(1979) 11 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No. 1874 of 1976-F

C.U. Raman APPELLANT

Vs

T. Joseph George and Others RESPONDENT

Date of Decision : 29-11-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1979) 11 KL CK 0007

Hon'ble Judges : George Vadakkel, J

Bench : Single Bench

Advocate : A.P. Chandrasekharan, for the Appellant; V. Sankara Menon and M. Venugopalan, for the Respondent

Final Decision : Allowed

Judgement

George Vadakkel, J.—The Secretary of the Choondal Model Panchayat Co-operative Society Ltd. No. 422, Choondal, Trichur District (hereinafter: the Society) is the Petitioner herein. The affairs of the Society were at the material time, 18th February 1965, managed by Respondents Nos. 1 to 5 who constituted its then committee. (The 1st Respondent died and his legal respresentatives have been impleaded as additional Respondent No. 7 onwards as per order on C.M.P. No. 664 of 1979). This committee on that day sold some properties owned by the society for Rs. 9,005. There were some complaints that these properties were undersold, and the committee was superseded on 13th July 1966 obviously u/s 49 of the Travancore-Cochin Co-operative Societies Act, 1951 (hereinafter: Travancore-Cochin Act) which was then in force and governed the society. A rectification officer was appointed to manage the society''s affairs. He on 4th January 1967 submitted a reference u/s 60 of the Travancore-Cochin Act claiming Rs. 22,105 from Respondents Nos. 1 to 5 on the basis that the properties sold by them were really worth Rs. 31,110. The Deputy Registrar of Co-operative Societies, Trichur, passed an Award in favour of the Society for Rs. 10,262.50 with interest at 6? per cent from 29th September 1973, the date of the Award. In the meanwhile on 15th May 1969 the Kerala Co-operative Societies Act, 1969 (hereinafter: the Kerala Act) came into force, Respondents Nos. 1 to 4 and the Society preferred appeals before the Tribunal u/s 82 of the Kerala Act, the former disputing their liability and the latter claiming the full amount. The Tribunal held that the reference was bad and incompetent in so far as an order of surcharge could be passed against Respondents Nos. 1 to 5. This decision is impugned herein.

2. Section 58 of the Travancore-Cochin Act conferred power on the Registrar to assess damage and to pass an order of surcharge against the persons mentioned therein, and is similarly worded as Section 49 of the Madras Co-operative Societies Act, 1932 (hereinafter: the Madras Act). This Section of the Madras Act was considered by the Madras High Court in Sundaram Iyer v. Deputy Registrar, Co-operative Societies AIR 1957 Mad 634. Noticing that a party aggrieved can u/s 49(2) corresponding to Section 58(2) of the Travancore-Cochin Act question a surcharge order before a civil court whereas such a party can have no recourse to a civil court in respect of an Award passed u/s 51 of the Madras Act (this corresponds to Section 60 of the Travancore-Cochin Act) to his prejudice, it was held--

Thus, we have, on the one hand, a provision which removes from the jurisdiction of the civil courts any interference with the decisions of the special forum, while on the other hand a parallel procedure in which access is provided to the civil court, where questions of fact and law could be agitated. In a case where the provisions of Section 49 are inapplicable, it is clear that recourse could be had to Section 51 and the procedure there contained would alone be applicable. But in cases falling within Section 49 where (1) Section 51 has no application and (2) cases where a matter falls both within Sections 49 and 51, the normal rule of construction would be that the two provisions are not intended to operate on parallel lines, leaving it open to the Registrar or the departmental authorities to choose to act under either provision in his or their unfettered discretion. But that Section 51 which excludes the jurisdiction of the civil court, will be strictly construed, and that in cases where Section 49 is applicable, Section 51 would for that reason be excluded.

This decision also is rested on the principles ''general things do not derogate from special things'' and ''special things derogate from general things''--Generalia specialibus non-derogant generalibus specialia derogant--though the emphasis and stress is on the principle that of the two parallel proceedings, one under which the aggrieved party can approach the civil court at some stage of the proceedings and another which does not provide for recourse to civil court, the former is to be followed, as is clear from the following discussion--

From the order of surcharge after what must really be a summary enquiry the Section provides for a resort to ordinary courts for the aggrieved persons for redress. This, therefore, is a special rule applicable to particular persons and in particular circumstance. The rule of construction, therefore, that where there are two sets of provisions, the one general and the other special, the latter alone would apply to cases falling within it, notwithstanding the generality of the other provision, applies to the construction of these two provisions, and it has to be held that where there is overlapping of the terms of Sections 51(1) and 49(1), the latter alone would be applicable to cases covered by it. The reasonableness of such a construction is indicated by the fact, that in these cases of serious misconduct resort is permitted to the civil court, a protection not available in the less serious ones dealt with by Section 51.

