

(2002) 01 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 246 of 1991

G. Mahadevappa and Sons, Hubli and Another	APPELLANT
Vs	
The Dharwad District Co-operative Marketing Federation Limited, Hubli and Others	RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2002) ILR (Kar) 2009 : (2002) 3 KarLJ 129 : (2002) 2 KCCR 102 SN

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Sundaraswamy Ramdas and Anand, for the Appellant; B.L. Acharya and M. Mahabaleswar, A.G.A., for the Respondent

Judgement

Mohamed Anwar, J.—By this writ petition, a writ of mandamus is prayed:

"(i) declaring the order of the third respondent in case No. CMW-36; CAP 86, dated 11-12-1990 (Annexure-J) is bad in law and void;

(ii) declaring the order of the second respondent dated 2-11-1987 (Annexure-H) is bad in law and void;

(iii) directing the first respondent to prosecute the claim only before the Commissioner of Payments appointed under Act as per Annexure-D, and recover monies only out of the amounts deposited under Sections 9 and 10 of the Act;

(iv) for costs of these proceedings and for such other reliefs as this Hon''ble Court deems fit to grant in the circumstances of the case".

2. Annexure-H is the order of respondent 2-Joint Registrar of Co-operative Societies, Belgaum ("R2-Registrar" in short), passed in Dispute No. B.DDS.DAM.28/1978-79, rejecting the contentions of petitioners, who were defendants therein, that the dispute u/s 70 of the Karnataka Co-operative Societies Act, 1959 (the Act of 1959" in short) before him was not maintainable

and that he had no jurisdiction to adjudicate the same, and thus disposing of the preliminary issue raised on the point of his jurisdiction. Annexure-J is the order dated 11-12-1990 of respondent 3-State of Karnataka (R3-State), made rejecting petitioners' Revision Petition No. CMW 36 CAP 88, that was filed against respondent 2's order vide Annexure-H. Annexure-D is the Karnataka Co-operative Textile Mills (Acquisition and Transfer) Act, 1986 ("the Act of 1986 in short) gazetted by Government of Karnataka, under Notification No. Law 52 LGN 86, Bangalore, dated 24th September, 1987.

3. Respondents 1 to 3 have filed their counters contending that for the reasons stated therein, the writ petition is liable to be dismissed.

4. A few undisputed material facts are that, a textile mill under the name and style of Karnataka Co-operative Textile Mills, at Hubli, was in the ownership of and was being run by "M/s. Karnataka Co-operative Textile Mills, Dharwad" (which is defined by Clause (g) of Section 2 of the Act of 1986, and hereinafter referred to as the "lessor"). That mill was closed down by it in the year 1969. Subsequently, in 1970, with the permission of the State Government, it was leased out to the partnership firm of petitioners "M/s. G. Mahadevappa and Sons, Hubli", which was also known as "Mahadev Textile Mills" which is defined as lessee by Clause (f) of Section 2 (hereinafter referred to as "the lessee firm"). The lessee firm was engaged in manufacturing of cloth yarn from the said mills and in trade thereof. In 1979, this firm also could not continue running of the said mills, as it was not able to manage its affairs properly. Since the closure of the said mills was found prejudicial to the scheduled industry, namely, Cotton Textile Industry; the Government of India, u/s 18-AA of the Industries (Development and Regulation) Act, 1951 ("the Act of 1951" in short) issued a Notification No. S.O. 170(E)18AA/IDRA/79, dated 30th March, 1979, vide Annexure-B, authorising the Government of Karnataka to take over the management of the said mills initially for a period not exceeding five years, and later for further periods, as found necessary, from time to time. Pursuant to that notification, the control and management of the said mills was taken over by the Government of Karnataka on and with effect from 4-4-1979. Annexure-B was followed by another Central Government's notification at Annexure-C, dated 11/15th May, 1979 and such other similar notifications under Clause (b) of Section 18-FB(1) of the Act of 1951 keeping the lessee firm's existing contractual obligations and liabilities specified therein, suspended. Thereafter, during currency of those notifications, when the said industrial unit of the lessee firm was found economically not viable, it was declared a sick unit. Subsequently, the Act of 1986 came to be enacted by the State Legislature for complete acquisition and transfer to it of the said mills and all its accessories, for the purpose of proper management and development of the said mills by making improvement thereof and to ensure continuance of the production and distribution of the cloth and yarn, which are essential to the needs of economy, and to provide relief against unemployment and for matters connected therewith and are incidental thereto. Accordingly, by Section 4 of this Act, it was declared

