

**(1985) 12 KL CK 0021**  
**In the High Court Of Kerala**  
**Case No : O. P. No. 76 of 1984**

Antony Varghese

APPELLANT

Vs

A and E Inspector and Others

RESPONDENT

**Date of Decision :** 17-12-1985

**Acts Referred:**

Kerala Co-operative Societies Act, 1969 — Section 70

**Citation :** (1986) 23 KLJ 94

**Hon'ble Judges :** K.P. Radhakrishna Menon, J

**Bench :** Single Bench

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

**Final Decision :** Allowed

## Judgement

K. P. Radhakrishna Menon, J.—The petitioner is a member of the Kattappana Rural Housing Society, a society registered under the Kerala Co-operative Societies Act, 1969, for short the Act. The Society has been advancing loans to agriculturists within the area of its operation for the purpose of constructing houses. The petitioner was given a loan of Rs. 13,500/- on his mortgaging his immovable property, measuring 2 acres 96 cents in extent as evidenced by Ext. P1. As per the bond executed by the petitioner, the loan advance should be repaid in half yearly instalments of Rs 675/- per instalment; and that in case default is committed in paying the instalments, the petitioner is liable to pay an extra 2% of penal interest.

2. The petitioner paid some instalments but committed default in paying the Subsequent instalments. This resulted in the 3rd respondent filing the Arbitration Case, A. R. C. No 4123 of 1979 before the 2nd respondent.

3. The petitioner filed his written statement, Ext.P3. The 2nd respondent thereafter referred the Arbitration Case for disposal to the 4th respondent and the 4th respondent by Ext.R3 (a) has given the award in favour of that Society,

the 3rd respondent.

4. From the records made available for scrutiny it could be seen that the petitioner had raised the objection that the 4th respondent had no jurisdiction to hear the case. The 4th respondent without going into this aspect of the case has given the award, Ext.R3 (a)

5. The 3rd respondent thereafter initiated execution proceedings on which, the 4th respondent has issued notices, Exts. P7 and P8 calling upon the petitioner to pay the dues as per the award to the 3rd respondent within i seven days of receipt of the notice, failing which, the petitioner has been warned, coercive steps for recovery of the said amount will be initiated against him. The petitioner thereupon has moved this Original Petition for the following reliefs:

(i) issue a writ of certiorari or other appropriate writ, order or direction to quash the proceedings of the respondents in Ext. P4 dated. 23-1-1982, Ex. P6 dated 26-2-1982, Ext. P7 dated 17-11-1983 and Ext. P8 dated 12-12-1983.

(ii) to issue a writ in the nature of mandamus or any other appropriate writ, order or direction, ordering the respondents on the facts and circumstances stated not to collect any amount alleged to be due from the petitioner.

(iii) to stay the operation of Ext. P7 and P8 demand notices, pending disposal of the above O. P.

(iv) to grant such other reliefs including costs.

6. The learned counsel for the petitioner submits that the 4th respondent has no jurisdiction to hear the Arbitration Case because he is not one of the authorities made mention of in Section 70 of the Act.

7. Dialating this point, the learned counsel submits that the 2nd respondent before whom the Arbitration Case was filed, is not "The Registrar" within the meaning of Section 70 of the Act; on the other hand, he is only a "person" who has been invested by the Government, "with powers of the Registrar". Such an authority has no jurisdiction under the Act to nominate an Arbitrator envisaged u/ s 70 (c)of the Act.

8. This approach to the issue has been very vehemently opposed by the learned counsel for the 3rd respondent society. According to him, the 2nd respondent has also the powers of the Registrar within the meaning of the Act. In support of this argument, he referred to the definition of the word "Registrar" in the Act. Section 2 [p] defines "Registrar" as 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."

9. That the powers of the Registrar have been conferred on the 2nd respondent is beyond dispute,

1. A reference in this context to the Notification u/s 3 (2) is relevant. The

Notification reads:

In exercise of the powers conferred by subsection [2] of section 3 of the Kerala Co-operative Societies Act, 1969 [21 of 1969] and in supersession of the existing notifications on the subject, the Government of Kerala hereby confer on the officers specified in column [1] of the Table below, the powers of the Registrar under the said Act specified in the corresponding entries in Column [2] thereof.

