

**(1987) 07 KL CK 0046**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 214 of 1986**

A and E Inspector, Asstt. Registrar's Office, Udumbanchola  
and Others

APPELLANT

Vs

Antony Varghese and Others

RESPONDENT

**Date of Decision :** 03-07-1987

**Acts Referred:**

**Citation :** AIR 1988 Ker 115

**Hon'ble Judges :** V.S. Malimath, C.J.;V. Bhaskaran Nambiar, J

**Bench :** Division Bench

**Advocate :** Govt. Pleader, for the Appellant; Thampan Thomas and P.H. Sankaranarayana Iyer, for the Respondent

**Final Decision :** Allowed

## Judgement

Malimath, C.J.—This appeal is by the original respondents 1, 2 and 4, against the judgment of the learned single Judge in O.P. No. 76 of 1984 (reported in 1986 Ker LT 274). Respondent 1 is a member of Respondent 2 society, registered under the Kerala Co-operative Societies Act, 1969, (hereinafter referred to as the Act.) Respondent 1 had obtained a loan from the society by mortgaging his immovable properties. On the ground that the loan was not discharged, the Society raised a dispute and referred the same before the 2nd appellant, the Assistant Registrar of Cooperative Societies, Nedumkandam. The Assistant Registrar to whom the dispute was referred, transferred it for disposal to the 3rd appellant, the Inspector of Co-operative Societies, Udumbanchola Unit A, u/s 70(1)(c) of the Act, which empowers the Registrar to refer the dispute for disposal to an Arbitrator appointed by the Registrar. The Arbitrator after due notice to the parties made an award on 16-3-1982. Respondent 1 did not challenge the same before the appellate authority and allowed the award to become final. It was when the award was put in execution and revenue recovery proceedings were set in motion for that purpose, that he invoked the jurisdiction of this Court under Article 226 of the Constitution and filed O.P. No. 76 of 1984.

Though he has challenged the proceedings and the notices of demand and the revenue recovery proceedings, he has not challenged the award in pursuance of which action was taken to execute. He has also not produced the award made by the Arbitrator. He has taken the stand that the Arbitrator had no jurisdiction and that therefore the award made by an authority which has no jurisdiction is void and therefore not executable.

2. The learned single Judge has by his judgment dt. 17-12-1985 allowed the Original Petition (since reported in 1986 Ker LT 274) and declared that the award made by the 3rd appellant is without jurisdiction and hence non est. He further declared that the proceedings initiated for recovery of the amounts under the said award are equally unenforceable and quashed Exts. P6, P7 and P8. There is a further direction that the Assistant Registrar of Co-operative Societies shall take up the case on its file and dispose of the same after affording the parties an opportunity of being heard and in accordance with law expeditiously. It is the said judgment that is challenged by the appellants in this appeal.

3. It is however necessary to notice one more fact, namely, that with a view to avoid further complications Section 70 has since been amended by Act 29 of 1986 by adding the following proviso to Section 70(1) :

"Provided that a transfer under Clause (b) or a reference under Clause (c) shall not be made to a person equal or superior to him in rank."

In pursuance of the direction of the learned single Judge, the Assistant Registrar of Cooperative Societies, Nedumkandam, the 2nd appellant, has made a fresh award on 11-11-1986.

4. Section 70(1) of the Act, which is relevant for the purpose of disposal of this case may be extracted :

"70. Decision and award on disputes : -- (1) The Registrar may, on receipt of the reference of a dispute u/s 69, --

(a) elect to decide the dispute himself; or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or

(c) refer it for disposal to an Arbitrator appointed by the Registrar."

5. The learned single Judge has taken the view that the power of referring a dispute for disposal to an Arbitrator could be exercised only by the Registrar appointed under Sub-section (1) of Section 3 of the Act. Sub-section (2) of Section 3 empowers the State Government to confer by general or special order on any person all or any of the powers of the Registrar under the Act. The expression "Registrar" has been defined in Section 2(p) to mean "the Registrar of Co-operative Societies appointed under Sub-section (1) of Section 3 and includes any person on whom all or any of the powers of the Registrar under this Act are conferred." It is in exercise of the powers conferred by Sub-section (2) of

Section 3 that the powers conferred on the Registrar by Section 70 of the Act have been conferred on the Additional Registrar, Joint Registrars, Deputy Registrars and Assistant Registrar. Thus so far as power u/s 70 is concerned, the same can be exercised by the Registrar, Additional Registrar, Joint Registrars, Deputy Registrars and Assistant Registrars. What the learned single Judge has held is that the power conferred by Section 70(1)(c) of the Act can be exercised only by the Registrar appointed u/s 3(1) of the Act. The only reason given by the learned single Judge for coming to this conclusion is that the context requires the expression "Registrar" to be understood as a person appointed u/s 3(1) and not on whom power has been conferred by the State Government u/s 3(2) of the Act. The learned single Judge has held that if the expression "Registrar" occurring in Section 70(1)(c) of the Act, includes Assistant Registrar on whom power has been conferred u/s 70, he would then be entitled to refer to or transfer the dispute for disposal to an authority superior to himself such as Deputy Registrar, Joint Registrar or Additional Registrar or the Registrar himself. If this is what the Assistant Registrar can do, it is obvious, it would lead to absurd result of empowering a subordinate officer to call upon the superior officer to decide the dispute referred by him. That would be clearly against the proper discipline and hierarchy between persons holding superior offices and those holding inferior offices.