that the said mills "and the rights, title and interest of the lessor and lessee in relation to the mills, shall, by virtue of this Act stand transferred to and shall vest absolutely in the Government", on and from the appointed day i.e., 30-6-1986, on which date the Act came into force.

(emphasis supplied)

5. Admittedly, on 27-6-1977, when the said textile mills at Hubli was being run by the lessee firm, "1,001 Jayadhar Full Pressed Cotton Bales" were purchased by it and were taken delivery of for its said mills from respondent 1-the Dharwad District Co-operative Marketing Federation Limited, Jayachamaraj Nagar, Hubli (R1-Society" for short) of the total value of Rs. 22,13,705.19 agreed to be paid by the former to the latter at a future date. This price was not paid to R1-Society by the petitioner-firm within the agreed time. The further case of respondent 1 was that, it was agreed between the parties, if the said price was not paid in time, then, the same becomes payable by the lessee firm with interest at 15% per annum from 25-7-1977 up to 31-10-1977, and penal interest at 18% from 1-11-1977 till the date of payment.

6. Despite the demand notice, reminders and requests, when the said amount was not paid by the lessee firm, R1-Society, as plaintiff, raised a dispute in the said case No. B.DDS.DAM. 28/1978-79 before R2-Regis-trar, by filing a petition u/s 70 of the Act of 1959 for recovery thereof, against lessee firm and all its nine partners showing them as defendants 1 to 10 therein. Besides, the Administrator of the said mills, and the Government of Karnataka, were added in the claim petition as defendants 11 and 12, in view of the contentions of the petitioner-firm taken to the effect that the latter defendants are liable to meet the petition claim.

7. In the said dispute, the two petitioners herein, who were opponents 1 and 3 in the dispute, and other opponents therein were treated as defendants 1, 2, 3, 4, 5, 6 ... 12, respectively. Admittedly, petitioner 2, who is defendant 3 in the said dispute, was the managing partner of the lessee firm at the material time, who transacted the purchase transaction of the said cotton bales with respondent 1.

8. The said petition u/s 70 of the Act of 1959, filed by R1-Society before R2-Joint Registrar was resisted by partners of the lessee firm by filing their written statement. Four grounds of objections were urged therein against maintainability of the petition. First objection was that, the lessee firm, being not a member of R1-Society, the latter is disentitled to bring an action u/s 70 before the Joint Registrar. Secondly, the lessee firm was not properly impleaded. Thirdly, in view of the management and control of the said textile mills having been completely taken over by the Government on and with effect from 4-4-1979, followed by acquisition thereof on and with effect from 30-6-1986, under the Act of 1986, the contractual liability of lessee firm to pay the said amount to claimant R1-Society became extinguished. The fourth one was that the remedy available to R1-Society for recovery of the said amount under the provisions of the Act of

1986 is only through "the Commissioner of Payment" appointed u/s 15 thereof, and therefore, R2-Registrar had no jurisdiction to entertain its petition u/s 70 of the Act of 1959 and to adjudicate the claim of R1-Society against the lessee firm and its partners.

9. A separate written statement was filed for defendant 11 before R2-Registrar in the said dispute contending that the present management of the said textile mills is not a co-operative institution and it is a unit of Karnataka State Textile (Private) Limited, registered under the Companies Act of 1956 and fully owned by State Government, and that, in respect of the liability arising out of the said sale transaction in question, the Administrator of the present management is not at all concerned therewith, which had taken place in June 1977, long before the appointed day. Therefore, by virtue of Section 6 of the Act of 1986, the liabilities of the lessor or lessee prior to the appointed date, shall be the liabilities exclusively of the lessor or lessee and not of the State Government, and, as such, the State Government is not liable to pay or meet the claim of R1-Society.

