

Civil Revision

PRESENT: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER

Judgement on: 21.05.2010

**C.O. NO. 946 OF 2003
(SRI MANOJIT NAG CHOWDHURY-VS- SAPTAPARNI CO-OPERATIVE HOUSING
SOCIETY & ANR.)**

WITH

**C.O. NO. 952 OF 2003
(BISWANATH GHOSH & ORS. -VS- SAPTAPARNI CO-OPERATIVE HOUSING
SOCIETY & ANR.)**

WITH

**C.O. NO. 953 OF 2003
(DR. CHITTARANJAN MUKHERJEE -VS- SAPTAPARNI CO-OPERATIVE HOUSING
SOCIETY & ANR.)**

WITH

**C.O. NO. 954 OF 2003
(AMIT GHOSH -VS- SAPTAPARNI CO-OPERATIVE HOUSING SOCIETY & ANR.)**

WITH

**C.O. NO. 955 OF 2003
(RANJAN MUKHERJEE & ORS. -VS- SAPTAPARNI CO-OPERATIVE HOUSING
SOCIETY & ANR.)**

WITH

**C.O. NO. 957 OF 2003
(SMT. INDUREKHA CHOWDHURY -VS- SAPTAPARNI CO-OPERATIVE HOUSING
SOCIETY & ANR.)**

Points

DISPUTE – Dispute In respect of allotment of flats and not in respect of title – “Dispute” sought to be raised before the learned arbitrator and subsequently, in appeal, before the learned Tribunal, which passed impugned judgment and order – Whether it could have been at all raised as a “dispute” – Whether the “dispute” raised for the purpose of adjudication before the learned arbitrator, fell within his jurisdiction, competence and domain – When Jurisdiction under Article 227 of the Constitution of India can be exercised – West Bengal Co-operative Societies Act 1983, S 2(20), 95(1) – Constitution of India, Article 227.

FACTS

The subject-matter of challenge in these revisional applications is the impugned judgment and order dated January 17, 2003, passed by the learned members of the West Bengal Co-operative Tribunal in Appeal No. 25 of 1998, affirming the judgment and award dated April 30, 1998, passed by the learned arbitrator.

National Co-operative Housing Society Limited, acquired certain plots of land on 58, Ballygunge Circular Road and caused construction of several multistoried buildings, comprising of several residential flats, community hall, servants’ rooms, car parking space etc. Of the several multistoried buildings, there is one building which has fourteen stories. In this particular building there are seven flats of each floor namely, A, B, C, D, E, F, & G. There are three servant rooms in each floor – one each is marked for A type, C type and G type flats. The A type flat allottees, at the

time of taking possession, took possession of the servant room also. Since 1976, they were possessing the flat along with the servant's room, so also the owners of flat "C" and flat "G".

Five allottees of "B" type flats namely, Mrs. Binita Sen, Smt. Jayasree Ghosh, Smt. Aparna Dasgupta, Smt. Reba Banerjee and Smt. Anjali Bose filed six separate dispute proceedings, being Dispute Case nos. 50/RCS of 1987-88, 51/RCS of 1987-88, 52/RCS of 1987-88, 53/RCS of 1987-88, 54/RCS of 1987-88 and 44/RCS of 1987-88, which culminated in the award dated 30th April, 1998 passed by the learned arbitrator appointed under the provision of the West Bengal Co-operative Societies Act. The operative portion of the award dated 30th April, 1998, reads as follows:-

A w a r d:

- (1) The allotment of the servant room to the defendants who are allottees of A type flats is declared void.
- (2) The defendants shall vacate the servant room within a period of three weeks and hand over quiet possession of the servant rooms to the defendant No.1.
- (3) The defendant No.1 shall there upon allot the servant rooms adjacent to the flats of the plaintiffs within a period of two months after remeasurement in the same manner the defendant No.1 has handed over servant quarter to 'C', 'F' and 'G' type flat allottees.
- (4) If upon remeasurement an amount is payable by the plaintiffs to the defendant No.1 the plaintiffs shall pay such amount to the defendant No.1 before taking possession of the servant rooms in question.

(5) There shall be no order as to costs.”

This award was later challenged before the learned Tribunal which passed the impugned judgment and order dated January 17, 2003, confirming the award of the learned arbitrator.

