

A WOODBURN PARK CO-OP. HOUSING SOCIETY LTD.

v.

CHANDA DEVI TANTIA AND ORS.

(Civil Appeal No.2638 of 2005)

APRIL 2, 2008

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[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

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West Bengal Cooperative Societies Act, 1973 – ss.73, 86, 138, 139 – Cooperative Society – Owning two plots – Construction of building for allotment of flats to members – Dispute between members of Society and Managing Committee – High Court directed Registrar to take steps for division of assets and liabilities – Registrar passed preliminary order – Names of some members not mentioned therein – Objections raised as to non-inclusion of their names – Not disposed of – Order of Deputy Registrar to appoint Managing Committee without hearing objectors and disposing of their objections – High Court held that Managing Committee so appointed had no legal sanction – On appeal, held: High Court's order set aside – Registrar directed to hear preliminary objections – Enquiry would be restricted to fact whether there was any resignation.

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The Society owned two plots in WP Road and EP Road. The said Society desired to construct two multistoried buildings on these plots for residence of its members. Dispute arose between the members of the Society and the Managing Committee and matter came up before the High Court. The High Court directed the Registrar of Co-operative Societies to take steps in terms of provisions of West Bengal Co-operative Societies Act, 1973 for division of the assets and liabilities of the Co-operative Society situated at EP Road and WP Road.

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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 WP 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. 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 WP Society without hearing them and disposing of their objections.

Both the orders were challenged before the High Court by filing the writ petition. Single Judge of High Court 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. He further directed appointment of an Administrator by the Registrar of Co-operative Society.

On appeal, Division Bench held that Single Judge rightly 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

A with law.

In appeal to this Court, appellant contended that whether one was a member has to be tested on the question of bifurcation under s.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 s.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.

Disposing of the appeal, the Court

D Held: 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. The Registrar is directed to consider the matter afresh within a period of 6 months. The enquiry would 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. [Para 5] [1041-G & H; 1042-A, B & C]

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WOODBURN PARK CO-OP. HOUSING SOCIETY LTD. 1039
v. CHANDA DEVI TANTIA AND ORS. [PASAYAT, J.]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. A
2638 of 2005.

From the final Judgment and Order dated 1/8/2002 of the
High Court of Calcutta at Calcutta in F.M.A.T. No. 1971/1984

Pradeep Ghosh, Arun K. Sinha, Atish Ghosh, Sudip Sanyal B
and Rakesh Singh for the Appellant.

Jaideep Gupta, Gaurav Kejriwal, P.C. Sharma, N.P.
Agarwalla, D.N. Ray, Sumita Ray, Manoj Swarup, M/S. Manoj
Swarup & Co., Sangeeta Mandal, M/S. Fox Mandal & Co., Sarad C
Singhania, Pratibha Jain, A. Mariarputham, Aruna Mathur, M/S.
Arputham, Aruna & Co., Jagjit Singh Chhabra, Dharmendra
Kumar Sinha, Rauf Rahim and Atishi Dipankar, for the
Respondents.

The Judgment of the Court was delivered by D

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 E
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 F
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 G
dismissed by the impugned judgment.

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

The East End Apartment Co-operative Housing Society H

A 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
B 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
C 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
D 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
E 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
F 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
G 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.

H 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

- A 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
- B 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
- C 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.

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

D.G.

Appeal disposed of.