
(2018) 09 CAL CK 0032

In the Calcutta High Court

Case No : Tender Mand Appeal No. 594 Of 2018, Can 4208 Of 2018

Prosad Ranjan Biswas

APPELLANT

Vs

Hijli Co-Operative Development Society Limited & Ors.

RESPONDENT

Date of Decision : 14-09-2018

Acts Referred:

West Bengal Co-operative Societies Rules, 2011 — Rule 145(2)

Citation : (2018) 09 CAL CK 0032

Hon'ble Judges : Biswanath Somadder, J; Arindam Mukherjee, J

Bench : Division Bench

Advocate : Milon Bhattacharya, P. C. Bhattacharya, Rabindra Nath Bag, Surajit Roy, Raja Saha, Partha Sarathi Pal

Final Decision : Allowed

Judgement

ARINDAM MUKHERJEE, J.

1. The appeal is at the instance of the respondent no. 5 in the writ petition. The writ petition was filed by Hijli Co-operative Development Society

Limited (hereinafter referred to as the said society), Narayan Chandra Paria and the Secretary, Hijli Co-operative Development Society Limited being

the respondent nos.1, 2 and 3 in the instant appeal. The other respondents are the State of West Bengal and its officers who were also the

respondents in the writ petition but neither of them were parties either to the arbitration proceedings or in the appeal before the Co-operative Tribunal.

2. The writ petitioners have challenged an order passed by the West Bengal Co-operative Tribunal on 8th July, 2016 in appeal no. 19 of 2015 filed by

the appellant which in turn have set aside an award passed by the Co-operative Development Officer, Paschim Medinipur Range being the appointed

arbitrator in case no. 2 of 2014-2015 being a proceeding also filed by the

appellant. On being unsuccessful in the arbitration proceeding the said Prosad Ranjan Biswas (appellant) filed the appeal before the West Bengal Co-operative Tribunal and got an order in his favour which has been over turned in the writ petition by the order impugned.

3. The disputes referred to the arbitration and the subject-matter of the appeal before the West Bengal Co-operative Tribunal are as follows:-

(a) The said society have proceeded to make construction of a community hall on a land earmarked for park in the master site plan of the society.

This action was challenged and ultimately a Division Bench of this Court had directed the society not to proceed with such construction.

(b) Subsequently the society in its 48th Annual General Meeting (in short AGM) held on 14th September, 2014 passed a resolution to construct the

second community hall of the society on the place earmarked for the park and a primary school. The appellant had challenged such decision which

gave rise to the arbitration case. The following reliefs were claimed by the appellant in the arbitration proceedings :-

â??a) To declare that the process and adopting of recommendation of proposal No. 3 of the agenda of the notice of the A.G.M. dated 14.09.2014 by

the defendant society is illegal, invalid and ultra vires and be farther prays that if any positive decision is take by the board over the said issue in the

A.G.M. dated 14.09.2014 that would be also illegal and in cooperative.

b) That the plaintiff be granted such other relief as he may entitled under law and equity.

c) Cost.â??

4. The arbitrator passed the following order:-

â??1) The prayer of the Plaintiff mentioned in Par 14 a) in his plaint filed before this Court of Arbitrator is being rejected.

2) No relief or relieves and no cost shall be granted.

3) The defendant society is directed to comply with the provisions of Rule 145 of W.B.C.S. Rules 2011 e.i. prior approval of the Registrar of Co-

operative Societies and other concerned law for the time being in use for further proceed of construction of 2nd community Hall.â??

5. The award passed by the arbitrator was challenged in the appeal before the West Bengal Co-operative Tribunal by the appellant. In the appeal the

following issues were framed:-

(1) Whether the decision for construction of Second Community Hall was legally taken by the defendant-society (respondent herein) ;

(2) Whether the learned Arbitrator was justified in passing the award under challenge;

(3) Whether the award under challenge demands interference.

6. The Co-operative Tribunal after considering the materials on record, discussing the facts and the provisions of law in details by a reasoned order

while setting aside the award held :-

That the appeal be and the same is allowed on contest but without any order as to costs.