10. After the said arbitration proceeding in dispute No. B.BDS.DAM.28/1978-79 before respondent 2 was instituted by R1-Society against lessee firm, the latter had approached this Court with W.P. No. 16983 of 1981 with a prayer that the further proceeding therein may be suspended during the currency of the notification dated 25-3-1981, issued following the Notifications at Annexure-B and C, of the Ministry of Industries, Department of Industrial Development, under the Act of 1951 (which was produced at Annexure-D, therein), on the ground that R2-Registrar had no jurisdiction to proceed with the matter. That writ petition was dismissed by order dated 25-7-1986 holding that it does not survive for consideration, while observing at paragraph 2 of the order that the concerned Registrar of Co-operative Societies before whom the dispute was pending was "bound to take notice of the law which is now in force and act according to the provisions contained in such law. Any claim against the partners, who own the textile mills will have to be agitated in accordance with the provisions made in the Ordinance and not in accordance with the provisions made under the Act" (i.e., the Co-operative Societies Act).

11. After disposal of the said writ petition, R2-Registrar proceeded to hear both parties on the point of his jurisdiction to entertain and proceed with the trial of the dispute raised before him by R1-Society. He then passed the impugned order at Annexure-H, dated 2-11-1987 answering the question in the affirmative. When that order was challenged in revision by the lessee firm before R3-State Government, it came to be affirmed by its impugned order at Annexure-J, dated 11-12-1990.

12. Mr. Ramdas, learned Counsel representing the lessee firm, argued assailing the validity of the impugned orders at Annexure-J and H on the basis of the aforementioned third and fourth grounds of objections only (vide paragraph 8 supra). For effective disposal of the question in the light of the other two objections as well, i.e., the first and second objections (paragraph 8 supra), Mr.

Ramdas was called upon by this Court to address his argument on those grounds also, but he categorically submitted that he does not intend to submit any argument on those two grounds namely, (1) that the petitioner-firm being not a member of R1-Society, and (2) it being not properly impleaded in the claim petition filed u/s 70, its legal action before R2-Registrar stands vitiated in law. His attention was specifically invited by the Court that the lessee firm has approached the Court invoking its writ jurisdiction and, therefore, if he does not press those first two grounds also for Court's consideration in challenging the impugned orders, then it would be treated as having been waived by it. Mr. Ramdas stoutly refused to press those two grounds against the impugned orders, with the result, a separate order dated 30-1-2001 was passed in this respect holding that the petitioner-lessee firm, shall stand precluded to re-agitate the validity of the impugned orders on the first two above stated grounds at any future stage of the proceeding in the said dispute between the parties.

13. However, referring to the various relevant provisions of the Act of 1986 and their sweep, viz., Sections 4, 5, 6, 9, 10, 15, 18, 19, 20, 21 and 26 read with items at (a) and (b) in Category V(b) of the Schedule to the Act, Mr. Ramdas pressed into service the latter two grounds of objections and contended that the impugned orders are untenable in law inasmuch as by reason of those provisions, R2-Registrar is divested of his jurisdiction to entertain the dispute u/s 70 of the Act of 1956, and that R1-Society's remedy lies exclusively before the Compensation Commissioner appointed under the Act.

14. Per contra, learned Counsel for R1-Society and of other respondents vehemently argued otherwise in support of the impugned orders, and contended that the petition is liable to be rejected.

15. The whole controversy relating to the point of jurisdiction involved in the dispute between the parties boils down to the determination of the following material questions:

(i) Whether by virtue of various relevant provisions of the Act of 1986, which followed the Central Government's notification at Annexure-B, dated 30-3-1979, the remedy for R1-Society to enforce its petition claim lies exclusively with the "Commissioner of Payments" appointed u/s 15 of the Act?

(ii) What order?