3. Laying down the above stated principles the Madras High Court in Sundaram Iyer''s case AIR 1957 Mad 634 directed the Registrar to treat the plaints filed under the provisions of Section 51 of the Madras Act (Section 60 of the Travancore-Cochin Act) as invoking his jurisdiction to pass surcharge orders u/s 49 of that Act and proceed accordingly. On the principles stated above, if the case on hand is one to be decided with reference to the provisions of the Travancore-Cochin Act (it appears that it is possible to argue so in view of the decision of this Court in Deputy Registrar Co-operative Societies v. Kunhikannan 1979 KLT 152 and Section 110(2) of the Kerala Act) and further if it is one that falls both u/s 58 and u/s 60 of the Travancore-Cochin Act, the proper course would be to direct the Deputy Registrar, to treat the plaint filed by the rectification officer as one invoking his jurisdiction u/s 58 of the Travancore-Cochin Act, and to proceed accordingly instead of dismissing the reference, as appears to have been done by the Tribunal in this case. However, it is not necessary to decide this question as to which statute governs this case herein, as in my view whichever statute, the Travancore-Cochin Act or the Kerala Act, governs the case on hand, it is one outside the ambit of the rule laid down in the Sundaram Iyer''s case AIR 1957 Mad 634 as will presently be shown.

4. The three conditions required to attract Section 49 of the Madras Act, as laid down in the V. Sundaram Iyer Vs. Deputy Registrar of Co-operative Societies, Ramanathapuram and Others, are:

(1) There must have been an audit u/s 37, or an enquiry u/s 38, or an inspection u/s 39, or the society must be in the course of winding up; (2) during the course of the proceedings set out in condition (1), a person who has taken part in the organisation, or management of the society or any past or present officer, must have (a) misappropriated, or (6) fraudulently retained any money or property, or (c) been guilty of breach of trust in relation to the society. If these two sets of conditions are satisfied then (3) the Registrar may, of his own motion or on the application of the committee, liquidator, creditor or contributory, examine into the conduct of such person, and may make the order requiring the person to repay or restore the money or property.

5. It is true that the claim here is against persons who were in management of the society and concerns a sale as alleged in the plaint, in breach of trust of the Society. But this alone is not sufficient to attract Section 58. As stated by the Supreme Court in Pentakota Srirakulu Vs. The Co-Operative Marketing Society

Ltd., with reference to Section 49 of the Madras Act and Sundaram Iyer''s case AIR 1957 Mad 634 -

The facts giving rise to the charge have to be disclosed in the course of an audit u/s 37 or an enquiry u/s 38 or an inspection u/s 39 or on the winding up of the society. Mr. Ram Reddy, while not disputing that unless this condition is also satisfied Section 49 would not be attracted, however submitted that there was an enquiry u/s 38 preceding the supersession and that in consequence the condition was fulfilled. It is true that there was an enquiry conducted into the affairs of the society u/s 38, but that by itself is not sufficient. It has further to be proved that the facts alleged in the claim, and on which it is based, were disclosed at that enquiry. This can be proved or establised only if the enquiry report which was submitted to the Registrar was placed before the Court and the facts disclosed therein corresponded with the facts alleged in the statement of claim. Mr. Ram Reddy admitted that the enquiry report was not before the Court and is not in the record of these proceedings. It is not, therefore, possible to say that there is correspondence between the facts disclosed in that report as a result of the enquiry u/s 38 and those found in the statement of claim which was referred by the Registrar to the Deputy Registrar for arbitration u/s 51. The case must, therefore, be held not to fall u/s 49 of the Act. There can be no doubt that if Section 49 does not apply, subject to the other argument about illegality to which we shall advert, the order of the Registrar proceeding u/s 51 is not open to objection. This first point, therefore, has to be rejected.

