
(1988) 11 CAL CK 0007
In the Calcutta High Court
Case No : C.R. No. 2734 (W) of 1978

Sujata Maitra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-11-1988

Acts Referred:

West Bengal Co-operative Societies Act, 1983 — Section 2, 69

Citation : 93 CWN 473

Hon'ble Judges : Mahitosh Majumdar, J

Bench : Single Bench

Advocate : Asoke Lahiri and Prodyut Kumar Nandy, for the Appellant; Biren Chakraborty and K.D. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Mohitosh Mazundar, J.—The writ petitioner impugned the appellate order arising of the award in Dispute Case No. 24/Calcutta of 1975-76 passed by D. K. Sanyal, Arbitrator appointed u/s 86 of Bengal Cooperative Societies Act, 1973 for short (the said Act hereinafter) passed in Appeal No. 29 of 1976 dated December 21, 1976 by Sri S. K. Chatterjee, Judge, West Bengal Cooperative Tribunal. Late Tapan Maitra (for short the said Maitra hereinafter), was a member of Surendra Nath Cooperative Housing Society Limited having its office at No. 238, Manicktolla Main Road, Calcutta. The Writ petitioner is the widow of the said Maitra who was allotted Suite No. 22, unit No.1, by the Managing Committee of the said Society on condition that the total price would be paid by instalments, in August, 1965. Total price of the suite was Rs.23,000/- out of which the said Maitra paid Rs. 16,923.32 during his life time and died on April 15, 1974. Ranjan Kumar Maitra, Respondent No. 3 was nominated by the said deceased. The said nomination in favour of Respondent No. 3 was made by the said Maitra before his marriage.

2. The language of nomination is reproduced below : -

" I also wish to nominate and do hereby nominate my relation name, Sri Ranjan Kumar Maitra, address : - 78, Ashokegarh East, Calcutta-35, age 26 to whom the value of the shares I may be permitted to hold and the profit which may accrue thereon, as also any sum, or sums payable to me, on any account should be paid in the event of my death."

3. On April 15, 1974 the said Maitra died leaving the petitioner as his widow as well as a widowed mother. Consequent upon the death of the said Maitra the petitioner along with widow mother-in-law under the provisions of the law of succession became the heirs, successors and legal representatives of the said Maitra. The allotment of the said Suite No. 22, unit No.1 lying at No. 238, Manicktoila Main Road, Calcutta is for 99 years and in terms of the said agreement entered into between the said Maitra and Respondent No.2. The petitioner after her marriage resided in the said disputed suite and kept all her belongings, furnitures etc. and the same are still lying there. Just after seven days of the death of the said Maitra, Respondent No. 3 made an application to Respondent No. 2 for transferring the shares as well as the flat in his favour.

4. On May 17, 1974 the petitioner also presented an application before the Respondent No.2 for transferring the flat only to her as heirness of the said Maitra. Sometime in June, 1974 the petitioner was compelled to leave the said suite by reason of the ill-treatment meted out to her by Respondent No. 3 and was, further, compelled to stay at her father's place at No. 9, Panchanantoiia Lane, Calcutta. Respondent No. 2 duly received the claims and counter-claims from Respondent No. 3 as also from the petitioner and thereafter Respondent No. 3 transmitted all the relevant papers and records as also claims and counter-claims to the Joint Registrar Cooperative Societies (Law), West Bengal and the Joint Registrar obtained opinion from Sri B., C Chakraborty, the learned Advocate, in the matter of transfer of the disputed Suite No. 22, unit No.1 in the name of the said deceased.