Question Nos. (i) and (ii)

These are inter-related questions. Answer to question No. (ii) depends upon question No. (i), which question requires to be determined in the context of the relevant provisions of the Act keeping in view the scheme of the Act. As far as the object of the Act is concerned, the same has been stated elsewhere hereinabove. Concerning the scheme of the Act, let us examine its skeletal picture. It is pertinent to note that this is a special enactment of the State enacted solely for the purpose of acquisition by the Karnataka State Government

of the textile mills in question of which petitioner was the lessee, in the circumstances already narrated hereinabove. The Act consists of seven chapters and one Schedule. Chapter I contains Sections 1 and 2, which deal with preliminaries such as the title and commencement of the Act and the definitions of the terms used in the body of the Act. Chapter n containing Sections 3 to 10 provides for "Acquisition and Transfer of the Karnataka Co-operative Textile Mill Limited, Dharwad". Section 3 is a declaratory provision made pertaining to and consistent with Article 31-C of the Constitution declaring that the provisions of the Act are enacted for giving effect to the policy of the State towards securing the principles laid down in Clauses (a) and (b) of Article 39 of the Constitution. Section 4 provides for transfer and vesting of the Mills in the Government. By Sub-clause (d) of Section 2, it is stated that "Government" means the State Government. Section 5 deals with general effect of vesting of the Mills with the Government. Section 6 relates to liabilities of the "lessor" or "lessee" in relation to the Mills which were existing prior to the appointed day. Section 7 provides for the right of Government to recover back wages etc., from the lessor or lessee, which were payable to the officers or other employees of the Mills and which had been paid to them by the "Present Management" which is defined in Sub-clause (h) of Section 2. Section 8 confers power on the Government to direct vesting of the said Mills in the "company" which is defined by Section 2(c). Section 9 directs the Government to pay lumpsum amount of Rs. 446.59 lakhs to the Mills by depositing the same with the "Commissioner" for acquiring u/s 4 the said Mills and the rights, title and interest in relation thereto, for the purpose of payment of that amount by the Commissioner to the "lessor, lessee or such other persons entitled thereto in the manner specified in Chapter V". Section 10 stipulated payment of simple interest at the rate of 4 per cent per annum by the Government on the amount envisaged in Section 9 for the period commencing on the appointed day and ending on the date of which that amount is deposited with the Commissioner. The said interest amount per Sub-section (2) of Section 10, as determined by the Commissioner, is required to be paid by the Government to the lessor, lessee or such other persons entitled thereto, as the case may be, in addition to the amounts specified in Section 2. More relevant provision is Sub-section (3) of Section 10 which contemplates that the liability of the lessor or lessee in relation to the Mills vested in the Government u/s 4 shall be discharged from the amount referred to in Section 9 plus the amount of interest stipulated by Sub-section (1) of Section 10.

16. Chapter IV of the Act deals with "Management of the Mills". It contains Sections 11 to 14. Section 11 contemplates that the Management of the Mills shall vest in the company pursuant to issuance of the Government Notification under Sub-section (1) of Section 8. Section 12 lays down the duties of the persons in charge of the Mills. Section 13 spells out the duty of the persons to account for assets etc., in their possession or under their control of any assets, books, documents, etc., relating to the Mills. Section 14 provides for "Accounts and Audit" of the company. Chapter V is important for our purpose, which

provides for appointment of the "Commissioner of Payment" (hereinafter referred to as "the Commissioner") and lays down his powers and the procedure to be followed by the Commissioner in determination of the claims of parties against the lessor and the lessee concerning discharge of their liability and disbursement of the determined amount to such claimants out of the amount deposited by the Government. Sections 24 and 25 of Chapter VI cover the matters relating to the service tenure and the service conditions of the employees of the Mills. Chapter VII provides for miscellaneous matters, which contains Sections 26 to 33. Section 26 declares the overriding effect of the provisions of the Act.

