

(1993) 02 GAU CK 0015

In the Gauhati High Court

Case No : Civil Revision No. 415 of 1992

Bhuban Chandra Das

APPELLANT

Vs

Bapuram Das

RESPONDENT

Date of Decision : 24-02-1993

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 79(1)(b), 79(1)(b)
Civil Procedure Code, 1908 — Section 9
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (1993) 1 GLJ 231 : (1993) 1 GLR 259

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : S.Keyal, T.C.Khetri, P.S.Deka, N.S.Deka, J.N.Sharma, B.J.Dutta,
Advocates appearing for Parties

Judgement

1. This petition under section 115 read with section 151 CPC and under Article 227 of the Constitution is against the order dated 22.12.1992 passed by the Assistant District Judge, Sonitpur at Tezpur in Misc. Appeal No. 14 of 1992. The appeal was filed before the learned lower appellate Court against the order dated 27.8.1992 passed by the Munsiff No. 1, Tezpur in Misc (J) Case No. 48 of 1992. By the above order the learned Munsiff passed adinterim injunction against the defendants prohibiting them to act upon the order dated 24.8.1992 passed by the Registrar, Cooperative Societies, Assam. By the said order the Registrar of Cooperative Societies constituted an ,ad hoc committee for the cooperative society in question consisting of members indirated in the order and also directed the committee to hold annual general meeting within 31. i0.92. A Secretary of the cooperative society was also appointed. The learned lower appellate Court by the impugned order dismissed the appeal and hence the present petition by the defendant.

2. The petitioner herein, who was one of the defendants in the present title suit, is a member of the cooperative society, G.hiladhari Naduwar Mean Samabaya: Samity, Limited and the said society was formed by 100 persons

actual fishermen. There was some alleged anomalies in running the cooperative societies and the Registrar of the Cooperative Societies after enquiring dissolved the Executive Committee by order dated 5.5.1992 and appointed an Officer of the department as an Executive Officer to run the society and to hold annual general meeting within 30th May" 92. Both the orders are available at Annexures I and IF to the petition. The present respondent, who was the Secretary of the Executive Committee was relieved from the charge of the said office by the above order of Registrar and a writ petition was filed by the President of the dissolved Executive Committee before this Court which was subsequently withdrawn vide Annexures III and IV. Thereafter respondent herein filed a suit for permanent injunction and also obtained an adinterim injunction on 11.6.1992. The Executive Officer appeared before the learned Munsiff and filed a petition under section 9 read with section 151 CPC and section 79 of the Assam Cooperative Societies Act, 1949 for short the Act, but the Court by order dated 6.7.1992 held that civil Court has jurisdiction to try the civil suit. A revision petition was filed before this Court and by order dated 27.7.1992 passed in Civil Revision no.288 of 1992 the order was stayed.

3. in the meantime the Registrar of the Cooperative Societies by exercising powers under section 32(5) of the Act passed an order on 14.8.1992 and constituted an adhoc committee in place of the Executive Officer to run the cooperative society and the present petitioner was appointed as Secretary. There are other 10 members in the said committee and the order is available at Annexure 5 to the present petition. It has been stated that the petitioner took charge of the cooperative society on 19.8.1992 from the Executive Officer and the new Adhoc Executive Committee also started functioning and passed several resolutions.

4. Thereafter the respondent filed the present suit with a petition for injunction which was registered as Misc. Case No. 42 of 1992 and the adinterim injunction was granted as stated above. The appeal against the said order was also dismissed by the impugned order. Hence the present petition.

5. The respondent has filed an affidavit in opposition. The fact that the petitioner took charge of the office has been disputed. It has also been urged that Secretary of the society is its employee and therefore there is no scope for relieving respondent from the said office by the Registrar. It has been alleged that the appointment of Adhoc Managing Committee by exercising powers under section 32 (5) of the Act is without jurisdiction. It has further been stated in the counter that the Managing Committee having been dissolved for alleged mismanagement, the appointment of another committee for the purpose of managing the society could be made only under section 32 of the Act and not otherwise. According to the respondent even if there were any irregularities and/or improprieties in the impugned appellate order there is no scope to exercise revisional jurisdiction of this Court.

6. Heard Mr. JN Sarma, learned, counsel for the petitioner and Mr. TC Khetri,

learned counsel for the opposite party.