5. B. C. Chakraborty duly gave his opinion. The said opinion is quoted below : -

"I have examined all the papers available in this file and the relevant law in connection with the question raised before me.-

So far I understand from the relevant papers the question raised before me is whether the wife of the Late Tapan Maitra will be the owner of Suite No. 22 of premises No. 238, Manicktoila Main Road, Calcutta or the nominee of the deceased will be the owner of the said flat. In this connection, I have carefully examined the letter dated 24.4.65 addressed to the Chairman, Surendra Nath Co-operative Housing Society Limited by the deceased T. Maitra wherein, the deceased clearly expressed his intention that in the event of his death the value of share and profit which may accrue thereon should be paid to his nominee. As such, I am of the opinion that at best the nominee of the deceased can claim the value of the share and profit accrued thereof, if any.

I have also carefully examined the provisions of sub-section (2) of section 2 of

the West Bengal Co-operative Societies Act, 1973 which provides that when the membership of a member of a Co-operative Society terminates by reason of death or by any other cause, his possession of, and interest in any land held by him under the "Society shall vest in his heir, executor or administrator or in the person, if any nominated by him u/s 69. In view of above, I am inclined to hold that the intention of the legislature is not that the legal heir has no right on the property of the deceased. In my humble opinion, the interpretation of the sub-section should be that the preference should go to the heir."

6. Respondent No. 3 initiated an action u/s 86 of the Bengal Co-operative Societies Act, 1973 Respondent No. 4 was appointed arbitrator for determining the dispute. The Arbitrator embarked upon the adjudication of dispute raised by Respondent No. 3. The petitioner duly appeared before the Arbitrator and made an application for impleading her as a party to the said dispute case and after the petitioner was duly added as a party in the said dispute case, the petitioner also submitted a rejoinder to the claims filed by Respondent No. 3 in the said dispute case.

7. There are various exhibits filed before the Arbitrator by Respondent No. 2 as well as the petitioner and they were examined before the learned Arbitrator and the Exhibit was tendered before the Arbitrator by Respondent No. 3. The petitioner claimed before the learned Arbitrator that she being the heiress of the said Maitra, Respondent No. 3 is not entitled to claim the disputed Suite No. 22, unit No.1 and excepting the petitioner no body else could have any claim. Respondent No. 3 could only claim the share and profit accrued thereon in respect of the share script No. 22. On the basis of nomination as claimed by Respondent No. 3, the petitioner claimed and contended before the learned Arbitrator that the Respondent No. 3 on the basis of nomination could not lodge any claim for Suite No. 22, unit No.1 which had been leased out for the purpose of 99 years, in favour of the said Maitra. Various issues were framed before the Arbitrator and the Arbitrator by an award dated June 18, 1976 held that the claimant i.e., Respondent No. 3 in the dispute case is entitled only to the share held by the said deceased and so far the disputed flat is concerned, only the petitioner alone was only legally entitled as the heiress, successor and legal representative of the said Maitra. Widow mother of the said Maitra did lodge any claim whatsoever.

8. While coming to this findings, the Arbitrator referred to sections 69 and 72 of the said Act, 1973 as well as the Bye-laws of Respondent No. 2. Against the said judgment and order passed by the Arbitrator, Respondent No. 3 preferred an Appeal before Respondent No. 5 being Appeal No. 29 of 1976 and the appeal was duly contested by the petitioner and Respondent Nos. 2 and 3. The learned Tribunal i.e., the Respondent No. 5 on December 21, 1976 allowed the appeal of the claimant i.e., Respondent No. 2 whereby it was ordered that as the claimant, Respondent No. 3, had been nominated in respect of the share and the interest issued by Respondent No. 2 and hence on such transfer of the share and interest

of the said Maitra by Respondent No. 2 and on his being accepted as a member of Respondent No. 2 the disputed" suite No. 22, unit No. 1 should go to the Respondent No. 3, claimant with ail the liabilities in respect thereof left by the said Maitra. It is held by the Tribunal that section 72 of the said Act is not applicable in the facts of the case. The Tribunal further held that Respondent No. 2 adopted section 70 of the said Act and not section 72 as held by the Arbitrator in the said dispute case.

