

(2023) 10 CHH CK 0029
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1736 Of 2015

Dhimen Das

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 20-10-2023

Acts Referred:

Constitution of India, 1950 — Article 226

Chhattisgarh Co-Operative Societies Act, 1960 — Section 58B, 58B(I), 77, 80, 80A

Citation : (2023) 10 CHH CK 0029

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Amiyakant Tiwari, A.K. Mishra

Final Decision : Dismissed

Judgement

1. The petitioners have preferred the present writ petition against the order dated 05.08.2015 passed by Chairman, Chhattisgarh State Co-operative Tribunal, Bilaspur in Appeal No.101/2014, by which the Tribunal has allowed the appeal filed by the respondents 4 and 5 against the order dated 14.03.2014 passed in Revision Case No. 80(K)/05/D/2014, by which the Registrar has affirmed the order dated 31.01.2014 and 26.02.2014 passed by Joint Registrar, Co-operative Societies, Raipur. The learned Tribunal has directed the parties to appear before the learned Registrar Co-operative Society on 26.08.2015 for hearing and thereafter he will decide the matter in accordance with the law. The petitioners have also prayed for quashing of the order 20.08.2014 passed by Joint Registrar, Cooperative Societies, Raipur, by which the Joint Registrar has exonerated the respondents from the charges of financial irregularities alleged to have been committed by them.

2. Brief facts as reflected from the record are that respondent No. 4 and Respondent No. 5 who are the Director and Share holder of Bhilai Nagrik Sahakari Maryadit Bank Bhilai (herein after referred to Bank) respectively at the relevant time. The Respondent No. 4 and 5 have made complaint against the

appellants before the Additional Registrar, Cooperative Societies, Raipur on 11.06.2013. The Additional Registrar vide its memo dated 06.07.2013 has forwarded the same to the Joint Registrar Cooperative, Societies, Raipur Division Raipur for necessary action. In pursuance of the memo received by the Additional Registrar, the then Joint Registrar Cooperative Societies have transferred the proceedings to the Joint Registrar Cooperative Societies for further proceedings on 14.06.2014. Thereafter, the Joint Registrar has concluded the proceedings and exonerated the petitioners vide its order dated 20.08.2014 against the charges of financial irregularities alleged to have been committed by the petitioners.

3. During pendency of the proceedings certain orders were passed by the Joint Registrar Cooperative Societies, Raipur on 26.02.2014. The Joint Registrar Cooperative Societies has rejected the objection raised by the appellant vide its order dated 31.01.2014 and again vide its order dated 26.02.2014 has rejected another application under Section 58 (B) for providing the documents. Both these orders were challenged by the respondent No. 4 and 5 by filing revision No. 80(K)/05/D/2014. The Registrar, Cooperative Societies vide its order dated 14.03.2014 has upheld the order passed by the Joint Registrar Cooperative Societies.

4. Complainant Brij Bihari Mishra and Awadesh Kumar Yadav being aggrieved with the order dated 20.08.2014 by which the petitioners have exonerated from the charges of alleged financial irregularities committed by them by filing an appeal under Section 77 of the Cooperative Societies, Act 1960 before the Cooperative State Tribunal Bilaspur which was registered as appeal No. 101 of 2014 mainly contending that the Joint Registrar vide its memo dated 14.06.2013 has committed illegality in transferring the case for further proceeding to the Joint Registrar having same hierarchy in the set up of officer provided under the Cooperative Societies Act, thus the impugned order dated 20.08.2014 is bad in law and void ab initio, therefore, the order of exoneration passing by the incompetent authority is non-est in the eye of law and would pray for quashing of the impugned order dated 20.08.2014.

5. Learned Tribunal vide its impugned order dated 05.08.2015 has quashed the order dated 20.08.2014 (Annexure P/3) and remanded the matter to the Registrar Cooperative Societies, Raipur either to decide the case himself or as per Section 58 B(I) may transfer the case to the competent Court/ authority having jurisdiction. Being aggrieved with this order, the petitioners have preferred this writ petition under Article 226 of the Constitution of India.