7. The main question to decide in this case is whether civil Court has jurisdiction under section 9 CPC to entertain the present suit for injunction in view of section 79 of the Act. I quote below the said section :

"79. Bar to jurisdiction of Courts :

(1) save as provided in this Act. no civil or revenue Court shall have any jurisdiction in respect of

(a) registration of a registered society or its byelaws or amendments of byelaws; or

(b) the dissolution of a managing or controlling body and the management of the affairs of the society on dissolution thereof; or

(c) any dispute referred to the Registrar; or

(d) any matter in relation to winding up and dissolution of a registered society.

(2) Save as provided in this Act, no order, decision or award under this Act, or working of the affairs of a registered society shall be liable to be challenged, set aside, modified, revised or declared void in any Court on any ground whatsoever except on grounds of jurisdiction."

8. Section 9 CPC inter alia provides that civil Court shall have a jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. So the question that has to be examined is whether in view of the provisions of section 79 of the Act the jurisdiction of the civil Court in respect of the present suit is expressly or impliedly barred or not. Even if it is barred, in view of the law laid down to what extent the civil Court can look into the present dispute.

9. It may be stated that the learned lower appellate Court after considering various decisions of the Apex Court as well as this Court held that even if the jurisdiction of the civil Court is barred either expressly or impliedly, it can still examine the case to ascertain whether provisions of this statute "have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure"*.

10. The learned lower appellate Court has considered subsection (4) and (5) of section 32, sections 33, 36, 37, 60 and 63 of the Act in addition to the other provisions of the Act.

11. The question to be considered is whether the jurisdiction of civil Court is barred to decide the present dispute by section 79 of the Act keeping in view of the provision of section 9 CPC. The section 9 CPC came up for consideration by the Apex Court in Dhulabhai vs. State of MP, AIR 1969 SC 78 and the principles regarding exclusion of jurisdiction of civil Court were laid down. It is not necessary to quote the seven principles and I may refer only to relevant

principles applicable to the case in hand. It was held by the Apex Court that where the statute gives a finality to the orders of the special tribunals the jurisdiction of the civil Court must be held to be excluded if there is adequate remedy to do what the civil Court would normally do in a suit but such provision does not excluded those cases where the provisions of the particular Act have not acted in conformity with the fundamental principles of judicial procedure. It was also held by the Apex Court that where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find out the adequacy or sufficiency of the remedies provided may be relevant but it is not decisive to sustain the jurisdiction of the civil Court. According to their Lordships challenge to the provisions of a particular Act as ultravires cannot be brought before the Tribunal constituted under that Act and even High Court cannot go into that question on a revision or reference from the decision of the Tribunal. Their Lordship laid down that an exclusion of jurisdiction of the civil Court is not readily to be inferred unless the conditions set down in the above decision apply.

12 In *Ram Swarup vs. Shikar Chand*, AIR 1966 SC 893 the Apex Court held that the jurisdiction of the civil Court to deal with civil cases can be excluded by the Legislature by special Acts which deal with special subject matters, but the statutory provision must expressly provide for such exclusion, or must necessarily and inevitable lead to that inference. According to their Lordship the bar created by the relevant provisions of the statute excluding the jurisdiction of civil Courts cannot operate in cases where the plea raised before the civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity.

13. To sum up the law regarding exclusion of jurisdiction of the civil Court it may be stated that an exclusion of jurisdiction of the civil Court is not readily to be inferred but such jurisdiction of civil Court may be excluded by special Acts by expressly providing for exclusion of jurisdiction of civil Court or must necessarily and inevitably lead to that inference from the scheme of the Act. It may be stated that where a special Act gives a finality to the orders of special Tribunals, the civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil Court would normally do in a suit. Even if jurisdiction of the civil Court is barred by a special Act either expressly or impliedly, the civil Court may have jurisdiction, if the provisions of the Act have not been complied with or the Tribunal has not acted in conformity with the fundamental principles of judicial procedure. Such bar of jurisdiction of civil Court cannot operate incases where plea raised before the civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity.

