers were competent to exercise the powers of the Registrar of Co-operative Society except the powers provided under certain provisions of the Bihar Co-operative Societies Act 1935 and the Bihar Co-operative Societies Rules, 1959.

The set of facts over which there is little difference between the parties is that Plot No. 158 of the Patliputra Co-operative Society, having its head office at Patna, was allotted to late Akhouri Parameshwar Prasad, who incidentally was also a founder member of the society. He died sometimes in 1997, leaving behind his two sons and 3 daughters, one of whom has been impleaded in the present appeal as Respondent No. 5, whereas the widow of another has appeared through an intervention petition.

It was recorded by the learned Single Judge that the original allottee did not nominate anyone as one of his heirs to become a member of the society after his demise.

The afore-noted statement in the order of learned Single Judge which was recorded as an admitted set of facts has been attempted to be disputed by the intervenor respondent/wife of one of the sons of the original allottee. He has submitted that the Co-operative Society, on finding that the original allottee had not named any nominee in accordance with the bye-laws of the society, made a communication with him for nominating one of the heirs. The late allottee thereafter marked his wife and the eldest son as the nominee. This was done in the year 1995. Since two persons were nominated by the original allottee, the Co-operative Society did not accept the same and issued notice to two witnesses

who had signed on such declaration of nomination. Ultimately, such nomination was rejected by the Co-operative Society.

It would also be relevant to state here that this aspect of the matter has been disputed by Respondent No. 5 who has submitted that there was no nomination and that the intention of the original allottee was well reflected in an intestate will, which but never saw the light of the day.

Mr. Amit Shrivastava, learned Senior Advocate, therefore, at this stage submits that the statement of Respondent No. 5 as also of the intervenor respondent with respect to their exclusive claim over the share of the original allottee, thus, remains non-existent; even though Respondent No. 5 had made a valiant attempt to demonstrate such claim. There could be some substance in the statement made by the intervenor respondent that these aspects were not brought to the notice of the learned Single Judge and that the intervenor respondent was never made party in any proceeding before the District Co-operative Officer or before the learned Single Judge. In fact, on coming to know of the present appeal, such intervention petition was filed by the widow of one of the sons of the original allottee.

The further set of undisputed facts recorded in the learned Single Judge's order is that Respondent No. 5 had made an application for admitting him as a member of the society. This was rejected on 15.03.2014 on the ground that Clause-4 of the bye-laws of the society does not permit him to be made a member and that the judgement of the Division Bench of Patna High Court in Patliputra Co-operative House Construction Society (supra) also came in the way of Respondent No. 5 becoming a member.

The learned Single Judge ultimately came to the conclusion that there was no dispute that there was no nominee of the original member of the society and in that event the Respondent No. 5 could only have and actually had rested his claim for being a member as the original allottee had 5 shares and in all its probability, the Respondent No. 5 would have been entitled to inherit one of such shares as the late allottee had 5 children. However, while recording such fact, the learned Single Judge also took note of Clause-11A of the bye-laws of the society which prescribed that every member of the society shall be required to subscribe and hold a minimum of one share in the society and pay full value of the share. Later, according to the argument advanced on behalf of the Respondent No. 5, which was noted down in the learned Single Judge's order, the bye-laws of the society admitted of 5 shares for each member, which was introduced in the bye-laws by virtue of an amendment carried out sometimes in the year 1972.

In the case of Patliputra Co-operative House Construction Society (supra), referred to above, certain facts had been recorded which indicated that a member could have 5 shares which could be transferred.

However, today at the time of hearing, it was conceded by the learned counsel for the parties that such amendment in the bye-laws is neither available with the

Co-operative Society nor with anyone of the members including Respondent No. 5 or the intervenor-respondent.

Juxtaposed to the aforesaid rendition of facts in the present case as also in Patliputa Co-operative House Construction Society (Supra), it is the specific statement of the society that the original allottee was given only one share, though there are instances of members of the society having been given more than one share.