6. Learned counsel for the petitioners would submit that since respondent No. 4 and 5 have participated in the proceedings of Case No. 36 /2014 and in Revision No. 80(K)/05/D/2014, therefore, they are estopped from challenging the order on the ground of jurisdiction. It has been further contended that the proceedings of case No. 36 of 2012 was decided in the personal capacity by the Joint Registrar (Respondent No.3) Shri K.L. Dhargave to Smt. Savitri Bhagat in their

personal name but in capacity of holding the charge of vacant post of Raipur Division. It has also been contended that after regular posting of Joint Registrar for Raipur Division, the case file was handed over and sent to the Office of regular Joint Register (Respondent No.3.). Thus there was no illegality in deciding the case vide order dated 20.08.2014. He would further submit that the Joint Register has already decided the issue therefore, there was no justification for remanding the matter. He would further submit that the Government of Chhattisgarh has issued notification dated 04.05.2012 directing that Joint Register, Cooperative Societies, Raipur has jurisdiction to exercise all the power of Registers upon the societies situated within the territorial jurisdiction of Raipur Division. He would submit that the Bank is situated at District Durg, therefore, jurisdiction lies with the Joint Register, Cooperative Societies, Raipur to exercise all the power of Register and would pray for quashing of the order dated 05.08.2015.

7. This Court while admitting the petition has directed that since jurisdictional issue has been raised the proceeding may go on but no final order shall be passed till the next date of hearing. The interim order is continued.

8. On the other hand learned counsel for the State opposes the submission and would submit that the Joint Register cannot transfer the case even a new Joint Register has been posted having its jurisdiction, it is for the Register who is the competent authority for transferring the case as per Section 80 of the Chhattisgarh Cooperative Societies Act and would pray for dismissal of the writ petition.

9. I have heard learned counsel for the parties and perused the record.

10. From the pleadings of the parties and material placed on record the point to be determined by this Court is whether the order passed by the Chhattisgarh State Cooperative Societies Tribunal is legal or justified.

11. For better understanding the point to be determined by this Court it is expedient for this Court to extract relevant provisions of the Chhattisgarh Co-operative Societies Act, 1960.

Sections 2(x)"Registrar"means the Registrar of Co-operative Societies appointed under Section 3.

Registrar and other officers- (1) The State Government shall appoint a person to be the Registrar of Co-operative Societies for the State and may appoint one or more officers of the following categories to assist him, namely:

(a) Additional Registrar of Co-operative Societies; (b) Joint Registrar of Co-operative Societies; (c) Deputy Registrar of Co-operative Societies; (d) Assistant Registrar of Co-operative Societies; (e) such other categories of officers as may be prescribed.

(2) The officers appointed to assist the Registrar shall, within such areas as the

State Government may specify, exercise such powers and perform such duties conferred and imposed on the Registrar by or under this Act as the State Government may, by special or general order, direct :

Provided that no officer other than the Additional Registrar or the Joint Registrar shall be directed to exercise the powers to hear appeals under Section 78.

(3) The Officers appointed to assist the Registrar shall be subordinate to him and shall work under his general guidance, supervision and control.

Section 58(B);-

58B. Procedure for making good, losses caused to a society. - (1) If in the course of an audit, inquiry, inspection or the winding up of a society or otherwise, it is found that any person, who is or was entrusted with organization or management of such society or any deceased, past or present chairman, secretary, member of Board of Directors, officer or employee of the society has made any payment contrary to the provisions of this Act or the rules made thereunder or byelaws of a society or has caused any deficiency or loss by gross negligence or misconduct or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may on his own motion or on the application of the Board of Directors, liquidator or any creditor may make an order requiring such person or in the case of a deceased person, his legal representative who inherits his estate, to repay or restore the money or property or any part thereof, with interest at such rate or to pay contribution and costs or compensation to such extent as the Registrar may consider just and equitable :

Provided that no order under this sub-section shall be made unless the person concerned is given a reasonable opportunity of being heard in the matters.