9. The instant writ application was presented before this Court or May 2, 1978 when the Rule was issued and the interim order of injunction was granted in terms of prayer (e). Respondent No. 3 filed affidavit-in-opposition and claimed and contended that the nomination made by the said Maitra in his favour was not only in respect of the share of Respondent No. 3 but also in respect of all interest in his favour and the said nomination was effected in terms of the Provisions of Article 8 of Bye-laws of the Societies Act and section 69 of the said Act.

10. The learned Counsel appearing for the parties filed written argument on June 21, 1988. Affidavit of Respondent No. 3 also referred to section 70 of the said Act, section 70(b) of the said Act and also Article 9 of the Bye-laws of the Society and the said Maitra did not pay Rs.22,936.47, but only paid Rs. 16,923.31. Respondent No. 3 further denied the claim of the writ petitioner and all assertions made by the writ petitioner are effectively dealt with by Respondent No. 3 in the affidavit. Thereafter, the matter was taken up for hearing for a number of days.

11. The writ petitioner raises serious challenge to the stand taken by Respondent No. 3 on the ground that upon the death of the said Maitra, the disputed Suite No. 2, being an immovable property could not devolve upon Respondent No. 3, but devolved upon the heiress in terms of fundamental law of succession. The writ petitioner further claimed the upon the death of the said Maitra, no such claim as is advanced by Respondent No. 3 could be sustained on the ground that upon death of the said Maitra, the petitioner being the widow belonged to Class I heiress and the that of the petitioner cannot be whittled down by referring to the provisions of the West Bengal Co-operative Societies Act, 1973 and/or Bye-laws of the Society.

12. Mr. Ashok Lahiri, the learned Advocate appearing for the petitioner referred to Bye-laws 37(a) of the said Society which provides that every member holding his share in the said society shall be eligible for applying to the Managing Committee to purchase lease, rent, tenancy and other building and structures available for such purchase, lease rent, tenancy etc. by the members. The decision of the Managing Committee in that regard shall be final and binding upon the members. Mr. Lahiri further, referred to By-Jaw 37(b) which states that "A member shall be required to pay the value at Cost, Hire, Rent or Charge as the case may be of the land, flat, apartment, suite and other buildings."

13. Srimati Purnima Moitra widow mother of the said Maitra never claimed her

interest in the suite belonging to her son in her life time and she died on February 14, 1979. Upon her death the petitioner, Srimati Sujata Moitra became the sole heiress to the said Suite No. 22 of the said deceased. It is also claimed by Mr. Lahiri" that the suite cannot be provided by the share held by the said Maitra. The writ petitioner is entitled to the ownership of the suite. The petitioner referred to the judgment of the Supreme Court in case of Sarbari Devi & Anr, v. Usha Devi & Ors, reported in AIR 1984 SC 346. The Supreme Court held that upon the death of a policy holder, the amount payable under the policy became part of his estate which is governed by the Law of Succession and the nominee does not get absolute right of the amount due.

14. Mr. Lahiri also relied on the judgment of this Court in case of Life Insurance Corporation v. United Bank of India & Ors., reported in AIR 1970 Calcutta 513. This Court held that the proceeds of the policy do not vest in the nominee and the nominee has no title to the policy money. Mr. Lahiri while contending, inter alia, that Respondent No. 3 could not make any such claim strenuously argued that under the said Act upon the death of a member, his possession of or interest in any land held by him under the Co-operative Housing Society shall vest in his heir, executor or administrator if such heir, executor or administrator is willing to be admitted as a member of the Cooperative Society, if otherwise eligible. Mr. Lahiri further claimed that the petitioner being the only living heiress of the said Maitra in terms of and in accordance with the provisions of law of succession and the claimant in respect of the said suite in question, the decision of the Tribunal is wholly improper and illegal on the ground that the petitioner could not be divested of her right to hold the suite as the other successor i.e., mother-in-law did not raise any claim for the share in the said suite during her life time and she died in the year 1979. Respondent No. 3 on the strength of the alleged nomination which was effected prior to the marriage of the petitioner with the said Maitra could not claim the right to the said suite.

