

CASE NO.:
Appeal (civil) 2638 of 2008

PETITIONER:
Woodburn Park Co-op. Housing Society Ltd

RESPONDENT:
Chanda Devi Tantia and Ors

DATE OF JUDGMENT: 02/04/2008

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO.2638 OF 2005

Dr. ARIJIT PASAYAT, J

1. Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court. A learned Single Judge had allowed the writ petition (C.R. No.3922(W) of 1981) filed by the respondents by setting aside the order dated 23.6.1980 passed by the Deputy Registrar of Co-operative Society. Learned Single Judge had directed allotment of flats made in respect of the Society by the first Managing Committee of the appellant-society or the successor of the Managing Committee and held that the same was to be given effect to. Learned Single Judge further held the appointment of Special Officer to be unnecessary and discharged his appointment. He further directed appointment of an Administrator by the Registrar of Co-operative Society and directed that all the papers were to be handed over to the Administrator. The appeal before the Division Bench was dismissed by the impugned judgment.

2. Background facts in which the dispute arose are as follows:

The East End Apartment Co-operative Housing Society Ltd. (hereinafter referred to as the "Society") owned two plots of land namely premises No.5B, Woodburn Park Road, Calcutta 700020 and 11/1B, Ekdalia Place, Calcutta-700019. The said society wanted to construct two multistoried buildings at the said two plots of land for the residence of its members. The appellants applied for allotment of flats at premises No.5B, Woodburn Park Road. The society had already constructed a multi storied building at 11/1B, Ekdalia Place, Calcutta consisting of 21 flats.

A dispute arose between the members of the society and the Managing Committee and the matter was brought before the High Court. Ultimately on 15th December, 1978 the Appellate Court directed the Registrar of Co-operative Societies to take steps in accordance with the provisions of the West Bengal Co-operative Societies Act, 1973 (in short 'the Act') for division of the assets and liabilities of the Co-operative Society situated at Ekdalia Place and Woodburn Park Road.

Pursuant to the order passed by the Division Bench the Registrar of Cooperative Societies passed a preliminary order

on 5th September, 1979 purporting to divide the assets and liabilities of the society. It is alleged that the Registrar recognized 38 members of Woodburn Park society and the names of some members were not mentioned in the preliminary order. They objected to the non-inclusion of their names and filed their objections but they were not heard and their objections were not disposed of. Therefore, they filed a writ petition. Their grievance was that while preparing the final order no notice was given to them and the final order was passed on 23rd June, 1980. Then on 8th August, 1980 further order was passed by the Deputy Registrar purporting to appoint the Managing Committee of the said Woodburn Society without hearing them and disposing of their objections.

Both the orders were challenged before the High Court by filing the writ petition, which was disposed of in the manner noted above.

In appeal, the Division Bench was of the view that the appeal was without merit and was directed to be dismissed. It was noted by the Division Bench that the learned Single Judge had correctly decided the matter since order dated 23rd June, 1980 was found to be bad and subsequent order dated 8th August, 1980 appointing the Managing Committee cannot survive. If the membership issue had been decided in favour of those persons it was not known what would have been the shape of the Managing Committee. The Registrar was directed to hear the preliminary objections filed by the members in accordance with law to decide who are the members and who are not. After the disposal of the question of membership by the Registrar, the Managing Committee was to be formed in accordance with law. Accordingly, the Division Bench was also of the view that the Managing Committee appointed after 8th August, 1980 had no legal sanction and it was open to the Administrator to take appropriate action in accordance with law.

3. Learned counsel for the appellant submitted that the basic question is whether enquiry can be conducted under Section 77 or 86. To the limited extent as to whether one was a member has to be tested on the question of bifurcation under Section 138. There is a statutory presumption on the basis of entries. If somebody's name is not there, statutory presumption is that he is not a member and audit report is a prima facie evidence for 1979-80 in terms of Section 139. The list of members and the list of shareholders clearly show the number to be 60. The year 1979-80 was the period immediately prior to bifurcation. The total strength of 1979-80 was 124 and the number of shareholders was also 124. In 1978-79 the number was 60.

4. Learned counsel for the respondents supported the orders.

5. There are certain factual aspects involved here. In the writ petition there was no mention about the alleged resignations. The letters of resignation dated 20.8.1976 are on record. There is also no denial of the writing or signatures. Out of 38 who are claimed to have resigned 13 persons filed objection, while rest did not. In the background of the factual position it would be appropriate to set aside the High Court's orders. Let the matter be considered by the Registrar afresh within a period of 6 months. The enquiry will be restricted to decide the question whether there was any resignation and

whether letter of resignation was signed by the objectors and whether the resignation was approved by any resolution and on the question of refund of share money and the effect of refund and acceptance. The Registrar shall also consider the other materials which have relevance so far as resignation is considered. It would be open to the Registrar to call for the records and the documents from the parties within a period of 6 months. There would be no allotment to 13 persons who raised objections until decision is taken by the Registrar.

6. The appeal is disposed of accordingly. No costs.

JUDIS