HELD

A plain reading of the word “dispute”, as defined under section 2(20) of the 1983 Act, makes it clear that it pertains to any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society.

Para 20

The “dispute” raised before the arbitrator was with regard to “allotment” of servant’s quarter and not in respect of “title” and as such the learned arbitrator had competent jurisdiction to adjudicate upon such “dispute” which clearly fell under his domain and authority. In the facts of the instant case, by no stretch of imagination it can be held that the issue of “allotment” of servant’s quarter, as sought to be raised before the learned arbitrator and subsequently in appeal before the learned Tribunal, was **not capable of being the subject of civil litigation** as a “dispute” concerning the “**business of**” or “**relating to the affairs of**” the co-operative society. This is more so, when one merely looks at the interpretation of law on the subject, as enunciated by the Special Bench of this Court in **Anjan Choudhury –vs- Anandaneer Co-operative Registered Housing Society & Ors**. The settled position in law on the subject matter of challenge in the instant proceedings does not provide any scope for this Court to come to a finding that the award of the

learned arbitrator was without jurisdiction. Consequently, the order of the learned Tribunal, being the appellate authority which affirmed the award of the learned arbitrator, is also within jurisdiction.

Para 25

It is well-settled by the Supreme Court of India in several of its pronouncements that jurisdiction of the High Court under Article 227 of the Constitution of India must be sparingly exercised and may be exercised to correct errors of jurisdiction, but not to upset pure findings of facts, which falls within the domain of an appellate court/authority. It is equally well-settled that the supervisory jurisdiction under Article 227 of the Constitution of Indian obliges the High Court to confine itself to the scrutiny of records and proceedings of the lower tribunal. Power under Article 227 of the Constitution of India is one of judicial superintendence which cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no court could ever reach them. The power of the High Court under Article 227 of the Constitution of India casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority so that they do not cross such limits, in order to ensure performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under Article 227, unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals, resulting in grave injustice to any party.

Para 27

CASES CITED

1. State of Namil Nadu –vs- Ramalinga Samigal Madam reported in A.I.R. 1986 S.C. 794 (paragraphs 12 to 15),
2. State of Rajasthan –vs- Harphool Singh (dead) through his LRs reported in (2000) 5 SCC 652 (paragraph 11),
3. Life Insurance Corporation of India –vs- India Automobiles and Co. & Ors. reported in (1990) 4 SCC 286 (paragraph 20),
4. Dr. Kusum Verma & Anr. –vs- Pritam Singh Gulati & Anr. reported in A.I.R. 1998 MP 199(paragraphs 24 and 26).
5. Dhulabhai etc. –vs- State of Madhya Pradesh & Anr. reported in A.I.R. 1969 SC 78,
6. Deccan Merchants Co-operative Bank Ltd. –vs- M/s. Dalichand Jugraj Jain and Ors. reported in A.I.R. 1969 SC 1320 (paragraph 17).
7. Anjan Choudhury –vs- Anandaneer Co-operative Registered Housing Society & Ors. reported in 1990(1) CLJ 345,
8. Smt. Sisirkana Guha & Ors. -vs- The Ayakar Grihanirman Samabaya Samity Limited & Anr. reported in 2008 (4) Indian Civil Cases 185.

Mr. Anupam Chatterjee.....Senior Advocate
 Mr. Tapas Bhattacharya.....Advocate
 Mr. Ashit Chakraborty.....Advocate
 For Petitioners (in C.O. Nos. 946 of 2003, 952 of 2003, 953 of 2003, 954 of 2003,
 955 of 2003 and 957 of 2003)

Mr. Pramit Kumar Roy.....Advocate,
 Ms. Lapita Banerjee.....Advocate,
 Ms. Pompey Basu..... Advocate.
 For Respondents (in C.O. Nos. 953 of 2003, 954 of 2003, 955 of 2003 and 957 of
 2003)

Mr.Kamalendu Ghosh.....Advocate,
 Mr.Raja Ghosh.....Advocate.

.....For Private Respondents

Biswanath Somadder, J. –

THE COURT 1.The common subject-matter of challenge in these revisional applications is the impugned judgment and order dated January 17, 2003, passed by the learned members of the West Bengal Co-operative Tribunal in Appeal No. 25 of 1998, affirming the judgment and award dated April 30, 1998, passed by the learned arbitrator, in Dispute Case Nos. 44/RCS/1987-88, 50/RCS/1987-88, 51/RCS/1987-88, 52/RCS/1987-88, 53/RCS/1987-88 and 54/RCS/1987-88.