15. Mr. K. D. Mukherjee appearing for Respondent No. 3 submitted that the said Maitra took a separate flat in tenancy in the latter part of 1972 on the ground floor of the building and moved into the said flat and started living in the said flat with the petitioner leaving him, Respondent No. 3 and his wife in the suite No. 22. Mr. Mukherjee further claimed that the said Maitra lived in the said flat along with the writ petitioner till his death on April 13, 1974. It is, further, claimed that the said Maitra died leaving his widow mother and the petitioner. The petitioner is the sole heiress and Respondent No. 3 is a nominee in respect of his shares and interest in the Society, The said Maitra during his life time did not pay the entire money. Respondent No. 3 being nominee and in possession of the said flat continued to pay the balance due on account of the cost of the flat along with repairing charges, maintenance charges, corporation taxes etc.

16. On April 22, 1974 Respondent No. 3 as nominee of the said Maitra effectively and duly made an application to the Society for transferring the shares along with the said flat No. 22 as nominee of the said Maitra. Similarly, the petitioner

also applied to the said Society for transfer of the suite in her favour as heiress of the said Maitra. The Society referred the claim and the counter claim to the Registrar of Co-operative Societies and the same Was ultimately referred to the lawyer of the Registrar of the Co-operative Society for his opinion.

17. After referring to the said opinion, Mr. Mukherjee claimed and contended that Respondent No. 3 filed a dispute case u/s 86 of the said Act claiming for transfer of the shares and the said flat No. 22 to him u/s 79(i)(a) of the said Act by the Society, as he was the nominee of the said Maitra u/s 69 of the said Act read with Article 8 of the Bye-laws of the Society. Mr. Mukherjee further submitted that Respondent No. 3 being a nominee of the said Maitra was entitled to the shares and interest in the society left by the said Maitra. The writ petitioner u/s 72 of the said Act was entitled to the suite in question. Award of the learned Arbitrator, according to Mr. Mukherjee, was wholly without jurisdiction, Mr. Mukherjee, while in details referring to the judgment of the Tribunal, referred to various provisions of the West Bengal Co-operative Societies Act and Rules framed thereunder. Mr. Mukherjee referred various Bye-laws of the Society. It is also the contention of Mr. Mukherjee that section 72 of the said Act had and has no manner of application. Section 70 of the said Act applies in its full force in the facts and circumstances of this case. Mr. Mukherjee also laid emphasis over section 69 of the said Act. It is also strenuously urged by Mr. Mukherjee that the question involved in the case was not the question of devolution of property by succession under the Hindu law, but the claim and counter claim of the parties are to be decided by the said Act which is a special statute herein.

18. Mr. Mukherjee sought to place reliance on various paragraphs of the writ applications in support of the contention that the shares held by the said Maitra, is not open for any challenge there the entitlement of the Respondent No. 3 as regards the shares became final and no challenge thereto could be made by the petitioner. It is also claimed that the finding of the Tribunal demonstrates the clearest position of law. The said finding would establish that Respondent No. 3 alone could claim the suit property with the shares and membership as made in the Bye-laws of the Society. Mr. Mukherjee sought to distinguish the decision cited by Mr. Lahiri by contending, inter alia, that the decision of the Hon"ble Supreme Court as reported in Sm. Sarbati Devi & Anr, v. Sm. Usha Devi has no manner of application to the instance case, inasmuch as the said decision is confined only to the position of the nominee, vis-a-vis the legal heirs under the Insurance Act (Act IV of 1938) where position of the nominee in respect of Life Insurance Policy is completely different. Section 39 of the said Insurance Act which is the relevant provision has been quoted in paragraph 3 of the said judgment. Sub-section (1) of section 39 of the above mentioned Act lays down that a holder of a policy of Life Insurance on own life may, when effecting the policy or at any time before the policy matures for payment, nominate a person or persons to whom the money secured by the policy shall be paid in the event of his death. In paragraph 12 of the said decision, inter alia, that a mere nomination made u/s 39 of the Act does not have the effect of conferring on the

nominee beneficial interest in the amount payable under the Life Insurance Policy on the death of the assured. The nomination only judicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the Law of Succession governing them.