The judgment and award dated 26.5.15 passed by the learned Arbitrator is hereby set aside. It is held that the decision as regards construction of a

2nd Community Hall taken in the 48th Annual General Meeting is not legal and valid in the eye of law and as such the decision as regards construction

of the 2nd Community Hall shall not be translated into action. Let a copy of this judgment along with the record of the Dispute case be sent back to

the office of the Asstt. Registrar of Co-operative Societies, Paschim Medinipur, at once.

7. The respondent nos. 1, 2 and 3 challenged the order of the Tribunal by filing the writ petition inter alia seeking the following reliefs:-

(a) A writ in the nature of Mandamus commanding the Respondents to forebear from giving any effect or further effect to the impugned order

dated 8th July, 2016 co-operative Tribunal, Kolkata in Appeal No. 19 of 2015 reversing the decision dated 26.05.2015 passed by the Learned

Arbitrator and co-operative Development Officer, Paschim Medinipur Range in Dispute case no. 2 of 2014 -2015.

(b) A writ in the nature of certiorari directing the Respondents to transmit and certify the records of the case before this Honâble Court, so that

conscionable Justice may be done by setting aside or by quashing the order dated 8th July, 2016 passed by the co-operative Tribunal, Kolkata in

Appeal No. 19 of 2015;

(c) An-ad-interim order of stay of operation of the decision/order dated 8th July, 2016 passed by the Learned Co-operative Tribunal, Kolkata in

Appeal No. 19 of 2015 in the meantime;

(d) Rule NISI in terms of prayers (a), (b) and (c) above and to make the Rule absolute if no cause is shown and/or insufficient causes are shown;

(e) An interim order of injunction restraining the Respondent No. 5 and his men, agents and servants from creating any disturbance and/or obstruction

in construction of the 2nd Community Hall which is going to be constructed on R.S. Plot No. 343, Khatian No. 704, J.L. No. 188, Mouza â?

Sonamukhi, P.S. â?" Kharagpur Town, District-Paschim Medinipur till the disposal of the Rule;

(f) An-ad-interim order of injunction in terms of prayer (e) above;

(g) Cost or costs;

(h) Any other or further order or orders, direction or directions be issued as to this Honâ??ble Court may deem fit and proper;â??

8. The writ petition was allowed by an order dated 4th June, 2018 and subsequently corrected by the order dated 15th June, 2018. The order dated 4th June, 2018 as corrected by the order dated 15th June, 2018 is the order impugned in the appeal.

9. After considering the materials on record we find that the arbitrator after discussing the case of the respective parties without assigning any reason

passed a cryptic award. The Tribunal on the other hand have considered each and every ground raised by the parties after framing issues in respect

thereof. The Tribunal has given a reasoned decision on all the issues framed by it. On scrutiny of the documents, the Tribunal found that at the 31st

A.G.M. of the society a decision was taken for development of four existing parks of the society which includes the park now sought to be converted

into the 2nd Community Hall. We find that there is no challenge to the said decision of the society. According to the Tribunal, under Clause 31(1) of

the bye-laws of the said society, the society was required to prepare a scale plan of the settlement along with the plot numbers, sub-plot numbers with

area, roads, parks etc. Under Clause 31(2) of

the said bye-laws, the society was also obliged to prepare a plot index

showing the plot numbers, sub-plot numbers with areas and roads,

parks, community hall etc. In the scale plan and plot index so

prepared by the society, plot no. 343 on which the second community

hall is sought to be constructed has been earmarked as site for

primary school and park. To construct a community hall on the said plot no. 343, according to the Tribunal would be a step towards changing the site plan of the society. We also agree with such finding once it amounts to the change of the site plan of the society, the decision to bring in such change has to be approved by the general body with 3/4th majority and prior approval of the Registrar in terms of Rule 145(2) of the West Bengal Co-operative Societies Rules, 2011 is also necessary. The Tribunal after considering the change of events further observed the following:-

On meticulous scrutiny of the minutes of the Meeting, we find that one of the delegates namely Sri Jiban Ghosh raised the proposal for construction of the Community Hall. It appears from the minutes of the Meeting that the proposal was accepted as huge majority members supported the proposal by raising hands and voice voting. It is curious to note that names of the members who opposed the decision, were not noted in the minutes of the meeting.