TABLE

Officers

Powers

[1]

[2]

1. Additional Registrar)

All powers of the Registrar under the Act.

2. Joint Registrars)

3. Deputy Registrars)

All the powers of Registrar under the Act except those referred. to in sections 32, 71 [1] and [3] and 87.

4. Assistant Registrar

The powers of the Registrar under sections 29 (2), 30, 63, 64, 65, 66, 67, 69, 70, 75 and 76 of the Act.

It can be seen from this Notification that the Assistant Registrar, the 2nd respondent, is one such officer who has been conferred with the powers of the Registrar under Sections 29(2), 30, 63, 64, 65, 66, 67, 69, 70, 75, and 76 of the Act. The learned counsel for the 3rd respondent therefore submits that the 2nd respondent while exercising the powers u/s 70, has the authority to refer the case for disposal to the 4th respondent whom, he has nominated as, the Arbitrator.

11. At the first blush this argument is attractive but when one goes deep into the matter it can be seen that it is without substance.

12. What then is the scope of Section 70. Section 70(1) "The Registrar may, on receipt of the reference of a dispute u/s 69,-

(a).

(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.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause [c] of that subsection and he may elect to decide the dispute himself or transfer it to any other person under clause (b) of sub-section (1) or refer it to any other arbitrator under clause (c) of that sub-section."

If the person who is invested with the powers of "The Registrar" by the Government u/s 3[2] is also "The Registrar" within the meaning of Section 70, then nothing prevents him from transferring the Arbitration Case for disposal to an Additional Registrar, Joint Registrar or Deputy Registrar in the department, officers admittedly superior to him. This will bring about a manifestly absurd situation namely a superior officer being compelled to carry out the directions of his subordinate. It is a cardinal principle of interpretation of statutes that "Manifest absurdity or futility or absurd inconvenience or anomaly" shall be avoided while Interpreting a statute.

13. A question however, would arise whether the words "The Registrar", could have a different meaning in a section from the meaning given to it in the definition clause. The answer depends upon the construction of the definition clause. it is by now well established that the meaning of a word in A section should ordinarily be the meaning given to that word in the definition clause. "But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening Sentence in the definition section," namely, unless the context otherwise requires as in Section 2 of the Act. In view of these qualifying words "the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances." [Vide The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another, ]. Even when the definition clause does not contain the qualifying words, the Lord Chancellor has held thus in 1940 A. C. 613:

It is perhaps worth pointing out that the words, "Unless the context otherwise requires", which we find in the Consolidating Act of 1929, are not to be found in the amending Act of 1928. I attribute little weight to this fact, for in my opinion some such words are to be implied in all statutes where the expressions which are interpreted by a definition clause are used in a number of sections with meanings sometimes of a wide and sometimes of an obviously limited character.

14. Going by the above principle of law I have no hesitation to hold that the words "The Registrar" mentioned in Section 70 of the Act can only mean "The Registrar" who is appointed u/s 3 (1) of the Act and not a person who has been conferred with the powers of the Registrar by the Government under sub-section (2) of Section 3. This interpretation therefore would avert the absurd situation that would otherwise be brought about, namely the possibility of an inferior officer directing a superior officer to dispose of the Arbitration Case pursuant to

the direction, he may issue u/s 70 (1) (b).

15. For the reasons stated above, I am of the view, that the award passed by the 4th respondent is one passed without jurisdiction and hence non-est. It cannot be enforced under law and therefore the proceedings initiated for recovery of the amounts described under the award are equally unenforceable. Accordingly Exts.P6, P7 and P8 are quashed. The Arbitration Case the 3rd respondent had filed before the 2nd respondent, in the circumstances of the case, must be held to be still pending before him. The 2nd respondent therefore shall take up the case on to his file and dispose of the same after affording the parties an opportunity of being heard and in accordance with law. as expeditiously as possible, in any event, within 4 months from the date of receipt of a copy of the judgment. It is made clear that the 2nd respondent shall give the parties an opportunity to let in whatever evidence they want to adduce, in proof their respective cases.

The Original Petition is allowed to the extent stated above. No order as to costs.