19. The Court specifically laid down the position of the nominee u/s 39 of the said Insurance Act. Even in the said judgment, the court distinguished between the position of the nominee u/s 39 and the position of the nominee u/s 44(2) of the said Insurance Act. In the said paragraph the court held, inter alia, that the next error committed by the Delhi High Court in *Mrs. Uma Dehgal v. Deoka Prosad Deghro* reported in AIR.1982 Delhi 36 is in drawing an analogy between section 39 and section 44(2) of the Act thinking that the Madras High Court had done so in *B. M. Mumdkur v. Life Insurance* reported in AIR 1977 Mad 72. In *B. M. Mumdkur's* case (Supra), the High Court of Madras instead of drawing an analogy between section 39 and section 44(2) of the Act actually contracts them as can be seen therefrom.

20. Strong reliance placed on various provisions of the West Bengal Co-operative Society Act and the Rules framed thereunder and the Bye-laws of the Society. Mr. Mukherjee in order to justify the finding of the Tribunal sought to distinguish the decision of the Supreme Court. Mr. Lahiri in answer in his reply claimed and contended that excepting what have been referred to by the Arbitrator, the other provisions of the said Act and the Rules and the Bye-laws have had no manner of application. Mr. Lahiri further placed the decision of the Supreme Court in *Sarbati Debi v. Usha Devi* and submitted that the aforesaid decision has and had fullest manner of application in the facts of the case.

21. After considering the facts and circumstances of this case and the rival contention of the parties and the written arguments I am of the view that the member of the Tribunal fell into grave error in misconstruing the provisions of sections 69, 70 and 72 of the said Act. The aforesaid provisions of the said Act are quoted below : -

Section 69 :-

" If the Bye-laws of a Co-operative Society so permit, any member of the society may, in accordance with the rules, nominate a person in whose favour the society shall dispose of the share or interest of such member on his death."

Section 70 :

" (1) When any member of a Co-operative Society dies, his share and interest in the society shall, subject to the provisions of sections 50 and 68 and to the further provisions of this section, be transferred : -

(a) to the person, if any, nominated in accordance with the provisions of section 69; or

(b) if there be no such nominee or, if the existence and residence of such nominee cannot be ascertained by the Managing Committee, or if for any other cause such transfer cannot be made without unreasonable delay, to the person who (subject to the production by him of probate, letters of administration or succession certificate) appears to the Managing Committee to be entitled, in accordance with the rules, to possession of such share or interest as part of the estate of the deceased member; or

(c) on the application of the person referred to in clause (b) without three months of the death of the deceased member, to any person specified in the application."

" (2) If the share or interest of the deceased cannot be legally transferred in accordance with the provisions of sub-section (1) or if the person, to whom the share or interest is payable under that sub-section within one year of the death of the deceased member, claims payment of the value of such share or interest, or if the society in accordance with the rules and Bye-laws decides to proceed according to this sub-section : -

(a) the share shall be transferred to some other person qualified in accordance with the provisions of section 68 to be the transferee of the share, in receipt from such person of the value thereof; and

(b) the value of the share or interest of the deceased member, determined in accordance with the rules, shall be paid to the person nominated in accordance with the provisions of section 69 or to the person appearing to be entitled to possession of such share or interest as aforesaid, after deducting the amount of any sum payable under this act to the society from the estate of the deceased member."

Section 72 :

" Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force : -

(1) A member of a co-operative society, the object of which is the reclamation and colonisation of land or the acquisition of land and the leasing thereof to its members shall not be entitled to transfer his possession of, or interest in, any land held by him under the society, except to the society or with the previous approval of the society given in accordance with its by-laws to a member thereof.