Mr. Narayan, learned Senior Advocate for Respondent No. 5 has tried to demonstrate from the Audit Report of 1960s that the original allottee had more than one share. However, at all the stages when the matter was argued before this Court, Mr. Narayan had conceded that at best, he was entitled to one share if the original allottee had more than 5 share, i.e., 5 shares distributed amongst the 5 children of the original allottee.

However, the stand of the intervenor respondent, who is the widow one of the sons of the original allottee, who claims to be residing in the same house is different. Mr. Ranjan Srivastava, appearing for the intervenor respondent has submitted that in view of the animus of the original allottee in nominating her late husband (one of the sons of the original allottee), there should be no difficulty for the Co-operative Society to give the widow a share even if the original allottee had only one share and not 5 shares as claimed by Respondent No. 5.

This Court while affording hearing to the parties, had recorded on 07.03.2022 and 20.06.2022 as follows:

"07.03.2022

Heard the learned counsel for the parties.

The respondent no. 5 is the son of the original allottee of a plot of land given by the appellant/Patliputra Cooperative House Construction Society Ltd.

After the demise of his father, respondent no. 5 wanted to be transposed as the allottee in his capacity as the heir of the original allottee to which he was entitled under the bye-laws of the Co-operative Society.

The request of the respondent no. 5 was not acceded to on the ground that all heirs of the original allottee would be required to give a "No Objection Certificate" in favour of respondent no. 5 before he could be made a member of the Society.

It was the case of the respondent no. 5 before the learned Single Judge that his late father (original allottee) had five shares and for an heir to become a member later, there is pre-requisite of such claimant having at least one share. It was thus the case of the respondent no. 5 that in any event, one of the shares of his late father would definitely devolve on him and, therefore, the Society was not justified in seeking "No Objection Certificate" from other heirs for making him a

member of the Co-operative Society.

The challenge to the decision of the Co-operative Society before the District Co-operative Officer acting in the capacity of Registrar of the Co-operative Societies was allowed, against which the appellant preferred an appeal before the Registrar which was transferred to the Joint Registrar and the order of the District Co-operative Officer was sustained.

Hence, the writ petition by the Co-operative Society.

The learned Single Judge has held that in view of the Govt. notification authorizing every District Cooperative Officer to be the Registrar, there was no ground to challenge the original order of the District Co-operative Officer as being coram non-judice and that the present respondent no. 5 being the heir of the original allottee, having five shares and for becoming a member, there is a requirement of such claimant to have at least one share, rejecting his request for being made a member was not justified.

Mr. Amit Srivastava, learned senior Advocate for the appellant / Co-operative Society submits that at the time of the decision by the Single Judge, it could not be brought to his notice that the original allottee (the father of respondent no. 5) had only one share and not five shares as claimed.

The entire judgment has been premised on the assertion of respondent no. 5 that his father had five shares and, therefore, he would definitely have inherited one share and in that circumstance, he could not have been denied the membership of the Co-operative Society.

It was for this reason that notice was issued to the respondent no. 5 in this appeal to ascertain the correctness of such statement having been made.

Mr. Makardhwaj Upadhyay, the learned Advocate has appeared on such notice on behalf of the respondent no. 5, who wishes to bring on record necessary documents to controvert the aforesaid statement of the appellant regarding the number of shares held by his late father.

Let that be done by the next date.

Re-notify this case on 22.03.2022.

20.06.2022

Heard Mr. Amit Srivastava, learned Sr. Advocate for the petitioner and Mr. Rajendra Narayan, learned Sr. Advocate for the Respondent No. 5.

The consistent stand of the Patliputra Cooperative House Construction Society Limited, which is the appellant before this Court, is that the original allottee, who is the late father of Respondent No. 5, had only one share which cannot be fractioned into different shares, to be given to his legal heirs.

As opposed to the aforesaid contention, Mr. Narayan, learned Sr. Advocate for

Respondent No. 5 and one of the sons of the original allottee, contends that his father had been allotted five shares, which fact he seeks to establish through an annual report of the Co-operative Society, prepared and drawn up in the year 1960-61. On the basis of the aforesaid contention, Mr. Narayan submits that at best, if the property of his late father would devolve amongst his heirs, he would surely be the recipient of one of the shares in the Co-operative Society, which would entitle him to become a member of the Co-operative Society.