17. In *G. Mahadevappa and Sons and Others Vs. State of Karnataka and Others*, the concerned Deputy Commissioner of Provident Fund was directed by the Regional Provident Fund Commissioner, Bangalore, by his order dated 31-5-1990, to collect the provident fund amount due from the lessee's ex-partners on account of default on its part to pay the same in time respecting its employees. The validity of that order was challenged by the lessee by filing a writ petition in that case of *G. Mahadevappa and Sons, supra*, while praying for additional reliefs also viz., to direct the first respondent-Government to deposit the said amount of Rs. 446.59 lakhs payable u/s 9, with the Commissioner, with interest at 21% per annum for delayed period of deposit, and for a direction to the Commissioner to adjudicate the claims and disburse the amount as per the provisions of the Act, etc. That writ petition was filed in this Court by the lessee in 1990. Admittedly, the said amount payable by the Government under Sections 9 and 10 of the Act was not deposited with the Commissioner. On consideration of the relevant provisions of the Act, the Court held that the said amount was withheld from deposit with the Commissioner by the Government without any reasonable excuse. Therefore, the prayer of the lessee in regard to this relief was allowed directing the first respondent-State therein to specify the date in terms of Section 16(1) for deposit of the sum of Rs. 446.59 lakhs within two months from the date of receipt of the order and it shall deposit that amount along with interest at 12% per annum as provided u/s 10(1) within 30 days from the date to be specified. As regards the claim of the respondent-Regional Provident Fund Commissioner for recovery of the provident fund in respect of the employees of the lessee Mills, it was pertaining to the period prior to the appointed day i.e., 30-6-1986. On consideration of the relevant provisions in Sub-section (3) of Section 17 read with Sub-section (3) of Section 10 and Section 18 of the Act of 1986, the Court held:

"21.... As stated earlier, Sub-section (3) of Section 10 declares that the liability of the lessor or lessee in relation to the Mills which have been vested in the Government shall be discharged from the amount required to be deposited as provided u/s 9 of the Act i.e., out of a sum of Rs. 446.59 lakhs to be deposited by the Government and also from the amounts determined under Sub-section (1) of Section 10 of the Act i.e., the interest to be paid on a sum of Rs. 446.59 lakhs. Section 18 of the Act as stated earlier provides for the claim to be made by the person before the Commissioner to settle his claims. Therefore, if a date

were to be specified by the State Government for the purpose of deposit of the amount determined u/s 9 of the Act as required u/s 16(1) of the Act, the Provident Fund Commissioner would be required to make a claim before the Commissioner; and in that event he will not be entitled to proceed against the petitioners and other partners of the Mills till the Commissioner determines the claim of the Provident Fund Commissioner as provided under the Act..... If the amount available with the Commissioner is not sufficient to discharge the claim made by the Provident Fund Commissioner, in that event, the Commissioner will be entitled to proceed to recover the amounts from the petitioners and other ex-partners of the Mills as arrears of land revenue. Sub-section (3) of Section 17 of the Act imposes the liability on the lessor or lessee in relation to Mills in respect of any transaction prior to the appointed day, in the event of the amount with the Commissioner is not sufficient to settle the claim. This is clear from the words and language employed in Sub-section (3) of Section 7 of the Act which provides save or as otherwise provided under the Act. Since Sub-section (3) of Section 10 provides that the liability of the lessor and lessee in relation to the Mills which have vested in the Government shall be discharged from the amount deposited as provided under Sections 9 and 10(1) of the Act, the liability of the lessor or lessee in respect of transaction prior to the appointed day would arise only after the final determination of the claim made by the various claimants, by the Commissioner....".

(emphasis supplied)

On arriving at the above conclusion, the said order dated 31-5-1990 which was produced at Annexure-G was quashed as prayed by the petitioner-lessee in that case of G. Mahadevappa and Sons, supra, with a direction restraining the third respondent, the Regional Provident Fund Commissioner, from proceeding against the lessee-petitioner or any of its ex-partners till the Commissioner was appointed u/s 15 of the Act to determine the claims made u/s 18 of the Act and settles and claim as provided under Sections 21 and 22 thereof.

