

Supreme Court of India

Usha Ranjan Bhattacharjee And ... vs Abinash Chandra Chakraborty And ... on 11 March, 1997

Equivalent citations: JT 1997 (10) SC 356, (1997) 10 SCC 344

Author: G Ray

Bench: G Ray, G Nanavati

ORDER G.N. Ray, J.

1. Leave granted.

2. Heard learned Counsel for the parties. This appeal is directed against the judgment dated 14-2-1996 passed by a Division Bench of the Calcutta High Court in FMAT No. 3326 of 1991. One Ranendra Kumar Acharya, since deceased, was a member of Manicktala Cooperative Housing Society Ltd. situated at 108/B, Manicktala Main Road, Calcutta-54. He was allotted Flat No. K/82 and after payment of the agreed value, the possession of the flat was delivered to Shri Ranendra Kumar Acharya. There is no dispute that Shri Acharya died as a bachelor. It also appears that he made a nomination in favour of the respondent, Abinash Chandra Chakraborty in respect of the said flat.

3. The dispute arose when the Cooperative Society wanted to hand over the possession of the said flat to Shri Chakraborty because the appellants were found in physical possession of the said flat. The case of the appellants was that since Shri Ranendra Kumar Acharya died intestate, they had inherited the said property of Ranendra Kumar Acharya according to the rules of intestate succession under the Hindu Succession Act. The respondent, however, contended that as nomination was made in his favour, the Cooperative Society was under a duty to hand over the possession of the said flat in favour of the respondent. Such dispute ultimately was raised before the Cooperative Tribunal. The Cooperative Tribunal held that there had been a valid nomination in favour of the respondent by the deceased Shri Ranendra Kumar Acharya but the Tribunal held that the question of title to the property was to be adjudicated by an appropriate forum if the parties would approach such forum. Since no direction for handing over the possession of the flat in favour of Shri Abinash Chandra Chakraborty was given, a writ petition was filed before the High Court against the decision of the Cooperative Tribunal. The learned Single Judge disposed of such Writ Petition being CO No. 766 of 1987. The learned Single Judge directed the Cooperative Society to hand over the possession of the said flat in favour of the said Abinash Chandra Chakraborty under Section 70 of the Cooperative Societies Act, 1973. The learned Judge also made observation about the effect of such nomination under the said Act by indicating that in view of such nomination, the party in whose favour valid nomination had been made under Section 69 of the said Act must be held to have acquired title to the property. Such decision of the learned Single Judge was challenged before the Division Bench of the High Court in appeal. By the impugned judgment, the Division Bench has dismissed the appeal and has upheld the decision of the learned Single Judge.

4. In our view, Mr. Amal Ganguli, learned Senior Counsel appearing for the appellants, has rightly contended that within the limited scope of Section 69 and 70 of the West Bengal Cooperative Societies Act, 1973, the Cooperative Tribunal was not required to determine the disputed question of title between the parties in dispute and the High Court had also gone wrong in holding that when a

valid nomination is made, the nominee acquires title to the property in question.

5. Dr. Shanker Ghosh, learned Senior Counsel appearing for the respondent has, however, submitted that the West Bengal Cooperative Societies Act, 1973 is a complete code by itself and since the said Act is applicable notwithstanding anything contained in any other Act, if a rival claim of title to the property is raised, the Cooperative Tribunal is not incompetent to decide such title.

6. We are, however, not inclined to accept such contention of Dr. Ghosh. In our view, within the limited scope of inquiry to be made for determining the question of valid nomination under Section 69, title to the property cannot be determined. In terms of determination of valid nomination the consequential direction for delivery of possession can be given in favour of the person having valid nomination under the provisions of Section 70 of the Cooperative Societies Act. The dispute as to the question of title is not to be decided within the limited scope and ambit of Section 69 and 70 of the cooperative Societies Act. We, therefore, dispose of this appeal by directing that in view of the finding by the Tribunal that the respondent had obtained a valid nomination from the deceased Ranendra Kumar Acharya, the respondent is entitled to get the possession of the said flat in accordance with the provisions of Section 70 of the Cooperative Societies Act. But the dispute as to the title of the said flat should not be held to have been decided either by the Cooperative Tribunal or by the High Court by the impugned judgment. Such question is kept open to be decided by an appropriate forum if such challenge is made before the appropriate forum. This appeal is accordingly disposed of without any order as to costs.