2. Briefly stated, the facts are as follows: -

National Co-operative Housing Society Limited, acquired certain plots of land on 58, Ballygunge Circular Road and caused construction of several multistoried buildings, comprising of several residential flats, community hall, servants' rooms, car parking space etc. Such allotments were made as far back as in the year of 1975/76. Thereafter, possession of the flats were given to the members from time to time. Of the several multistoried buildings, there is one building which has fourteen stories. In this particular building there are seven flats of each floor namely, A, B, C, D, E, F, & G. There are three servant rooms in each floor – one each is marked for A type, C type and G type flats. The A type flat allottees, at the time of taking possession, took possession of the servant room also. Since 1976, they were possessing the flat along with the servant's room, so also the owners of flat "C" and flat "G".

Owners of flat "B" was handed over with the possession of their flats in 1976-1977, without servant's room. In 1978, the society, National Co-operative Housing Society Limited, by its circular dated 07.1.1978, indicated the area of the flats, cost of the flats and the status of the servant's room. Later on, the Administrator subjected the entire property to the West Bengal Apartment Ownership Act.

The Society, National Co-operative Housing Society Limited, was later subdivided into two societies, namely, Saptaparni Co-operative Housing Society Limited and Naba Kailash Co-operative Housing Society Limited, by an order contained in the Calcutta Gazette published on July 22, 1985.

Five allottees of “B” type flats namely, Mrs. Binita Sen, Smt. Jayasree Ghosh, Smt. Aparna Dasgupta, Smt. Reba Banerjee and Smt. Anjali Bose filed six separate dispute proceedings, being Dispute Case nos. 50/RCS of 1987-88, 51/RCS of 1987-88, 52/RCS of 1987-88, 53/RCS of 1987-88, 54/RCS of 1987-88 and 44/RCS of 1987-88, which culminated in the award dated 30th April, 1998 passed by the learned arbitrator appointed under the provision of the West Bengal Co-operative Societies Act. The operative portion of the award dated 30th April, 1998, reads as follows:-

A w a r d:

- (6) The allotment of the servant room to the defendants who are allottees of A type flats is declared void.
- (7) The defendants shall vacate the servant room within a period of three weeks and hand over quiet possession of the servant rooms to the defendant No.1.
- (8) The defendant No.1 shall there upon allot the servant rooms adjacent to the flats of the plaintiffs within a period of two months after

remeasurement in the same manner the defendant No.1 has handed over servant quarter to 'C', 'F' and 'G' type flat allottees.

(9) If upon remeasurement an amount is payable by the plaintiffs to the defendant No.1 the plaintiffs shall pay such amount to the defendant No.1 before taking possession of the servant rooms in question.

(10) There shall be no order as to costs."

3. This award was later challenged before the learned Tribunal which passed the impugned judgment and order dated January 17, 2003, confirming the award of the learned arbitrator.

4. It has been submitted by the learned senior advocate appearing on behalf of the petitioners that the proceedings prescribed under the provisions of the West Bengal Co-operative Societies Act is a summary procedure restricted to determination of the business or affairs of the society. An arbitrator appointed to adjudicate disputes raised under the provisions of the West Bengal Co-operative Societies Act has, therefore, an authority of limited jurisdiction. Such an authority does not have any power to declare title to an immovable property. The learned Tribunal proceeded on the basis of the relief granted in the award which was under appeal. Jurisdiction of an authority is to be ascertained and exercised not on the basis of the relief granted or to be granted, but on the authority of the relief prayed for in the pleadings. In this context, learned senior advocate for the petitioners has referred to the following judgments: -

9. State of Namil Nadu –vs- Ramalinga Samigal Madam reported in A.I.R. 1986 S.C. 794 (paragraphs 12 to 15),

10. **State of Rajasthan –vs- Harphool Singh (dead) through his LRs reported in (2000) 5 SCC 652 (paragraph 11),**
11. **Life Insurance Corporation of India –vs- India Automobiles and Co. & Ors. reported in (1990) 4 SCC 286 (paragraph 20),**
12. **Dr. Kusum Verma & Anr. –vs- Pritam Singh Gulati & Anr. reported in A.I.R. 1998 MP 199(paragraphs 24 and 26).**