18. Let me now advert to the present liability of the lessee to pay the said price amount of the cotton purchased by it from R1-Society on 27-6-1977. Certain indisputable and admitted facts in this regard are that the said liability incurred by the lessee on 27-6-1977 was long prior to the "appointed day" i.e., 30-6-1986 on which date the Act came into force; that at the time when the said liability was incurred by the lessee firm, the said Textile Mills was under its complete management and was being run by it; that it was under the Central Government's Notification dated 30-3-1979 issued u/s 18-AA of the Act of 1951, vide Annexure-B, which the management of the said Mills was taken over by the Government of Karnataka; and that by virtue of another Central Government's Notification dated 11/15-5-1979 vide Annexure-C, and other similar notifications issued under Clause (b) of Section 18-FB(1) of the Act of 1951, the existing contractual obligations and liabilities of the lessee in relation to the said Mills specified therein remained suspended till the Act of 1986 came into force on

30-6-1986, whereby the said Mills and the rights, title and interest in relation thereto of the lessor and the lessee were acquired by and stood transferred to the State Government. In the meantime, in the year 1978, the said dispute u/s 70 of the Karnataka Co-operative Societies Act was raised before R2-Registrar by R1-Society as against the lessee firm. It is also an admitted fact that the price for the said goods payable by the lessee firm to R1-Society was not the "loan", but it was the "amount due" by the lessee firm to respondent 1. Regarding Government's liability to pay for the acquisition of the said Mills together with its right, title and interest in relation thereto, Section 9 of the Act of 1986 states:

"9. Amount to be given to lessor, lessee and other interested persons.--For the transfer to and vesting in, the Government, of the Mills u/s 4 and the right, title and interest in relation to the Mills the Government shall pay an amount of Rupees 446.59 lakhs by depositing the same with the Commissioner and the said amount shall be paid to the lessor, lessee or such other persons entitled thereto in the manner specified in Chapter V".

As indicated, Section 10(1) created liability against Government to pay interest on the said amount at the specified rate per annum for the period stated therein. Sub-section (3) of Section 10 enjoins:

"10. Payment of further amounts.-

(1).....

(2).....

(3) For the removal of doubts, it is hereby declared that the liability of the lessor or lessee in relation to the Mills which has vested in the Government u/s 4 shall be discharged from the amount referred to in Section 9, and also from the amounts determined under Sub-section (1) in accordance with the rights and interest of the creditor of the lessor or lessee, as the case may be".

As regards deposit by the Government with the Commissioner of the amount of Rs. 446.59 lakhs determined by Section 9, Sub-section (1) of Section 16 states:

"16. Payment by the Government to the Commissioner.--(1) The Government shall within thirty days from the specified date deposit in cash with the Commissioner for payment to the lessor, lessee and other interested persons.-

(a) an amount equal to the amount specified in Section 9; and

(b) an amount equal to the amount payable u/s 10".

19. Now, it is not in dispute that the Commissioner had been appointed in compliance with the mandate of Section 15, "for the purpose of disbursing the amount payable under Sections 9 and 10", and that in compliance with the direction of this Court given in the case of G. Mahadevappa and Sons, supra, the said amount together with the interest thereon had been deposited by the Government with the Commissioner, thereby fulfilling the requirement of Section

16(1). Section 18, which deals with enforcement of the claim of any person in relation to the said Mills, confers right on such person to put forth such claim before the Commissioner, in the manner stated therein. Relevant portion of Section 18 is extracted below:

"18. Claims to be made to the Commissioner.--Every person having a claim with regard to any of the matters specified in the Schedule in relation to the mills before the appointed day, shall prefer such claim before the Commissioner within thirty days from the specified date:

Provided....".

(emphasis supplied)

The "specified date" mentioned in Section 18 relates to the "specified date" stated in Sub-section (1) of Section 16, and defined by Sub-clause (j) of Section 2 as the date which the Government made for the purpose of any provision of the Act, by notification. In connection with enforcement of liability of any third person against the lessor or the lessee, it is also necessary to consider certain other relevant provisions contained in the Act, Section 5 deals with the "General effect of vesting". Its Sub-section (1) declares to the effect that the textile mills vested with the Government by virtue of Section 4 shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, moveable and immovable, cash on hand, reserve fund, investments and "book debts", other rights and interest, in or arising out of such properties, as, were immediately before the appointed day, in the ownership, possession, power or control of the lessor or lessee. Sub-section (2) declares that the mills and its all such properties stated in Sub-section (1) vested with the Government shall be free of and discharged from all encumbrances. Sub-section (4) which is an important provision states:

"(4) For the removal of doubts, it is hereby declared that the mortgage of any property referred to in Sub-section (3) or any other person holding any charge, lease, lien or other interest in or in relation to, any such property shall be entitled to claim in accordance with his rights and interest, payment of the mortgage money or other dues in whole or in part out of the amount specified in Section 9 and also out of the amount determined u/s 10 but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Government".