The learned Sr. Advocate for the Cooperative Society, however, has disputed the aforesaid claim of Respondent No. 5 but admits that in case there is a joint application for the devolvement of the share held by the original allottee or a no-objection-certificate from the other heirs of the late allottee, the petitioner could, without any demur, be admitted to the membership of the Cooperative Society.

Since some statement was made on behalf of the Society in the earlier proceedings with respect to the number of shares which the original allottee held, this Court has asked the counsel for the appellant/Co-operative Society to make a clear statement, on affidavit, as to the number of shares held by the original allottee, which, in fact, would set the controversy at rest.

The learned counsel for the appellant shall also find out the names and addresses of the other heirs of the original allottee. Should the Court decide on the next occasion, they may be impleaded as party respondents to ascertain their view point over the partition of the shares of the original allottee, especially with respect to the membership of the Co-operative Society.

It appears from the arguments advanced on behalf of the parties that the house constructed by the original allottee is occupied by Respondent No. 5 and another son of the original allottee, who is also no more in the world of living.

In order to avoid any further scramble over the membership of the Co-operative Society and consequently the possession of the plot of land over which the house stands, such clear statement on behalf of the Cooperative Society would be required.

A copy of such affidavit be served upon the counsel for the Respondent No. 5 in advance, so that it could be rebutted, in case so deemed necessary, by the next date.

Re-notify this case on 4th of July, 2022."

On going through the entire set of facts as well as the order passed by the learned Single Judge, we are of the view that the stand of the Co-operative Society is absolutely justified.

Mr. Shrivastava, learned Senior Advocate has repeatedly made the stand of the society clear that if all the heirs of the late allottee approached the society after having come to a consensus, membership could be given according to such consensus. However, taking any decision otherwise, would not be supported by

the bye-laws and it would further lead to scramble between the heirs of the original allottee with respect to share which ultimately would lead to multiple litigations at various forums. At no point of time, the society has rejected the claim of the heirs of the original allottee but has only insisted for a consensus amongst all the heirs.

Mr. Srivastava, learned Senior Advocate has conceded that while responding to the counter affidavit by Respondent No. 5 before the Writ Court, a wrong statement was made that the original allottee was given five shares. Such statement was inadvertent. The records have been verified and the Accountant of the society has sworn an affidavit that the original allottee had only one share to his credit.

We also find the contention of the intervenor respondent to be totally unacceptable, in as much as the nomination made by the original allottee was never accepted by the society but was specifically rejected. We have taken note of the fact that the intervenor respondent is residing in the same house along with Respondent No. 5. Neither the intervenor respondent nor the Respondent No. 5 have been able to demonstrate their specific and exclusive claim over share of the original allottee to the exclusion of the other three heirs of the original allottee.

In that view of the matter, we find justification in the stand of the Co-operative Society.

For the reasons afore-noted, we set aside the order of the learned Single Judge and direct the Co-operative Society that in case the heirs of the original allottee come with a consensus and ask for anyone of them or all to be made members of the society with only one share which was given to the original allottee, that shall be acceded to, without any delay and the process in that regard shall be initiated immediately.

With the aforesaid observation/direction, the appeal stands allowed.

Later

29.09.2022

The order dated 26.09.2022, which was dictated in open Court was mentioned for being listed under the heading "To Be Mentioned" at the instance of Mr. Amit Shrivastava, who had appeared for the Patliputra Co-operative House Society Construction Limited / Appellant.

Mr. Shrivastava, learned Senior Advocate wanted the Court to incorporate in the order that the two of the orders of the authorities dated 02.09.2014 and 30.09.2014 which were upheld by the learned Single Judge be also set aside in the background fact of the order the learned Single Judge having been set aside.

The orders dated 02.09.2014 and 30.09.2014 are also set aside.

With the afore-noted modification in the last part of the order, dated 26.09.2022, the prayer made on behalf of the appellant is allowed.

This shall also form part of the order dated 26.09.2022.