

(2018) 01 CAL CK 0002
In the Calcutta High Court
Case No : 1819 of 2017

S.K. Jalaluddin & Ors.

APPELLANT

Vs

The State of West Bengal & Ors.

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

Citation : (2018) 01 CAL CK 0002

Hon'ble Judges : Biswanath Somadder, Moushumi Bhattacharya

Bench : Division Bench

Advocate : Milon Chandra Bhattacharya, Khirul Alam, Sulagna Bhattacharya, Srijan Nayak, Raja Saha, Partha Sarathi Bhattacharya, Somnath Banerjee, Raju Bhattacharya

Final Decision : Dismissed

Judgement

1. The order under challenge before us has been passed in a writ petition being W.P. 14226(w) of 2017 filed by the writ petitioners challenging two orders passed by the Principal Secretary, Government of West Bengal and the Registrar Co-operative Societies, West Bengal, confirming the decision of the Co-operative Society to expel the petitioners.

2. All six petitioners are residents of Khowab Housing Co-operative Society Limited, a co-operative Society registered under the provisions of the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as "the Society"). On the date of filing of the writ petition, the Society had a total of 48 members. The petitioners allege that they were required to pay certain amounts of money for obtaining a flat of a specified area, which according to the petitioners, was contrary to the decision approved in the Special General Meeting held in June 2013. In the writ petition, the petitioners have questioned the basis of increase in the price for allotment of flats and were finally aggrieved by the decision of the Society to expel them after they failed to pay the enhanced amount of money.

3. Mr. Milon Bhattacharya, learned Senior Counsel, appearing for the petitioners submits that the impugned order should be set aside since the petitioners were not given an opportunity of hearing by the Board of Directors of the Society. According to him, although the petitioners were present before the Registrar and participated in the hearing before him, no such opportunity was given to the petitioners before the Board of Directors decided to expel the petitioners from the Society. According to Mr. Bhattacharya, this is in violation of Rule 133 of the West Bengal Co-operative Societies Rules, 2011.

4. A brief narration of the facts as stated in the writ petition:- The Society sent several communications to the petitioners to pay the required sum of money for allotment of flats and some of the notices to this effect from 15th November 2013 onwards are annexed to the writ petition. A notice dated 24th August 2014, annexed as P4 to the writ petition, shows that the Society had unequivocally intimated the petitioners that any member who continues to default in payment of his dues towards cost of allotment of flat to him by the Society for more than six months without a break may be expelled for the Society. The petitioners' reply to such notice is also on record. Since the petitioners failed to make the required payment within the specified time frame, a show cause notice was issued by the Society on 4th May 2015, whereby the Society gave one last opportunity to the defaulting members to clear their dues failing which the member would be expelled from the Society. The West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as "the Rules"), were referred to in the said Show Cause notice. The decision to expel the petitioners was communicated by a letter dated 20th August 2015. A perusal of this communication shows that the decision to expel the petitioners was taken in terms of Rule 133(1) of the Rules and that further the said decision was communicated to the Registrar Co-operative Societies, West Bengal on 7th July 2015. The petitioners were thereafter informed that a hearing with regard to the proposed expulsion had been fixed on 15th October, 2015 before the Registrar.

5. It is an admitted position that the petitioners attended the hearing before the Registrar at the scheduled time and made their submissions with regard to escalation of the cost for the flats which according to the petitioners was enhanced without any basis. As directed by the Registrar, the petitioners filed written statements and appeared before the Registrar once again on further dates being 3rd December 2015, 18th January 2016, 9th February 2016 and 5th September 2016. After hearing was concluded, the Registrar directed the Society to prepare updated demands for each of the defaulting members. It was further directed that in the default of the payment as directed, the decision of the Board of Directors of the Society for expulsion of the petitioners would come into effect. Being aggrieved, the petitioners filed a revision before the Government of West Bengal under Section 148(1) of the West Bengal Co-operative Societies Act, 2006. The petitioners participated in the hearing before the Principal Secretary and an order was passed on 20th January 2017, dismissing the petitioners' application. By this order, the Society decided to place the updated demand and

payment to be made by the petitioners accordingly, failing which the decision of expulsion would come into effect. This order is also the subject matter of the writ petition.

6. Since deprivation of a right to a hearing before the Board of the Society appears to be the primary grievance of the petitioners, we asked the learned Counsel representing the parties to produce records in relation to the aforesaid allegation. Mr. Partha Sarathi Bhattacharya, learned Counsel appearing for the respondent no.4 / Society produced several documents during the course of hearing which were taken on record and copies were handed over to Mr. Milon Bhattacharya. On perusal of these documents, we find that petitioner Nos. 1, 3, 4 and 5 were present at a meeting held on 1st December 2014 where the issue, inter-alia, of cost of construction was discussed. The minutes further record that the petitioners present agreed to pay the balance sum of money upon perusing certain documents as recorded in the minutes of the meeting. From the documents disclosed, it appears that the petitioners were given an opportunity to present their case before the decision of expulsion taken by the Board. These minutes were not disputed by the petitioners.