6. The enquiry report, if an enquiry has been held u/s 45 of the Travancore-Cochin Act (then the Kerala Act was not in force) is not in evidence and therefore it is not possible to say that the facts disclosed at the enquiry correspond to those alleged in the plaint filed u/s 60 of that Act. It was on the basis of Ext. P-13 before the Deputy Registrar that the Tribunal held that the first condition stated in the Sundaram Iyer''s case AIR 1957 Mad 634 is obtained in this case. Ext. P-13 appears to be the order superseding the then Committee in management of the society constituted of Respondents Nos. 1 to 5. The Tribunal does not refer to any material that will go to show that the facts disclosed at the enquiry are the same as those set out in the plaint. Besides, merely because an investigation has been made by the Registrar in order to form an opinion as to whether the committee is or is not functioning properly (it is based on this opinion that he is to decide the question of supersession u/s 49 of the Travancore-Cochin Act), it cannot be said that he has held an ''inquiry into the constitution, working and financial condition of'' a society as envisaged by Section 45 of that Act. Therefore, viewing the case on hand as one governed by the Travancore-Cochin Act, the relevant provisions under consideration wherein are more or less the same as in the Madras Act it has to be held that it falls outside Section 58 of the Travancore-Cochin Act. If so the reference u/s 60 thereof was received and proceeded with by the Deputy Registrar competently.

7. If on the other hand, it is the Kerala Act that governs this case, the principle

stated in Sundaram Iyer''s case AIR 1957 Mad 634 would not be attracted to it in so far as under that Act there is no provision corresponding to Sub-section (2) of Section 49 of the Madras Act which is the same as Sub-section (2) of Section 58 of the Travancore-Cochin Act. It will, therefore, perhaps be more advantageous to the aggrieved person to have the proceedings u/s 69 of the Kerala Act (corresponding to Section 51 of the Madras Act and Section 60 of the Travancore-Cochin Act) in so far as u/s 82 thereof he can prefer an appeal arising therefrom before the Tribunal, who, under the provisions of the Kerala Act, is to be constituted of a legally trained person, namely, one who is or has been holding the post of a District Judge in the State, whereas the appellate authority who can sit in judgment over a surcharge order passed u/s 68 of the Kerala Act is u/s 83 thereof, the Government when that order is one passed by the Registrar, and the Registrar in other cases.

8. I may here usefully read the following passage from the decision of the Supreme Court in Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, at 1499:

It will be noted from the above that the jurisdiction of the ordinary civil and revenue courts of the land is ousted u/s 57 of the Act in case of disputes which fell u/s 48. A Registrar exercising powers u/s 48 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue courts of the land. The Registrar has not merely the trappings of a Court but in many respect he is given the same powers as are given to ordinary civil courts of the land by the CPC including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of courts mentioned in Section 151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred u/s 48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a court of law is expected to do.

The statute considered by the Supreme Court is the Bihar and Orissa Co-operative Societies Act, 1935; Section 48 thereof mentioned in the passage extracted above confers power on the Registrar to decide disputes and corresponds to Section 51 of the Madras Act, Section 60 of the Travancore-Cochin Act and Section 69 of the Kerala Act.

9. In view of what is stated above there can be no doubt that in the absence of a provision similar to Sub-section (2) of Section 49 of the Madras Act and Sub-section (2) of Section 58 of the Travancore-Cochin Act in the Kerala Act, arbitration proceedings u/s 69 of the last mentioned statute ensures a more elaborate and fair trial and adherence to principles of natural justice, than surcharge proceedings u/s 68 thereof. In that view and taking into account the fact that from an award passed in arbitration proceedings u/s 69 an appeal lies to the Tribunal whereas an appeal against a surcharge order lies only to the

Government or the Registrar as the case may be, I am not prepared to extend the principles stated in V. Sundaram Iyer Vs. Deputy Registrar of Co-operative Societies, Ramanathapuram and Others, to cases arising under the Kerala Act.

10. The result is, either way, that is, assuming that this case is governed by the Travancore-Cochin Act or in the alternative, assuming it is governed by the Kerala Act, the Deputy Registrar was competent to decide the dispute referred to him. The Tribunal went wrong in holding otherwise. I quash Ext. P-1 judgment of the 6th Respondent Tribunal and direct it to take back, hear and dispose of the appeals Nos. 125 and 138 of 1973 on its file afresh on merits. This writ petition is allowed to the above extent. No orders as regards costs.