

Pradip Kumar Biswas Vs. State of West Bengal and ors.

Pradip Kumar Biswas Vs. State of West Bengal and ors.

SooperKanoon Citation : sooperkanoon.com/1162648

Court : Kolkata

Decided On : Aug-12-2014

Judge : I. P. Mukerji

Appellant : Pradip Kumar Biswas

Respondent : State of West Bengal and ors.

Judgement :

T No.293 of 2014 WP No.of 2014 IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION ORIGINAL SIDE Pradip Kumar Biswas
Versus State of West Bengal & ORS.Before: The Hon'ble Justice
I.P.MUKERJ.Date: 12h August 2014 Appearance: Mr.Jishnu Saha, Sr.Advocate
Mr.Raja Basu Chowdhury, Advocate Ms.Sutapa Dutta, Advocate for the petitioners
Mr.Amitesh Banerjee, Advocate for the Board Mr.Subrata Kumar Bose, Advocate
Mr.Rupendra Nath Choudhuri, Advocate for respondent Nos.4, 6 & 8 Mr.Mohit
Gupta, Advocate for respondent No.12 Mr.T.D.

Roy, Advocate Mr.Tilak Mitra, Advocate Mr.Himangshu Ghosh, Advocate
Mr.Tapan Ray, Advocate for respondent Nos.7, 9, 10 & 11 The Court: This writ
concerns the affairs of Rishi Dwaipayan CoOperative Housing Society Limited.

The writ petitioner is the sister of Dr.

Bibha Mukhopadhyay, the twelfth respondent.

She had a flat in the property owned by the cooperative society.

Under the law, she was also a member thereof.

There is provision in the relevant law for transfer of a flat occupied by a member.

It is done by transfer of shares held by the member in the cooperative to the transferee subject to the approval of the Registrar and compliance with some other formalities.

It appears that by a letter dated 15th December 2012 Dr.

Bibha Mukhopadhyay desired to transfer her shares to her brother, the writ petitioner.

A meeting of the board of the society was held on 19th February 2013 where apparently this transfer was approved.

These documents are at pages 111 to 113 of the writ petition.

According to Mr.Saha, learned senior advocate, this decision was taken by the Secretary Smt.

Geeta Mukherjee and Mr.Jalesh Mukherjee, both members of the board.

On 19th June 2014 the Joint Registrar of cooperative societies made a communication to the society inter alia to the effect that in the meeting of the board of the society held on 19th February 2013 there was absence of quorum.

Hence the decision to transfer the flat of Smt.

Bibha Mukhopadhyay to the writ petitioner has no legal status.

The election to the board is scheduled to be held tomorrow.

The writ petitioner wants a stay of this communication and the right to participate in the election which is denied by the Joint Registrar.

Mr.Amitesh Banerjee, learned advocate appearing for the board submitted that the purported decision taken on 19th February 2013 to approve the purported transfer of shares of Dr.

Bibha Mukhopadhyay to the writ petitioner was without quorum.

According to the rules, the board should have six members and the quorum for a meeting is four members.Mr.Subrata Kumar Basu, learned advocate appearing for the society endorsed the submission of Mr.Banerjee.

The writ petitioner was supported by Mr.Roy, learned advocate appearing for seventh, ninth, tenth and eleventh respondents.

Mr.Gupta, learned advocate appearing for the twelfth respondent also supported the writ petitioner.

In my opinion, there is a serious administrative problem in the society.

It comprises of nine members.The board is supposed to comprise of six of these members.According to the records, the disputed transfer of shares of Dr.

Bibha Mukhopadhyay in favour of her brother, the writ petitioner, does not seem to be without bona fide.

It is stated in the letter dated 15th December 2012 that the transfer was being made as Dr.

Mukhopadhyay was frequently residing out of station.

The minutes of the meeting of the members held on 19th February 2013 has mentioned transfer of shares of Dr.

Bibha Mukhopadhyay in favour of the writ petitioner, at the very outset.

The members present at the meeting approved this transfer.

The writ petitioner was not a member of the society.

If a body of the society accords its approval to the transfer of shares, a transferee has every reason to believe that this body had the authority to do so.

About one and half years after this alleged transfer, there is a decision of the Joint Registrar to the effect that the transfer was non est.

What emerges, in my opinion, from this state of affairs is that the administration of this little society is in complete jeopardy.

Whether the transfer in favour of the writ petitioner was at all lawful or not has to be decided in this writ application upon exchange of affidavits.

Perhaps the status of other members of the society would also have to be decided on exchange of affidavits.

In this state of affairs I would not permit one set of persons to participate in elections to the exclusion of another and come to a decision to bind the whole body.

Therefore, tomorrows election to the cooperative society has to be stayed for the time being till the issues are resolved.

I order accordingly.

The affairs of the society will be run by the Registrar of the cooperative societies or any officer designated by him.

The writ petitioner will not transfer, encumber or part with the possession of the flat until further orders of this Court.

Affidavit-in-opposition be filed by 2nd September 2014.

List this application 24th September 2014.

Affidavit-in-reply may be filed in the meantime.

Since the election is tomorrow, leave is granted to the learned advocates for the appearing parties or any of them to communicate a gist of this order, authenticated

by the Assistant Registrar of this Court, to all concerned parties.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(I.P.MUKERJI, J.) R.

Bose AR(CR)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com