6. But it was contended by the learned counsel for the appellant that there is no justification for the inference drawn by the learned single Judge that the Assistant Registrar who has been conferred with the power u/s 70(1)(c) of the Act is entitled to refer the dispute to an officer superior in rank to himself functioning under the Cooperative Societies Act. What has been conferred by Section 70(1)(c) of the Act is power to refer the dispute for disposal to an Arbitrator appointed by the Registrar. The Assistant Registrar has to function within the territorial limits for which he has been appointed as the Assistant Registrar, vide Circular No. 49/75 dt. 5th July, 1975. That itself is a limiting factor justifying the inference that it will not be competent to refer the dispute to an officer superior in rank than himself. The very nature of the power that has been conferred by Section 70(1) of the Act brings in an in-built limitation in regard to the exercise of the power by the Assistant Registrar. The Assistant Registrar being an officer inferior to Registrar, Additional Registrar, Joint Registrars and Deputy Registrars cannot arrogate to himself the power to refer a dispute to those officers who are superior to him in the hierarchy of posts in the department. Besides it is necessary to point out that all those superior officers, namely, the Deputy Registrars, Joint Registrars and the Additional Registrar being "Registrar" as defined in Section 2(p) of the Act, would be entitled to exercise the very same power conferred by Section(sic) of the Act. If the Assistant Registrar proposes to refer a dispute to the Deputy Registrar, the Deputy Registrar in turn can call upon the Assistant Registrar to dispose of the dispute. This is a limitation on the power of the Assistant Registrar as he cannot successfully call upon his own superior officer to decide the dispute as that

superior officer has a right to call upon the inferior officer to decide the dispute. This, in our opinion, is an in-built limitation on the exercise of power by the inferior officer. He cannot therefore arrogate to himself the power to refer the dispute to an officer superior in rank than himself. It is obvious having regard to the language and content of the power that the Assistant Registrar can exercise on conferment of power u/s 70(1)(c) of the Act, that only an officer not superior in rank than himself can be directed to dispose of the dispute referred to him. We have therefore no hesitation in taking the view that there are no good reasons as to why the Assistant Registrar to whom the power u/s 70 of the Act has been conferred cannot be regarded as a Registrar for the purpose of Section 70(1)(b) and (c) of the Act, as he answers the definition of Registrar in Section 2(p) of the Act. There is nothing in the context to take the view that the Registrar contemplated under Section 70(1) is only a Registrar appointed u/s 3(1) of the Act.

7. The view which we have taken receives full support from the pronouncement of the Supreme Court in the decision reported in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, Section 48(2) of the Bihar and Orissa Co-operative Societies Act which is analogous to Section 70(1) of the Act, says that the Registrar may on receipt of such reference (a) decide the dispute himself, or (b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf, or (c) subject to any rules refer it for disposal to an arbitrator or arbitrators. Section 6 of the said Act is analogous to Section 3 of the Act and Section 2(1) of the said Act which defines "Registrar" is analogous to Section 2(p) of the Act. Construing these provisions, the Supreme Court has pointed out in Para.20 of the judgment and that the Assistant Registrar who has been clothed with the powers of the Registrar had all the powers of the Registrar having regard to the application made in his favour and that he was competent to dispose of the dispute referred to him in the same manner as the Registrar would have done. We have therefore no hesitation in taking the view that the Assistant Registrar on whom power u/s 70(1) has been conferred is fully competent to refer the dispute u/s 70(1)(c) of the Act to an arbitrator appointed by him. In the light of the conclusion which we have arrived at, disagreeing with the view taken by the learned single Judge, it follows that the original petition is liable to be dismissed. The subsequent award made in pursuance of the direction issued by the learned single Judge dt. 11-11-1986 must therefore be regarded as void. The award made by the 3rd appellant has become final and conclusive, the same not having been challenged by the first respondent either by way of appeal or in the original proceedings. Hence it follows that the award made by the 3rd appellant has become final and conclusive. The authorities were therefore entitled to execute the same by initiating appropriate revenue recovery proceedings for that purpose. Hence the original petition filed by the 1st respondent is liable to fail.

8. For the reasons stated above, the appeal is allowed, the judgment of the learned single Judge is set aside and the original petition is dismissed with costs.

Advocate"s fee Rs. 500/-.