So also its Sub-section (6) envisages:

"(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature, in relation to any property which has vested in the Government u/s 4, instituted or preferred by or against the mills, is pending, the same shall not abate, be discontinued or be in any way, prejudicially affected by reason of the transfer of the mills or anything contained in this Act but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the

Government or, where the mills is directed, u/s 8 to vest in the company, by or against the company".

Sub-section (1) of Section 6 declares:

"6. Lessor or lessee to be liable for certain prior liabilities.--(1) Every liability other than the liability specified in Subsection (2), of the lessor or lessee in relation to the mills in respect of any period prior to the appointed day, shall be the liability of such lessor or lessee, as the case may be, and shall be enforceable against them and not against the Government or where the mills is directed u/s 8 to vest in the company, against the company".

According to this provision, every liability other than the liability specified in Sub-section (2) of Section 6, of the lessor or the lessee, in relation to the mills in respect of any period prior to the appointed day shall be the liability of such lessor or lessee, as the case may be, and shall be enforceable against them and not against the Government or where the mills is directed u/s 8 to vest in the company, against the company. The liability dealt with by Section 6(2) is not material for our purpose. Similarly, the provision of Section 6(3) is also not relevant. Section 7 confers the right on the Government to recover from the lessor or lessee of the amounts paid by the "present management" to the officers or other employees of the mills towards back wages, gratuity, retirement benefits and other dues on behalf of the lessor or lessee, as arrears of land revenue. "Present Management" is defined by Sub-clause (h) of Section 2 as the State Government authorised by the Central Government under its notification issued under Clause (b) of Sub-section (1) of Section 18-AA of the Act of 1951 as per Notification No. S.O. 170(E) 18AA/IDRA/79, dated 30-3-1979 vide Annexure-D. Sub-sections (2) and (3) of Section 17 are the other relevant provisions which call for notice and consideration. They are reproduced below:

"17. Certain powers of the Government and the company.--(1)....

(2) The Government or the company, as the case may be, make a claim to the Commissioner with regard to every payment made by the Government or the company after the appointed day for discharging any liability of the lessor or lessee in relation to the mills, in respect of any period prior to the appointed day and every such claim shall have priority in accordance with the priorities attaching under this Act to the matters in relation to which such liability has been discharged by the Government or the company.

(3) Save as otherwise provided in this Act, the liabilities of the lessor or lessee in relation to the mills in respect of any transaction prior to the appointed day, which have not been discharged on or before the specified date shall be the liabilities of the lessor or lessee, as the case may be".

Then, we need to refer to Section 19 which lays down the order of priority of claims made u/s 18. It states that Category I in the Schedule (referred to in Section 18) shall have precedence over all other categories and Category II shall

have precedence over Category III and so on. Sub-section (b) of Section 19 states:

"19. Priority of claims.--The claims made u/s 18 shall have priorities in accordance with the following principles, namely.-

(a).....

(b) the claims specified in each of the categories shall rank equally and be paid in full, but if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly; and".

Sub-section (c) thereof reads:

"(c) the question of discharging any liability with regard to a matter specified in a lower category shall arise only if surplus is left after meeting all the liabilities specified in the immediately higher category".

Sub-section (1) of Section 20 directs the Commissioner to arrange the claims made u/s 18 in the order of priorities specified in the Schedule and examine the same in accordance with such order. Sub-section (2) of Section 20 states:

"20. Examination of claims.--(1)....

(2) If, on examination of the claims, the Commissioner is of opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category he shall not be required to examine the claims in respect of such category".