5.He further submitted that the dispute was really a dispute between a member and another member with regard to their respective rights over the servant's room and such dispute was neither the business nor the affairs of the Society. In support of this submission, he relied on following judgments: -

1. **Dhulabhai etc. –vs- State of Madhya Pradesh & Anr. reported in A.I.R. 1969 SC 78,**
2. **Deccan Merchants Co-operative Bank Ltd. –vs- M/s. Dalichand Jugraj Jain and Ors. reported in A.I.R. 1969 SC 1320 (paragraph 17).**

6.He submitted that National Co-operative Housing Society Limited was divided into two Societies by an order passed under section 19 read with section 20 of the West Bengal Co-operative Societies Act, 1983. When a Co-operative Housing Society is divided by an order of the Registrar, the order becomes final if no appeal is preferred. Here no appeal had been preferred by any one including the plaintiffs/respondents and, therefore, the order became final and binding. He, thus,

submitted that the areas of the “A” type flats, as indicated in the order, which included servant’s room, became final and binding upon all including the plaintiffs.

7. He further submitted that certain important documents were never taken into consideration by the learned Tribunal and the learned Tribunal failed to exercise its jurisdiction by not considering relevant facts, which, if considered, would have changed the verdict. He also submitted that the relevant law was not considered by the learned Tribunal.

8. Referring to one of the dispute cases (Dispute Case No. 52/RCS of 1997-98), he contended that the possession of the flat-in-question was handed over to the plaintiff in the said dispute case on 07th February, 1977, and she was not in the possession of the servant’s room. She did not raise the question of her alleged entitlement. Therefore, the cause of action arose on 07th February, 1977, under the relevant provision of the West Bengal Co-operative Societies Act and the dispute should have been raised within one month from that date. That right got extinguished in view of the provisions of section 27 of the Limitation Act, 1963. Once the right to sue stood extinguished, there was no provision either in the West Bengal Co-operative Societies Act or in the Limitation Act to revive that right.

9. With reference to another dispute case (Dispute Case No. 44/RCS of 1997-98), he submitted that exchange of correspondences inter parties did not and could not extend the period of limitation. He further submitted that from the documents and correspondences placed before the learned arbitrator it would be clear that the order of Deputy Registrar of the Co-operative Directorate, Calcutta Metropolitan Housing Cell, Government of West Bengal, dated 19th July,

1985, which was published in The Calcutta Gazette on 22nd July, 1985, had attended its finality and the learned Tribunal failed to take note of this document as well as other documents and as such, the learned Tribunal's findings, while upholding the award of the arbitrator, was contrary to record and perverse. In such circumstances, he submitted that the impugned judgment and order dated January 17, 2003, passed by the learned members of the West Bengal Co-operative Tribunal be set aside.

10. On the other hand, learned advocate representing the private respondents in C.O. Nos. 953, 954, 955 and 957 of 2003, submitted that the impugned judgment and order dated January 17, 2003, has been passed by a Tribunal of competent jurisdiction and this Court, while exercising its power under Article 227 of the Constitution of India, ought not to interfere with the same.

11. With regard to the main issue which has been raised by the petitioners that the authority of the Arbitrator under the provisions of the West Bengal Co-operative Societies Act was of a limited jurisdiction and that the Arbitrator did not have power to declare title of an immovable property, the learned advocate submitted that the issue which was raised before the learned arbitrator fell squarely within the term, "dispute" as defined under section 2(q) of the West Bengal Co-operative Societies Act, 1973 and section 2(20) of the West Bengal Co-operative Societies Act, 1983 and included any matter capable of being subject of a civil litigation. In this context, he relied on a Special Bench judgment of this Court in the case of **Anjan Choudhury –vs- Anandaneer Co-operative Registered Housing Society & Ors.** reported in **1990(1) CLJ 345**, as also a latter Division Bench judgment of this Court in the case of **Smt. Sisirkana Guha & Ors. -vs- The**

Ayakar Grihanirman Samabaya Samity Limited & Anr. reported in 2008 (4) Indian Civil Cases 185.

12.He submitted that the contention of the petitioners that dispute between two members of a society is a private dispute and would therefore be outside the domain of the Arbitrator does not stand to reason in view of the statutory definition of the term, 'dispute', as stated above. He submitted that the Registrar had jurisdiction to decide a 'dispute', where parties to such 'dispute' were members of the co-operative society, as provided under the provisions of the 1973 Act as well as the 1983 Act.

