

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 171 OF 1999

BIBHUTI B CHAKRAVARTI

Appellant (s)

VERSUS

DY REGISTRAR OF COOP SOC.HOUSING & ORS.

Respondent(s)

(With prayer for interim relief and office report)

WITH
Civil Appeal NO. 172 of 1999
(With office report)

Date: 15/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE A.K. MATHURFor Appellant(s) Mr. V.A. Mohta, Sr. Adv.
In CA 172/99 Mr. Shibashish Misra, Adv.
Mr. Nilakanta Nayak, Adv.
Mr. Jana Kalyan Das, Adv.In CA 171/99 Mr. P.N. Misra, Sr. Adv.
Ms. Kumud Lata Das, Adv.For Respondent(s) Mr. Dipak Bhattacharya, Adv.
Mr. Rana Mukherjee, Adv.
Mr. Siddharth Gautam, Adv.
Mr. Goodwill Indeevar, Adv.UPON hearing counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed order.

(J.S.Rawat)
Court Master(Jasbir Singh)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 171 OF 1999

Bibhuti B. Chakravarti

Appellant (s)

Versus

Dy. Registrar of Cooperative Societies
Housing & Ors.

Respondent (s)

With

Civil Appeal No. 172 of 1999

O R D E R

Mr. Bibhuti Bhushan Chakravarti, his wife and daughter were the original owners of Flat No.5B in the building known as "Urbashi" at 12-C Camec Street, Calcutta 700016. The building is owned by the Urbashi Cooperative Housing Society Limited (hereinafter referred to as "the Society") respondent no.4 herein.

The original owners sought to transfer after receiving full consideration Flat No.5B in favour of Suresh Lal Santuka and his wife Smt. Chanda Devi Santuka. Under Rule 142(3) of The West Bengal Co-Operative Societies Rules 1987 (hereinafter referred to as "the Rules") permission of the Managing Committee of the Society was required to be taken before effecting the transfer. Application filed by the original owners and the transferees for effecting the transfer was

declined by the Managing Committee of the Society, aggrieved against

which the original owners as well as transferees filed an appeal before

the Registrar of the Cooperative Societies, West Bengal. The Deputy

Registrar of the Cooperative Societies exercising the powers of the

Registrar (hereinafter referred to as "the Appellate Authority)" under

the West Bengal Cooperative Societies Act (hereinafter referred to as

"the Act") by his order dated 10th of May, 1993, remitted the matter

back to the Society with the following directions:

"1) The Managing Committee of the society shall call a special General Meeting as per Section 26(1) of the W.B.C.S. Act, 1983, with specific agenda on the proposed transfer of the flat no. 5B from Mr. B.B. Chakraborty and others the existing members in favour of Sri and Smt. Shantuka, the intending transferees, within eight weeks from the date of communication of this order.

2) That the said special General Meeting shall discuss and consider the proposed admission of Sri and Smt. Shantuka into the membership of the society according to law giving the proposed transferees an opportunity to represent their case in such meeting through

a written notice served on them;

3) THAT the special General Meeting shall pass through vote a clear resolution in the matter of acceptance of Sri and Smt. Shantuka as members of the society in place of Mr. B.B. Chakraborty and others and communicate the said resolution to the Appellants and Respondents No.2 and 3 within ten days from the date of such meeting; and

4) That any such resolution, if passed through vote by less than 2/3rd majority of the total number of members of the society for disallowing the membership to Respondents No. 2 & 3, shall be ineffective, and in that case, Respondents No.2 & 3 shall be admitted into the membership of the society in place of the Appellants in terms of Section 70(4) of the W.B.C.S. Act, 1983 read with rule 120(1) of the W.B.C.S. Rules, 1987 on completion of all legal formalities by the proposed transferors and the proposed transferees in this respect."

Aggrieved against the order dated 10th May, 1993, passed by

the Appellate Authority, the original owners filed a writ petition being Matter No. 3059 of 1993 in the High Court of Calcutta. The learned Single Judge while deciding the two legal points, came to the conclusion that the order passed by the Appellate Authority could not be upheld. The learned Single Judge remitted the case back to the Appellate Authority under the Act for a fresh decision, with the following directions:

"With these two clarifications the writ application is disposed of by setting aside the impugned order and remanding the matter back to the Appellate Authority who will decide the issues raised on merits after considering the question of maintainability of the proceeding before him as agreed by the respondent society. The Appellate Authority will dispose of the appeal after giving the parties concerned an opportunity of being heard. He will decide the matter within a period of 8 weeks from the date of communication of the order to him in the light of the observations contained in this judgment."

Aggrieved against the order passed by the learned Single Judge the original owners as well as the transferees filed separate appeals which have been disposed of by the common order passed by the Division Bench, which is under challenge in these appeals.

The Division Bench set aside the order of the learned Single Judge and that of the Appellate Authority dated 10.5.1993, and concluded that the learned Single Judge was not right in remanding the case back to the Appellate Authority.

Counsel for the parties have agreed that the order passed by the Division Bench be set aside and that of the Single Judge restored and suitable directions may be given to the Appellate Authority to

decide the matter at an early date in accordance with law.

In view of the concessions made by the counsel for the parties, the impugned judgment of the Division Bench is set aside and that of the Single Judge is restored. The Appellate Authority is directed to decide the appeal as expeditiously as possible and, in any case, within three months of the receipt / production of a certified copy of this order. Another fact which needs to be mentioned is that this Court on 17th of March, 2004, in order to test the bonafides of the appellants, directed them to bring out the following facts by filing an affidavit duly supported by documents:

- "(i) That the buyers intend to permanently reside in Calcutta;
- (ii) That they wish to use the flat only for the purpose of residence for themselves or their family members and shall not use the same for any other purpose, not even as a guest house;
- (iii) Since 1991 and upto date, if the children of the buyers have taken education in the educational institutions of Calcutta, where are they settled now;
- (iv) Any other fact or document relevant for the purpose of sub-Sections (1) and (9) of Section 89 of the West Bengal Cooperative Societies Act, 1983."

In pursuance of the directions issued by this Court, parties have filed their respective affidavits. The Appellate Authority shall take into consideration the affidavits filed by the parties in this Court, at the time of deciding the appeals.

It goes without saying that the Appellate Authority shall

decide the matter in the above terms, in accordance with law, without

being uninfluenced by any of the findings recorded by the Division

Bench. With these observations, the appeals are disposed of. The

parties are left to bear their own costs.

J.

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(ASHOK BHAN)

New Delhi;

.J.

February 15, 2005.

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(A.K. MATHUR)