

(2016) 01 KL CK 0138
In the High Court Of Kerala
Case No : W. P. (C) No. 16125 of 2011

Eranad Primary Co-op. Agricultural & Rural Development
Bank Ltd.

APPELLANT

Vs

Kerala State Farmer's Relief Commission

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Kerala Farmers Debt Relief Commission Act, 2006 — Section 5

Citation : (2016) 2 KHC 930

Hon'ble Judges : Mr. K. Harilal, J.

Bench : Single Bench

Advocate : Government Pleader; Babu S Nair, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. K. Harilal, J. - The petitioner is a primary Co-operative Bank registered under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act") with the principal objective of providing financial assistance to its members for the purpose of agricultural operations, land development and other allied activities. The respondents 3 to 7 are the members, who have availed of loans from the Bank for various purposes. They have availed of loans of Rs. 18,840/-, Rs. 12,987/-, Rs.2,35,000/-, Rs.33,231/- and Rs. 16,490/- respectively. They had mortgaged different extents of their landed properties in favour of the Bank and deposited the title deeds with the Bank, under the said mortgage. Subsequently, the repayment of the loans was defaulted and the petitioner Bank was constrained to take steps for realising the amount due from respondents 3 to 7, by proceeding against the property mortgaged by them. The amounts of arrear due from respondents 3 to 7 mounted up to Rs.47,106/ in March, 2000, Rs.64,297/- in March, 2000, Rs.5,46,070/- in December, 2008, Rs.1,21,932/- in March, 2000 and Rs.80,840/- in August, 1995 respectively. When all attempts to recover the arrear failed, the petitioner initiated proceedings under Section 75 of the Act and the lands mortgaged were sold in auction and the respective sales

had been duly confirmed by the Joint Registrar of Co-operative Societies (General), Malappuram, as per Exts. P1(a) to P1(e). The loan accounts of the respondents have been closed making the required adjustments and the sale of the lands in favour of the petitioner Bank were confirmed, as early as on 21/06/2000, 21/06/2000, 16/01/2010, 21/06/2000 and 15/03/1996 respectively. Thus, these lands have now become the property of the petitioner Bank and entries to that effect were made in the Asset Register of the Bank.

2. While so, respondents 3 to 7 approached the 1st respondent Commission, seeking reliefs under the Kerala Farmers' Debt Relief Commission Act, 2006, suppressing the fact that the sale of their lands has been closed on realisation of the arrear by sale of their properties. Exts. P2(a) to P2(e) are the copies of the statement filed on behalf of the petitioner Bank before the Commission. In the statement, the petitioner Bank specifically stated that respective mortgaged properties have been transferred in favour of the Bank, by due registration and there are no debts due from them at that time. But, the 1st respondent Commission, without considering the objections raised in the statement, passed Exts. P3(a) to P3(e) orders exceeding the jurisdiction and powers vested under Section 5 of the Kerala Farmers' Debt Relief Commission Act, 2006. According to the petitioner, the orders challenged in this Writ Petition are null and void, as the same are passed in exercise of jurisdiction not vested in the 1st respondent. Hence, this Writ Petition is filed with a prayer to issue a writ of certiorari, calling for all records leading to Exts. P3(a) to P3(e) and quash the same.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

4. In view of the rival submissions at the Bar, the question to be considered is, whether the Kerala Farmers' Debt Relief Commission has jurisdiction and power to re-open a transaction, which stands closed much earlier, by realisation of the amount, write off the debt and direct the Bank to re-convey the properties, which were already sold in auction. The powers and functions of the 1st respondent Commission has been specifically enumerated under Section 5 of the Kerala Farmers' Debt Relief Commission Act, 2006. Before making a survey in the provisions, as regards the powers of the Commission, it is apposite and profitable to consider the aim and object of the Kerala Farmers' Debt Relief Commission Act, 2006. The said Act is an Act aimed to provide relief to those farmers, who are in distress due to the indebtedness, by constituting a Commission with power to pass awards, after adjudication and to recommend appropriate measures for the redressal of the powers of such farmers through conciliation and negotiation and for matters connected rendering thereon. On a close analysis of the aim and object of the Act, it is seen that the Act is provided to grant relief to those farmers, who are in distress due to indebtedness. Thus, indebtedness to the Bank at the time of exercising power under the Act is a statutory requirement to get benefit under the said Act. To put it differently, in the absence of debt due to the Bank, at the time of exercising power under the Act, the debtor is not

entitled to get any benefit under the said Act. In short, the debt must be a subsisting one. However, I am of the view that "such farmers" contemplated under the aim and object of the Act means farmers, who are indebted to the Bank at the time of consideration. If there is no subsisting debt, the farmer is not entitled to get any benefit under the Kerala Farmers' Debt Relief Commission Act, 2006.

5. Moreover, going by Section 5 of the Kerala Farmers' Debt Relief Commission Act, 2006, do not find any provision, which empowers the Commission to enter into any transaction, which stands closed much earlier, by the repayment of the amount or by sale of the property in auction, to write off the debt and direct the Bank to reconvey the property, which was sold in auction.

6. In the instant case, the properties mortgaged by respondents 3 to 7 were put in auction and auctions were confirmed in March, 2008 and the entries to that effect have been entered into the Asset Register of the Bank also. But, Exts. P2(a) to P3(e) show that respondents 3 to 7 have filed the application before the 1st respondent Commission, after confirmation of the sale and taking possession of the property by the Bank, without disclosing the said facts. If that be so, I am of the opinion that the 1st respondent has exceeded the powers and passed Ext. P3 series of orders. The 1st respondent has exercised jurisdiction and power, which are not vested in it. Consequently, Exts. P3(a) to P3(e) are liable to be quashed and do so.

7. However this will not stand in the way of exercising discretionary power by the petitioner Bank. The petitioner Bank admitted that respondent Nos. 4 to 7 have repaid the entire amount due to the Bank and the property had been reconveyed to them. In such a circumstance, it is made clear that this order will not affect the re-conveyance made in favour of the respondents 3 to 7.

This writ petition is disposed of accordingly.