Decision for construction of a 2nd Community Hall on the land earmarked for park amounts to decision for change of project. It is clear from the language of Rule 145(2) of W.B.C.S.Rules that if the concerned society is to make any change in the project or the project site, not only the approval of the General body with three four majority but also the prior approval of the Registrar is required.

On careful consideration of the minutes of the 48th Annual General Meeting of the society, we find it too risky to conclude that the proposal for construction of the 2nd Community Hall was approved by 3/4th members. So, it is too difficult to conclude that provision of Rule 145(2) of the W.B.C.S. Rules was complied with in the matter of approval by members. If the letter of approval of the Registrar, minutes of the 48th Annual General Meeting and copy of the letter of the Chairman of the Municipality are considered side by side, we fail to hold that the prior approval of the Registrar was taken in the matter of change of project.

10. Thereafter, the Tribunal held that the decision for construction of the second community hall was not legally taken by the society that is to say the

decision was taken without observing the requirements to change the site plan of the society and therefore cannot be said to be a legally taken

decision. The award was thus set aside.

11. After going through the factual findings arrived at by the Tribunal we find no infirmity therein. There also exists no reasons to disagree with such

finding. On the other hand, upon perusal of the order impugned we find that the learned Single Judge has not discussed any of the findings of the

Tribunal or the grounds put forth by the appellant in his affidavit-in-opposition. No reasons has been given by learned Single Judge to fault such

findings. The learned Single Judge has proceeded solely on the basis of the fact that the appellant is only one out of 1500 members of the society who

may not be inclined to have a second community hall constructed after converting a park for such purpose. The learned Single Judge has also not

decided the maintainability point raised by the appellant.

The learned Single Judge simply disposed of the writ petition by setting aside order of the Tribunal dated 8th July, 2016 on the lone ground that the

appellant is only one out of 1500 members objecting to the construction of the 2nd Community Hall thereby giving an official seal to the decision said

to have been taken in the 48th Annual General Meeting of the Tribunal changing the previous decision taken on the 31st Annual General Meeting

without any discussion or finding as to why such later decision is valid. The learned Single Judge in his order held as follows:-

“It is further directed that the writ petitioner would be entitled to go ahead with construction of the second community hall only and only upon a

complete and comprehensive and duly held General Meeting within a period of 45 days from the date of communication of this order to ascertain the

approval of the majority of members once again. If the members approve such construction which may include an amendment to the byelaws, such

amendment shall be carried out in accordance with law and in accordance with rules prescribed therefor.”

12. We are of the view that a decision for changing the project if not taken in accordance with the provisions of the West Bengal Co-operative

Societies Rules 2011 [Rule 145(2)] and the bye-laws of the society is illegal and cannot be sustained even if there is only one objector. We find that

the learned Single Judge proceeded on an erroneous consideration and palpable

infirmity is noticed in the order impugned for the reasons as aforesaid.

We therefore set aside the order impugned dated 4th June, 2018 as corrected by the order dated 15th June, 2018 and also dismiss the writ petition by

upholding the order of the Tribunal dated 8th July, 2016. The said order of the Tribunal is restored.

13. The Registrar of Co-operative Societies and concerned Municipal Authorities should immediately stop the construction of the second community

hall at the place of the park, if the same is continuing. Further construction or demolition will be subject to any fresh resolution for the same being

adopted in a validly constituted A.G.M. of the society after observing all requirements for taking a decision to change the project plan already in

existence. In the event no fresh resolution is taken on this issue within a period of one year from date, the concerned municipality will at the cost of

the society proceed to demolish the construction so far made in the name of the second community hall and restore it to the state as before.

14. The appeal is allowed to the extent as above and all connected applications are accordingly disposed of. There shall, however, be no order as to

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