(2) When the membership of a member of a co-operative society specified in clause (1) terminates by reason of his death, expulsion, resignation or insanity or any other cause, his possession of, and interest in, any land held by him under the society shall vest in his heir, executor or administrator or in the person, if any, nominated by him u/s 69, if such heir executor, administrator or person is willing to become a member of the society and is eligible for membership in accordance with the by-laws of the society.

(3) If the heir, executor administrator or person referred to in clause (2) does

not becomes a member of the co-operative society, the possession of and interest in, the land including the structure thereof, if any, of, the deceased, expelled, resigned or insane member shall vest in the society, which shall pay to such heir, executor, administrator or person, as the case may be, a sum equivalent to the value of the land including the structure thereon, if any, as determined in accordance with the rules or the by-law and;

(4) No land held under a co-operative society specified in clause(1) by a member thereof, or vest under clause (2) in the heir, executor or administrator of such member or in any person nominated by such member u/s 69 shall be attachable in any suit or proceeding for the recovery of any debt due to the society or to a member thereof."

22. On a careful scrutiny of the materials on record and also the respective submissions of the learned Counsel appearing for the parties, I am of the view that the court is required to bear in mind that sections 70 and 72 of the said Act could not be construed in such manner as was done by the Tribunal. I find it difficult to hold section 70 of the said Act was intended to act as third party mode of succession provided by the statute. Section 70 as argued by Mr. Mukherjee cannot defeat the provisions of the Hindu Succession Act. The Tribunal while considering the fundamental issues both factually or legally overlooked the language of the aforesaid provisions of the said Act. Nominee cannot be construed in such manner as to frustrate the right of the heir or heirs, section 70 read with section 69 of the said Act, in my view, cannot alter the course of succession under the law. It is not appropriate to treat the nominee as being equivalent to an heir. The member of the Tribunal overlooked the import, scope and effect of the law of the law of Succession. The nominee cannot be treated as equal or equivalent to the heirs, membership between the member and the society being contractual in nature. It is the contractual right which remains vested in the member with reference to the nomination which happens to be effected. Section 70 does not deal with the right to the suite or the property. Nomination in my view, cannot affect the substantive right.

23. On a careful examination of sub-section (2) of section 70 of the said Act I am of the view that the provision cannot be given such a narrow meaning. The said sub-section (2) of section 70, in my view, confers the right upon the petitioner to the said suite. The provisions of the said Act cannot be interpreted in such a narrow compass as is done by the Tribunal. If this court is to accept the finding of the Tribunal, the inescapable conclusion would follow that the intention of the legislature is that the legal heir would forfeit the right to property in complete negation of law of succession on mere nomination.

In the case of Life Insurance Corporation of India v. United Bank of India & Ors., the Court, inter alia, held that the proceeds of the policy do not vest in the nominee and the nominee has no title to the policy money. The impugned act of nomination, in my view, can divest the petitioner of her right to the property left by the said Maitra. I find enough justification for interfering with the judgment of

the Tribunal. The impugned judgment or order is accordingly set aside. Respondent No. 2 is directed to act on the basis of the award made by the Arbitrator. The petitioner is entitled to the property being Suite No. 22 left by the said Maitra. The Respondent No. 2 directed to comply with the award passed by the arbitrator. The petitioner is directed to make payment of a sum of Rs. 1,00,000/- to the Respondent No. 3 within a period of 3 weeks from the date of communication of the letter towards repairing charge maintenance charges and Corporation taxes and expenses incurred by him during all the years. The petitioner shall be entitled to obtain possession of the suite in question within a period of 6 months from date, on such suite being vacated by Respondent No. 3. The petitioner before taking steps in the matter in terms of the directions made hereinbefore shall comply with the said direction.

The application is allowed. There will be no order as to costs.