13.With regard to the issue raised by the petitioners that the dispute was barred by limitation, learned advocate submitted that the petitioners relied upon a resolution dated 03rd April, 1976, which was never communicated to the private respondents/opposite parties. The said resolution was communicated/disclosed for the first time by the Society by a letter dated 06th February, 1988. He further submitted that the dispute was filed within time, i.e., within two months from the date of communication of the letter dated 06th February, 1988, of the Managing Committee of the Society, as per section 95 of the West Bengal Co-operative Societies Act, 1983. He further submitted that, in any event, under section 95(3) of the West Bengal Co-operative Societies Act, 1983, the Registrar has power to condone delay in the event of delay.

14.He also submitted that under Article 65, Schedule I of the Limitation Act, 1963, the period of limitation prescribed for possession of immovable property or any interest therein based on title is twelve years; when the possession of the defendant becomes adverse to the plaintiff. He

submitted that “common area” and “facilities” are enumerated in Schedule III of the agreement between the Co-operative Housing Society and the Purchaser and the said Schedule does not indicate servant’s quarter as a “common facility” and in the purported resolution dated 03rd April, 1976, the term used was, “offer”/“allot”. The term, “allot”, in respect of servant’s room has also been used by the petitioners in the instant applications under Article 227 of the Constitution of India. He, thus, submitted that the issue before the learned arbitrator was with regard to “allotment” of servant’s quarter and not title to an immovable property, as sought to be contended by the petitioners.

15. With regard to the contention that the Gazette Notification dated 22nd July, 1985 had not been challenged and had, therefore, reached finality, learned advocate for the private respondents submitted that this point has been specifically dealt with by the learned Tribunal in its judgment and order dated 17th January, 2003.

16. He further submitted that neither the Society nor the petitioners could produce a resolution book of the Annual General Meeting containing the purported resolution dated 03rd April, 1976. The report of inspection conducted by the Joint Registrar revealed that no Annual General Meeting was held on 03rd April, 1976, and therefore the question of any purported resolution on that date did not and could not arise.

17. He also drew this Court’s attention to the stand taken by the Saptaparni Co-operative Housing Society Limited in their written statement filed before the learned arbitrator. He submitted that in that written statement, Saptaparni Co-operative Housing Society Limited, made a prayer

before the Registrar for a judicious decision as to the entitlement of the disputed servant's quarter. He further submitted that it would appear that Saptarni Co-operative Housing Society Limited was not aggrieved by the award of the learned arbitrator dated 30th April, 1998 or the impugned judgment and order dated 17th January, 2003, passed by the learned Tribunal, since the said Co-operative Housing Society did not prefer any revisional application before this Court. He, thereafter, proceeded to distinguish the judgments cited by the learned senior advocate for the petitioners and submitted that the revisional applications ought to be dismissed by this Court, in the facts and circumstances of the case.

18. After considering the submissions made by the learned advocates for the parties and upon perusing the revisional applications, the award of the learned arbitrator dated April 30, 1998, and the impugned judgment and order dated January 17, 2003, passed by the learned Tribunal affirming the said award, it appears that the immediate issue that requires to be taken up for consideration is whether the "dispute" sought to be raised before the learned arbitrator and subsequently, in appeal before the learned Tribunal, which passed the impugned judgment and order, could have been at all raised as a "dispute", as statutorily defined under the relevant provisions of the West Bengal Co-operative Societies Act.

19. In the opinion of this Court, the judgment and order of the Special Bench of this Court rendered in **Anjan Choudhury** (supra) gives a direct answer to this issue. In the said judgment, both, the 1973 Act as well as the 1983 Act, were taken into consideration and the Court in paragraphs no. 7, 8 and 9 of the said judgment observed as follows: -

“As we have already noted, any “dispute” required to be referred to the Registrar under S. 86(1) of the Old or S. 95(1) of the New Act, would go out of the jurisdiction of the Civil Courts because of S. 132(2) of the Old and S. 134(2) of the New Act. The expression “dispute” has been defined in S. 2(20) of the New Act as “any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society”. The definition as in S.2(q) of the Old Act was also the same, but for the addition of the words “whether such claim be admitted or not” at the end, which probably makes no difference and surely no difference for our present purpose.

