(1986) 01 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3920 of 1976

Beedha Singh APPELLANT

Vs

The District Registrar, Co-operative Societies and Others RESPONDENT

Date of Decision : 07-01-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Agricultural Credit Act, 1973 — Section 19(1), 19(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 236

Citation : (1986) RD 250

Hon'ble Judges : H.N. Seth, Acting C.J.;N.N. Mithal, J

Bench : Division Bench

Advocate : D.P.S. Chauhan, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Seth, A.C.J.

1. Petitioner Beedha Singh was served with a notice dated 17.07.1976, issued by the Topsider Under Rule 236 of the UP ZA and LR Rules (Annexure 4 to the writ petition), informing him that a sum of Rs. 28,61)5-60 p. plus interest plus costs was due from him and that he should appear before him on 24.07.1976. The notice further mentioned that in case the Petitioner did not appear, as directed, necessary orders for his arrest and for attachment and auction of his properties would be issued. Aggrieved, the Petitioner has approached this Court for relief Under Article 226 of the Constitution.

2. Petitioner claims to be the Cashier of a Co-operative Society known as Sahkari Samiti Ltd. Nagla Chhetti, District Mathura (hereinafter referred to as the Samiti). In its turn, the said Samiti is a member of the Zila Sahkari Bank Ltd. (hereinafter referred to as the Bank). Primary object of the Samiti was to advance loans to its members. In due course the Samiti used to forward the loan applications to its members to the Bank and the Bank, after scruitinising and sanctioning the same used to transfer the amount applied for to the current

account of the Samiti. The Samiti thereafter paid the amount to the concerned members by means of cheques. The Petitioner claims that he never took any loan either from the Samiti or from the Bank. However, the Assistant Development Officer, Co-operative Societies was prejudiced against him. He accordingly lodged a first information report on 30.12.1975 at Police Station Shahabad alleging that the Petitioner and the Chairman of the Samiti had embezzled the funds of the Samiti. Thereafter Secretary of the Bank also made a reference u/s 19(2) of the U.P. Agricultural Credit Act, 1973 to the Registrar, Societies Lucknow, claiming a sum of Rs. 25,529/- from the Petitioner. Additional Registrar (Consumer Cooperative Societies), acting under Rule 230 of the Rules made an Order dated 08.06.1976 appointing the Deputy Registrar, Societies, Agra Region, as Arbitrator for deciding the said dispute. While the said arbitration case was pending and before any award could be made, District Assistant Registrar, Co-operative Societies, Mathura, in collusion with the Secretary of the Bank, wrote to the Collector requiring him -to recover a sum of Rs. 28,605-60 p. from t e Respondents. In pursuance of the said request, the Topsider issued the impugned notice on 17.07.1976. The Petitioner claims that, in the circumstances, neither any Bank loan nor any other co-operative dues could be recovered from the Petitioner unless and until the Deputy Registrar, Societies, Agra Region, who had been appointed to act as an Arbitrator for resolving the dispute, has given his award.

3. Sri Mohan Singh Sharma, Additional District Co-operative Officer, Mathura, has filed a counter affidavit on behalf of the Respondents. According to him Petitioner Beedha Singh had obtained loans from the Samiti and on 30.06.1976 a sum of Rs. 1,675/- towards principal amount of short-term loan and Rs. 2,500/- towards principal amount of mid-term loan were due against him Besides this, he as Cashier of the Samiti bad recovered loans from 13 members of the samiti on 28.06.l973 and had kept the cash balance amounting to Rs. 15,685/- with him. He neither deposited the said cash with the Bank nor did he hand it over to the Samiti. In due course proceedings u/s 95A of the U.P Co-operative Societies Act, 19b5 were initiated against the Petitioner because on record he was found to be a heavy defaulter. The Respondents further claimed that it was not necessary for them to have obtained an award before initiating proceedings u/s 95A of the Co-operative Societies Act. The Respondents, therefore, claim that there is nothing illegal in the recovery sought to be effected by the Topsider, and assert that the Petitioner is not entitled to the relief claimed by him.

4. Section 95A of the Co-operative Societies Act runs thus:

95A. Special provision for recovery of certain dues of agricultural society--(I) The Registrar may, on an application made by the Society referred to in Section 34 or an agricultural credit society for the recovery of arrears of any loan advanced by it or any installment thereof to any member and on its furnishing a statement of accounts in respect of such loan and after making such enquiries, if any, as he thinks fit, issue a certificate lord the recovery of the amount due.

(2) A certificate issued by the Registrar Under Sub-section (1) shall be final and conclusive proof of the dues which shall be recoverable as arrears of land revenue.

In the first place resort can be had to provisions of Section 95A of the Cooperative Societies Act only for recovery of arrears of any loan advanced by a Co-operative society. It cannot be utilised for effecting recovery of any amount said to have b en embezzled by an official of the Samiti. From the counter-affidavit it becomes clear that the sum of Rs. 28,650 p. sought to be recovered from the Petitioner is made up partly by the alleged amounts of short-term and mid-term loans of Rs. l,to75/- and Rs. 2,500/- together with the interest due thereon as also by the sum of Rs. 15,685/- the amount said to have been embezzled by him. Together with interest etc. due thereon. Recovery of that portion of the amount mentioned in the impugned recovery certificate which represents the sum of Rs. 15,685/- which did not partake the nature of a loan advanced by the Samiti, plus interest thereon cannot be sustained.

5. So far as remaining amount is concerned, it is true that Under Sub-section (1) of Section 95A the Registrar has been, after an application has been made to him for recovery of arrears of loan advanced by the society, empowered to issue a recovery certificate and to, in his discretion hold such inquiry into the claim made by the society as he thinks fit. This provision, however, does not mean that while issuing recovery certificate, the Registrar can give a go by to the principles of natural lustice. As and when an application is made by the Registrar to recover any balance or installments of loan from any debtor, the Registrar has to, in accordance with the principles of natural justice, inform the debtor concerned about the claim made by the Society so that the debtor may approach and satisfy him that the amount sought to be recovered from him is not in fact due. It is after the debtor has shown cause that discretion arises with the Registrar depending upon the circumstances of the case to hold such inquiry in the matter as he thinks fit and proper. In the instant case, it is clear that the Registrar has issued the recovery certificate to the Collector without affording any opportunity to the Petitioner to place his version before him. Consequently there is no escape from the position that the Registrar has, while issuing the recovery certificate, failed to comply with the principles of natural justice and this defect has the effect of vitiating the entire recovery proceedings including the impugned notice issued by the Tahsildar.

6. In the result, the petition succeeds and is allowed. It is, however, made clear that the order passed by us shall not stand in the way of the Registrar Co-operative Societies in re-initiating proceedings u/s 95A of the Co-operative Societies Act for recovering any loan due from the Petitioner. Parties are directed to bear their own costs. Stay order dated 10.09.1976 is vacated.