Provided further that the liability of a legal representative of the deceased shall be to the extent of the property of the deceased, which has come to the hands of such legal representative.

(2) Any person aggrieved by the order made under sub-section (1), may within thirty days from the date of communication of the order to him, appeal to the Tribunal:

Provided that in computing the period of limitation, the time requisite for obtaining a copy of the order appealed against shall be excluded.

(3) Any order made under sub-section (1) or sub-section (2) shall be enforced in accordance with the provisions of Section 85.

(4) In the Registrar is satisfied on affidavit, enquiry or otherwise that any person with intent to delay or obstruct the enforcement of any order that may be made against him under this Section-(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Registrar, he may, unless adequate security is furnished, direct the conditional attachment of the said property or such part thereof as he thinks necessary.

Section 80;

80. Transferor withdrawal of cases. - Subject to the provision of section 78, the Registrar, Additional Registrar or Joint Registrar may make over any case or class of cases arising under the provisions of this Act, for decision before him to any officer subordinate to him competent to decide such case or, class of cases or may withdraw any case or class of cases for decisions before any such officer and may proceed to deal with such case or class of cases himself or refer the same to any other officer subordinate to him and competent to decide such case or class of cases.

80A. Power of Registrar to call for proceedings of subordinate officers and board of a society and to pass order thereon.- The Registrar may, at any time on his own motion or on the application made by any party, call for and examine the record of any enquiry or the proceedings by any subordinate officer or a decision of board of a society for the purpose of satisfying himself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer or board. If in any case, it appears to the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the Registrar, may pass such order thereon as he may deem fit:

Provided that no order under this Section shall be made to the prejudice of any party unless such party has had an opportunity of being heard:

Provided further that the powers conferred on the Registrar under this Section, shall not be delegated to any officer below the rank of Joint Registrar.

12. From the above stated provisions of Cooperative Societies Act, particularly Section 3 of the Act, it is quite vivid that the Joint Register, Additional Register, Dy. Register and any such officers are appointed to assist the Register. As per Section 80A of the Act, 1960 it is also very much clear that Register has power to transfer or withdraw any case from any officer sub ordinate to him. The Register can transfer any proceedings before any officer sub ordinate to him, competent to decide such case. In the present case, the complaint was made on 14.06.2013 to the Additional Register, Raipur who in turn has directed Joint Registrar, Cooperative Societies, Raipur to take necessary action vide its letter dated 06.07.2013, thereafter after taking certain steps in the matter the Joint Register has transferred the case to the Joint Register, Cooperative Societies, Raipur Division on 14.06.2014 (Annexure P/6) whereas the proceedings are handed over to Joint Register, Cooperative Societies, Raipur by the Additional Register, therefore, in absence of any specific direction passed by the Additional Register, Cooperative Societies or Register Cooperative Society, the case cannot be handed

over to Joint Register, Cooperative Societies Raipur Division taking add of notification dated 04.05.2012, as per Section 80 of the Cooperative Societies Act, the power of transfer or withdraw lies with the Register, as such transfer of case from the office of Joint Register, Cooperative Societies Raipur to another Joint Register Cooperative Societies Raipur Division on 14.06.2013 is without jurisdiction.

13. Learned Tribunal considering the provisions of Section 80 of the Cooperative Societies Act, has recorded its finding that the then Joint Register without any jurisdiction has transferred the case to another Joint Register Cooperative Societies vide memo dated 14.06.2013 and since the order was beyond jurisdiction, as such the Joint Register Cooperative Societies, Raipur has no jurisdiction to pass the order dated 20.08.2014. Thus order dated 20.04.2014 is illegal and deserves to be quashed.