Having defined the term “dispute” as “any matter capable of being the subject of civil litigation”, user of those very words purporting to qualify the expression “dispute” in S.95(1) of the New Act is obviously sheer tautology. But enactment of good law is good enough, even if the language may lack precision. Be that as it may, what must go to the Registrar under S.95(1), and would go out of bounds of the Civil Courts, is a “dispute” which is “concerning” the “business of” or “is relating to the affairs of” a co-operative society. The expressions “concerning” and “relating” and the expressions “business” and “affairs” may sound synonymous and reference to the Lexicon may also go to support such an impression. Tautology again? We do not think so.

Anything concerning the business of a co-operative society is a matter relating to the affairs of the society. But everything relating to the affairs of the

society may not be concerning the business of that society. Lending money to its members is obviously the business as well as the affairs of a “Co-operative Credit Society” as defined in S.2(p) of the Act of 1973 and S.2(17) of the Act of 1983. Providing its members with residential accommodation is obviously the business as well as the affairs of a “Co-operative Housing Society” as defined in S. 2(18) of the Act of 1983. But any dispute relating to the appointment or termination of service of any of the officers or employees of the society or any dispute relating to the holding or not holding the statutory meetings would be one relating to the affairs of the society, but not necessarily concerning its business. From that point of view, even though the two expressions business and affairs may very often be used synonymously, the expression affairs has a wider connotation or import than the expression business. As we have already indicated, disputes relating to the constitution of the society, or the election of its office-bearers, or the conduct of its general meeting and the like are obviously disputes relating to the affairs of the society, but may not be disputes concerning concerning the business of the society, where the business of the society, as per its Rules and By-laws, consists of, say, lending money to its members as in the case of Co-operative Credit Society, or providing accommodations to its members, as in the case of a Co-operative Housing Society.”

20.A plain reading of the word “dispute”, as defined under section 2(20) of the 1983 Act, makes it clear that it pertains to any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society. However, this

definition is qualified and circumscribed by section 95(1) of the West Bengal Co-operative Societies Act, 1983. As held by the Special Bench of this Court in **Anjan Choudhury** (supra) what must go to the Registrar under section 95(1), and would go out of bounds of the Civil Courts, is a “dispute” which is “**concerning**” the “**business of**” or “**is relating to the affairs of**” a co-operative society. Therefore, in the given facts, what now falls for consideration is whether the “dispute” raised before the arbitrator was a matter capable of being the subject of civil litigation “**concerning**” the “**business of**” or “**was related to the affairs of**” the co-operative society. In other words, the only issue in the instant case is whether the “dispute” raised for the purpose of adjudication before the learned arbitrator, fell within his jurisdiction, competence and domain.

21. In order to find an answer, it is necessary to advert to the issues raised before the learned arbitrator, which are as follows: -

22. Before the learned arbitrator the issues raised were as follows: -

1. Whether the Arbitrator has jurisdiction ?
2. Is there any cause of action for the dispute ?
3. Is the dispute barred by limitation ?
4. Is the dispute barred by acquiescence ?
5. Was the allotment of flat and servant room made by National Cooperative Housing Society in accordance with law ?
6. If not, whether such allotment was made according to the building plan ?
7. Whether the plaintiff has paid for the servant room ?

8. If not whether the defendant has paid the servant room ?
9. Was the plaintiff put in possession of the servant room ?
10. Is the defendant enjoying the servant room lawfully ?
11. Whether the plaintiff is entitled to any relief ?

23.It would be clear from the above that apart from issues relating to jurisdiction, cause of action and limitation, the other issues raised before the learned arbitrator were not in respect of title, but in respect of “allotment” of flat and servant room. The learned arbitrator himself was conscious of his limited jurisdiction and that did not have power to declare title in respect of an immovable property. In this regard, it may be pertinent to cull out certain observations made by the learned arbitrator in his award, which reads as follows: -

“Sri K.D.Mukherjee, Ld. Advocate for the plaintiff submits that the issue is not determination of right title or interest alone. The issue involved is the right to possess the servant quarter which is illegally being occupied by the defendant no.2.