14. The section 79 of the Act, as quoted above, bar the jurisdiction of a civil Court, interalia, in respect of the dissolution of a managing or controlling body and the management of the affairs of the society on dissolution thereof. By order dated 5th May" 9! vide Annexure I to the present petition the Registrar of

Cooperative Societies held that the society was not functioning properly and continuation of the Managing Committee was not desirable and accordingly directed dissolution of the Managing Committee, appointment of an Executive Officer to manage the affairs of the society and holding of annual general meeting. By order dated 14th August, 1992 vide Annexure V to the present petition the Registrar of the Cooperative Societies in place of the Executive Officer, whose services were withdrawn, constituted adhoc committee with the members indicated in the order and also directed the committee to hold annual general meeting within the time fixed in the said order. These two orders have been challenged in the civil suit and there cannot be any second opinion that these two orders relate to the dissolution of Managing Committee, which is the controlling body of the society and also interfered with the management of the affairs of the society. Therefore against the said two orders, a person cannot approach the civil Court in view of clause (b) of subsection (1) of section 79 of the Act.

15. Now the question to be examined is whether these two orders of the Registrar of Cooperative Societies were nullity on the ground that these orders were passed in complete disregard to the provisions of the Act.

16. The section 36 of the Act empowers the Registrar to direct that a special meeting of the general assembly be called within a time specified by the Registrar for the purpose of dissolution of the Administrative Council, Managing Committee or the concerned committee and to elect a new one. Such order can be passed only after inspection or inquiry under section 60, 61 of the Act and for reasons to be recorded in writing and after giving reasonable opportunity to the existing committee. This section further provides that if the Registrar is of the opinion that it is necessary as an emergent measure to suspend the committee forthwith, he may do so and shall appoint a person or persons, on such condition as prescribed by him, to be in full control of the suspended body until a new body has been elected or action has been taken in accordance with section 37 of the acc.

17 In the case in hand the order dated 5th May, 1992 was passed by the Registrar after obtaining a report and giving an opportunity to the existing committee. In fact the Chairman of the Managing Committee personally appeared before the Registrar and he was heard. Therefore the requirement of section 36 was duly complied with. Regarding appointment of the Executive Officer to manage the society by invoking special powers under section 36 of the Act, the Registrar recorded in the order that the society was not functioning properly and that continuation of the committee was not considered desirable. In other words from said order of the Registrar it appears that he was of the opinion that as an emergent measure it was necessary to suspend the committee and appoint an Executive Officer. It is true that in the above order it has been recorded by the committee stood dissolved though under section 36 Registrar can only suspend the committee but I am of the opinion though the Registrar has

used the word "dissolve" in fact it was an order of suspension as the Registrar has directed holding of the annual general meeting to elect a new committee as provided under section 36 of the Act. Therefore, it cannot be said that the order was passed by the Registrar in violation of the provisions of the Act or without any authority.

18. In view of the above finding I am of the opinion that a civil suit is not maintainable against the order passed by the Registrar as it cannot be said that the order has been passed by the Registrar in complete disregard to the provisions of the Act or without any authority under the Act. I may add here that section 80 of the act provides for appeal or review and the plaintiff could have approached the authority under this section.

19. Reliance has been placed in a decision of this Court in Abdul Gafor Barbhuyan vs. Mnstakim Ali, AIR 1970 Assam & Nagaland 96 to bring home the point that the civil Court has jurisdiction. From the facts of that case I find that the plaintiff challenged the constitution of a Managing Committee and the Court held that under section 79(2) of the Act the jurisdiction of a civil Court is not barred where the question of jurisdiction was involved regarding subject matter of the suit. But in the case in hand though an attempt has been made to show that Registrar passed the orders without any jurisdiction, as stated above this contention has no force.

20 In Anipur Cooperative Society Limited vs. Sudarsan Sen.(1984)1 GLR 451 this Court had occasion to consider section 79 (2) of the Act in respect of an injunction issued by lower appellate Court interfering the process of election to a cooperative society and the Court held that it will be patently erroneous for any civil Court to consider any prayer for temporary injunction for interfering with a process of any election under the Act without directing its attention to section 79 of the Act more particularly sub section (2).

21. I hold that by issuing temporary injunction interfering with the management of the cooperative society, the civil Court i.e. learned lower appellate Court exercised a jurisdiction not vested in it in view of the provision contained in section 79 of the Act. I further hold that, *prima facie*, the Registrar of the Cooperative Societies did not act without jurisdiction while passing the two orders stated above. In view of these findings the plaintiff has failed to make out a *prima facie* case and as such he is not entitled to get any injunction.

In the result the rule is made absolute by setting aside the impugned order dated 23.9.92 passed by the learned Assistant District Judge. Tezpur in Misc. Appeal No 14 of 1992 arising out of Title Suit No.62 of 1992 pending before the learned Munsiff No.I. No costs.