7. Since Mr. Milon Bhattacharya relied on Rule 133 of the Rules for the point that an opportunity of hearing should be given before the decision of expulsion, we think it is necessary to examine whether the requirement contemplated therein were complied with by the Society. Rule 133(1) is set-out below: "133. Expulsion of members-(1) Any member who continues to default in payment of his dues towards cost of land or house or apartment allotted to him by the society for more than six months without a break or in payment of his maintenance charges for more than three months without a break may be expelled from the society by the vote of two-thirds of the members of the board present and voting at a meeting after he has been given an opportunity of being heard and no resolution of the board shall be effective unless it is submitted to the Registrar for approval and approved by him: Provided that the order of expulsion shall take effect only from the date of communication of the decision of the board to the concerned member after the approval of the Registrar, as aforesaid, has been duly obtained:

Provided further that the approval or disapproval of the Registrar shall be communicated to the society within a period of six weeks and in the absence of such communication the resolution of the board shall be effective.

Explanation- The power of approval conferred under this rule shall vest in the Registrar exclusively and shall not be capable of being delegated to any other officer."

8. It is an admitted fact that the petitioners, being six members of the Society, have defaulted in payment of their dues towards the apartments allotted to them by the Society and for the time period mandated in the above Rule. Even according to the writ petitioners' own case, the payment was required to be made by them on 26th June 2013 and the Society continued to send reminders

to the petitioners for such payment through 2014 until the show cause issued on 4th May 2015 for payment of the dues within a period of fifteen days. Further, the show cause notice shows that the contents of a letter given by the petitioners to the Society had been discussed at length by the Board at its meeting held on 22nd February 2015 and the petitioners were given a last opportunity to pay the outstanding amounts. The communication dated 20th August 2015 sent by the Society to the petitioners show that a Resolution of the Board of the Co-operative Society had been taken on 27th May 2015 for expelling the petitioners from the Society specifically in view of the default in payment for a continuous period of 18 months and for other activities of the petitioners which were deemed to be contrary to the interest of the other members of the Society. The show cause notice further mentions that the decision of the Board was communicated to the Registrar, Co-operative Societies on 7th July 2015 and after waiting for six weeks as required under Rule 133(1) of the Rules, the petitioners were "now expelled" (words used in the communication) from the primary membership of the Society. We are therefore, satisfied that the requirements of Rule 133 were duly complied with by the Society before making the decision of expulsion, including giving an opportunity of hearing to at least four of them.

9. The second round of hearing took place before the Registrar, Co-operative Societies, West Bengal and there is no dispute that the petitioners appeared before the Registrar on several occasions and filed their written statement. Significantly, on perusing the records, we find that the petitioners did not raise the issue of being deprived of an opportunity of hearing before the Board of the Society. The only issue raised before the Registrar was the excess amount being claimed by the Society.

10. Two further issues which are worth taking note of are that, firstly, the petitioners form less than seventh of the total strength of the Society. In the order impugned before us, the Learned Single Judge found, that as opposed to the petitioners, who had not made any deposit beyond the initial Rs. 3.86 lacs, the other 42 (forty-two) members had already deposited the entire enhanced amount of Rs 24 lacs. The learned Judge was therefore of the view that the Society had faced serious difficulties by reason of the petitioners not putting in the money and directed the petitioners to pay the balance amount within one month for the flats allotted to them. In the interregnum, the respondents were restrained from giving effect to the order of the Registrar and the Principal Secretary, Government of West Bengal; which would revive in the event of a default on the part of the petitioners. Further, by reason of disputes regarding payment having surfaced in 2015 leading to the orders of the Registrar and the Principal Secretary in September 2016 and January 2017 respectively, the project has admittedly been put on hold. Since no objection to the payments, enhanced or otherwise, has been taken by the majority of the Society, we would have to be satisfied that the demand was so grossly unfair or unreasonable, that it warranted putting a stop to the project. In these facts however, we do not find any such patent unreasonableness in the demand made by the Society.

11. In the context of the above findings and on a pure question of fact, we find the direction of the learned Single Judge upon the petitioners to pay the outstanding amount for the flats within a specific time frame to be reasonable and no interference is warranted.

12. It may not be out of place to mention that at the time of reserving the matter for judgment, counsel for the appellants / writ petitioners submitted that his clients were ready to pay the balance amount. We find this submission to be inexplicable; if the petitioners were indeed ready to settle, then why keep the entire Society on hold since 2015 and thereby cause inconvenience to all the other stakeholders?

13. Without speculating further as to the motive of the petitioners" shifting stand, we proceed to hold that the appeal is completely without merit and is liable to be dismissed.

14. The respondent no. 4 / Society, however, is at liberty to furnish a statement of outstanding dues as on the date of the pronouncement of the judgment to the six writ petitioners within a fortnight from date. The six writ petitioners, upon receipt of such statement, may make payment of the balance amount - as reflected in such statement - to the respondent no. 4 / Society within a month thereafter. Upon such payment being made, the appellants / writ petitioners shall be restored to their position as existed before the decision of expulsion, i.e., before the communication dated 20th August, 2015.

15. The appeal is dismissed with the above directions. Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on a priority basis.