I am inclined to agree with Mr. Mukherjee on this issue. It is correct that the question of right title or interest cannot be determined by the Arbitrator within the ambit of Section 79 and Section 80 of the W.B.C.S. Act, 1983, because such issues can be decided by a Court of contempt jurisdiction. But the primary issue here is not determination of right title and/or interest within the ambit of Section 79 or 80 of the W.B.C.S. Act, 1983. The main issue is whether the plaintiff has been wrongfully disposed/denied allotment of the flat in question. Hence I hold that this Court has jurisdiction to decide the issues.”

24. Thus, the contention of the learned senior advocate for the petitioners that the arbitrator had limited jurisdiction and authority and did not have power to declare “title” in respect of an immovable property is not at all relevant in the given facts of the instant case.

25. The contention of the learned senior advocate for the petitioners that the learned Tribunal proceeded on the basis of the relief granted in the award, which was under appeal, and not on the authority of the relief prayed for in the pleadings also does not merit any consideration in view of the fact that the issue relating to “allotment” of servant’s quarter fell squarely within the compass of the statutory definition of the word, “dispute”, both under the old Act of 1973 as well as under the new Act of 1983, as interpreted by the Special Bench of this Court in **Anjan Choudhury** (supra). As observed hereinabove, it is clear that the “dispute” raised before the arbitrator was with regard to “allotment” of servant’s quarter and not in respect of “title” and as such the learned arbitrator had competent jurisdiction to adjudicate upon such “dispute” which clearly fell under his domain and authority. In the facts of the instant case, by no stretch of imagination it can be held that the issue of “allotment” of servant’s quarter, as sought to be raised before the learned arbitrator and subsequently in appeal before the learned Tribunal, was **not capable of being the subject of civil litigation** as a “dispute” concerning the “business of” or “relating to the affairs of” the co-operative society. This is more so, when one merely looks at the interpretation of law on the subject, as enunciated by the Special Bench of this Court in **Anjan Choudhury** (supra). The settled position in law on the subject matter of challenge in the instant proceedings does not provide any scope for this Court to come to a finding that the award of the learned arbitrator was without jurisdiction. Consequently, the order of the learned Tribunal, being the appellate authority which affirmed the award of the learned arbitrator, is also within jurisdiction. Therefore, the decisions on

the point of limited authority of the arbitrator, cited by the learned senior advocate for the petitioners, are clearly not applicable in the facts and circumstances of the instant case. Similarly, the judgments of the Supreme Court rendered in **Dhulabhai etc. –vs- State of Madhya Pradesh & Anr.** reported in **A.I.R. 1969 SC 78** and **Deccan Merchants Co-operative Bank Ltd. –vs- M/s. Dalichand Jugraj Jain and Ors.** reported in **A.I.R. 1969 SC 1320 (paragraph 17)** are inapplicable in the facts of the instant case.

26. At this juncture it may not be out of place to refer to the pleadings in the revisional applications filed before this Court. In paragraph 7 of each of the revisional applications it has been specifically stated that a Title Suit No. 30 of 1980, relating to the servant's room, was instituted before the learned Munsif, 2nd Court at Alipore, Calcutta, which was subsequently dismissed on the ground of want of jurisdiction. An appeal preferred therefrom was also subsequently dismissed in the year 1984. Therefore, it is clear that the civil court had declined to entertain, try and determine the "dispute" sought to be raised before it, for want of jurisdiction.

27. It is well-settled by the Supreme Court of India in several of its pronouncements that jurisdiction of the High Court under Article 227 of the Constitution of India must be sparingly exercised and may be exercised to correct errors of jurisdiction, but not to upset pure findings of facts, which falls within the domain of an appellate court/authority. It is equally well-settled that the supervisory jurisdiction under Article 227 of the Constitution of Indian obliges the High Court to confine itself to the scrutiny of records and proceedings of the lower tribunal. Power under Article 227 of the Constitution of India is one of judicial superintendence which cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so

perverse or so unreasonable that no court could ever reach them. The power of the High Court under Article 227 of the Constitution of India casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority so that they do not cross such limits, in order to ensure performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under Article 227, unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals, resulting in grave injustice to any party.

28. In view of the settled position of law as enumerated above and for reasons discussed hereinbefore, the impugned judgment and order passed by the learned Tribunal affirming the award of the learned arbitrator exercising competent jurisdiction under the provisions of the Co-operative Societies Act does not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

29. All the revisional applications are thus all liable to be dismissed and is hereby dismissed.

(Biswanath Somadder, J.)