

CASE NO.:  
Appeal (civil) 1766 of 2002

PETITIONER:  
Supriyo Basu and Ors.

RESPONDENT:  
West Bengal Housing Board and Ors.

DATE OF JUDGMENT: 05/08/2005

BENCH:  
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:  
J U D G M E N T

ARIJIT PASAYAT, J.

Appellants call in question correctness of the judgment rendered by a Division Bench of the Calcutta High Court holding that the writ petition filed by them is not maintainable. Accordingly, it set aside judgment of learned Single Judge who had entertained the writ petition and given some directions.

The dispute related to the allotment of 156 car parking spaces. The appellants who are occupying B Type flats took the stand that the car parking spaces were to be allotted only to them and not to A type flat owners. Questioning the legality of a letter purportedly issued by the Housing Commissioner dated 6th June, 1995 giving certain clarifications about entitlement of A type flat owners a writ petition was filed with a prayer that the letter was without any authority and even if any action has been taken by the respondents-West Bengal Housing Board (hereinafter referred to as the 'Board') and/or Samdrita Co-operative Housing Society Ltd (in short the 'Society') in selling the parking spaces or any issue connected thereto, it was inoperative and invalid. Learned Single Judge accepted the plea overruling the contention raised by the Board/Society and A type flat owners who were parties in the proceedings about maintainability of the writ petition and gave certain directions.

The order of the learned Single Judge was questioned in Letters Patent Appeal before the Division Bench which by the impugned order held that writ petition would not lie against a society and the writ petition was therefore clearly not maintainable as no statutory action has been assailed.

The only question which arose for consideration was whether the covered car parking spaces could be sold to both allottees of A and B type units or to B type unit only. A notice dated 21.5.1995 was issued by the Society proposing to consider and discuss the matter at its Annual General Body Meeting. Members of the Society in question comprised of both type of allottees i.e. A and B type units. The prayer in the writ petition was to declare that the proposed meeting was convened without any authority.

The High Court by the impugned judgment held that a mandamus would lie only if the duty imposed on the respondent-Society is of public nature and the writ of

mandamus could be issued for enforcing compliance with such public duty. Two exceptions as noted by the High Court were: (i) if the rights are purely of a private character and (ii) if the body against which a mandamus is to be issued is purely a private body with no public duty. It was noted by the High Court that the rights claimed by the writ petitioners are purely of private character and the Society is a private body with no public duty, and a writ Court would not embark upon enquiry into disputed questions of title. Accordingly, the writ petition was held to be not maintainable. It was noted that the question whether the letter of the Housing Commissioner was an administrative decision or not was not required to be adjudicated as the writ petition was not maintainable and since he had not adjudicated any dispute before him.

In support of the appeal, learned counsel for the appellants submitted that the High Court has taken a very technical view without realizing that the rights which the writ petitioners wanted to enforce are relatable to a scheme framed by the Board and, therefore, non-observance of the provisions of the scheme amounted to breach of public duty.

According to learned counsel for the respondents the High Court has rightly held that the writ petition was not maintainable and that there was not even semblance of public duty.

The rival stands need consideration on the core issue of maintainability of the writ petition, though several other issues were raised by learned counsel for the appellants. It is undisputed that the respondent-Society is a co-operative society constituted on agreement between members thereof who had agreed to abide by the provisions of the West Bengal Co-operative Societies Act, 1983, the Rules framed thereunder or the bye-laws framed by the Society. The Society is undisputedly not a department of the State and is also not a creature of a statute but merely governed by a statute. Only if it is established that the mandatory provision of a Statute has been violated, a writ petition could be maintainable. Before a party can complain of an infringement of his fundamental right to hold property, he must establish that he has title to that property and if his title itself is in dispute and is the subject matter of adjudication in proceedings legally constituted, he cannot put forward any claim based on the title until as a result of that enquiry he is able to establish his title. It is only thereafter that the question whether the rights in or to that property have been improperly or illegally infringed could arise. The dispute as noted by the High Court essentially related to the claims of two rival groups of private individuals in relation to common car parking spaces. Learned Single Judge gave certain directions, which even touched upon the legality of the sale deeds. It was not open to be dealt with in a writ petition. As observed by this Court in *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors.* (AIR 1999 SC 753) in relation to the question whether a writ petition would lie against a Cooperative Society the question to be considered is what is the nature of the statutory duty placed on it and the Court is to enforce such statutory public duty. The question as to entitlement of the members was to be discussed in the Annual General Body Meeting. The writ petitioners could not have questioned the decision of the Society to discuss the matter in the Annual General Body

Meeting. We, therefore, find no merit in this appeal. The Society is free to convene a General Body Meeting and to discuss the rival claims regarding entitlement. We make it clear that we have not expressed any opinion on that aspect of the matter. The appeal fails, but without any order as to costs.

JUDIS