Accordingly, it has quashed and remanded the matter to the Register, Cooperative Societies to decide the case himself or to transfer the case under Section 58 B(I) of the Act to any officer to competent to adjudicate the case, as such impugned order dated 05.08.2015 does not suffer from any illegality or irregularity which warrants any interference by this Court. It is also well settled legal position of law that the non-est order has to be set aside and even if the parties have participated in the proceedings still they are at liberty to challenge the same as illegality will remain illegality and cannot be cured on the count that subsequently parties alleging illegality have participated in the proceedings.

14. The Hon'ble Supreme Court in the case of Harshad Chiman Lal Modi vs. DLF Universal Ltd. And another (2005) 7 SCC 7891 has held in paragraph 29 to 33 which is as under:-

29. Ms. Malhotra, then contended that Section 21 of the Code, requires that the objection to the jurisdiction must be taken by the party at the earliest possible opportunity and in any case where the issues are settled at or before settlement of such issues. In the instant case, the suit was filed by the plaintiff in 1988 and written statement was filed by the defendants in 1989 wherein jurisdiction of the court was 'admitted'. On the basis of the pleadings of the parties, issues were framed by the court in February, 1997. In view of the admission of jurisdiction of court, no issue as to jurisdiction of the court was framed. It was only in 1998 that an application for amendment of written statement was filed raising a plea as to absence of jurisdiction of the court. Both the courts were wholly wrong in allowing the amendment and in ignoring Section 21 of the Code. Our attention in this connection was invited by the learned counsel to Hira Lal v. Kali Nath, (1962) 2 SCR 747 and Baherin Petroleum Co. v. Pappu, 1966 (1) SCR 461.

30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection

to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

31. In Halsbury's Laws of England, (4th edn.), Reissue, Vol. 10; para 317; it is stated;

317. Consent and waiver. Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."

32. In Bahrein Petroleum Co., this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non iudice.

33. In Kiran Singh v. Chaman Paswan AIR 1954 SC 340 this Court declared;

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties." (emphasis supplied).

15. The learned Tribunal has remanded the matter to the Register Cooperative Societies and against the remand order the petitioners have preferred the

present writ petition which is not maintainable in view of the law laid down by the Hon'ble Supreme Court in the case of Babulal Nagar v. Shree Synthetics Ltd. AIR 1984 SC 1164 wherein the Hon'ble Supreme Court observed as under:-

"20. Ordinarily, the Courts exercising extraordinary jurisdiction are loathe to interfere with an order remanding the matter to the authority directed to investigate facts. The High Court was not justified in interfering with the same. By this uncalled for interference, it has merely prolonged the agony of the unemployed workmen and permitted the jurisdiction of the High Court under Art. 226 to be exploited by those who can well afford to writ to the detriment of those who can ill-afford to wait by dragging the latter from court to court for adjudication of peripheral issues avoiding decision on the issue more vital to them. (D.P. Maheshwari v. Delhi Administration, (1983) 4SCC 293; (AIR 1984 SC 153.)".

16. Considering the fact and provisions of Cooperative Societies Act, it is quite vivid that the Joint Register Cooperative Societies has no jurisdiction to hand over the case to any Joint Register Cooperative Societies having equivalent competency in absence of any specific order from the Register Cooperative Societies Raipur, in view of specific provisions contained under Sections 58 B(I) or 80 A of the Cooperative Societies Act, 1960 and further taking into consideration the fact that the Tribunal Cooperative Societies remanding the matter for afresh adjudication, this Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, should not interfere with the order passed by the Tribunal, thus this Court is of the view that the writ petition deserves to be dismissed and accordingly it is dismissed. The interim order passed by this Court dated 30.09.2015 is vacated. The proceedings pending before the Competent Authority in view of direction given by the Tribunal shall be concluded and final order shall be passed within two month from the date of receipt of the copy of the order.

17. Accordingly, the writ petition is dismissed. No order as to cost.