20. Mr. Ramdas, learned Counsel for lessee, in his attempt to substantiate his contention that the liability of the lessee to pay the said amount to R1-Society stands extinguished and that the Government or the company, as the case may be, having stepped into the shoes of the lessee under the Act, is liable to pay the same to R1-claimant Society, he in the first instance intended to take shelter under the provisions of Sub-sections (4) and (6) of Section 5, Sub-section (3) of Section 10 and Sections 18 and 19 read with Category V(b) of the Schedule of the Act, besides drawing support from the decision of this Court in G. Mahadevappa and Sons case, *supra*.

21. Learned Counsel for the lessor and other respondents argued otherwise in view of the dictates of law contained in Sections 6(1), 7 and 17(3) of the Act of 1986.

22. It has to be noted that the verdict of this Court in W.P. No. 16983 of 1981, DD: 25-3-1981, which is quoted at paragraph 10 *supra*, that "any claim against the partners of the lessee will have to be agitated in accordance with the provisions made in the ordinance ..." will have to be now construed as a directive that any claim against the partners of the lessee shall be agitated in accordance with the provisions of the Act of 1986, since the said previous ordinance stood merged with the Act.

23. In the instant case, we have to first determine the nature of the claim of R1-Society against the lessee and its partners, and its placement in the Schedule of the Act. The position of R1-Society vis-a-vis the lessee in respect of the said sale transaction is that of the unpaid seller. The property in the said sale transaction i.e., cotton bales, has already passed to the buyer lessee. Therefore, undisputedly, the latter is liable to pay the agreed price of the goods to the former with interest at the agreed rate or, in the absence of which, the commercial rate of interest. This amount is the amount "due" by the lessee to the R1-Society for recovery of which claim petition u/s 70 of the Co-operative Societies Act was filed by the latter before R2-Registrar. This liability of the lessee is the liability which had arisen during June 1977 and long before the material date 4-4-1979 with effect from which date the control and management of the lessee Mills was taken over by the Government and which remained as "the present Management" within the meaning of the term defined by Sub-clause (h) of Section 2, till the Act of 1986 came into force and by which Act, the lessee Mills stood acquired by it and vested in the Government and subsequently in a company by virtue of Section 8 of the Act. In that view of the position of law, the lessee's present liability in question is the liability which had arisen prior to the "appointed day" for the purposes of the Act of 1986. In the Schedule of the Act, which is material for the purposes of Sections 9, 10, 18, 20 and 21(1) of the Act, the existing prior liabilities of various kinds of the lessor and the lessee have been differently categorised in five categories. Each category, in turn, contains different nature of liabilities in the order of priority. The lessee's present liability in question to pay the said "amount due" to R1-Society finds place at Clause (b) of Category V under the "dues" as a last item of the Schedule.

24. The declaratory provision in Sub-section (4) of Section 5, on which reliance was sought to be placed by Mr. Ramdas, states to the effect that the mortgage of any property referred to in Sub-section (3) or any other person holding any charge, lease, lien or other interest in or in relation to any such property shall be entitled to claim in accordance with his rights and interest or other dues out of the amount specified in Sections 9 and 10, and that no such claim is enforceable against any property which is vested in the Government by virtue of Section 4 of the Act. Therefore, this provision does not transfer the lessee's liability to the Government or the company by reason of acquisition of the lessee Mills as was sought to be made out by Mr. Ramdas. On the other hand, it simply provides an alternate remedy for the claimant to enforce his claims specified in Sub-section (4) out of the amount to be deposited by the Government in compliance with the directives contained in Sections 9 and 10. Sub-section (6) of Section 5 on which reliance was sought to be placed by the learned Counsel for lessee in support of the contention that the claim of R1-Society has to be prosecuted against the Government or the company, as the case may be, is also not relevant since it does not support this contention. The provision in Sub-section (6) of Section 5 relates to "any suit, appeal or other proceeding of whatever nature, in relation to any property which is vested in the Government u/s 4, instituted or preferred by

or against the mills, and which was pending on the appointed day". The provision provides that such legal proceeding against the said Mills shall not abate or be discontinued or get prejudicially At tested by reason of the transfer of the Mills and its property to the Government, but the said proceeding/proceedings may be continued, prosecuted and enforced by or against the Government or the company. The legal proceeding contemplated in Section 5(6) of the Act relates to the proceeding against any property of the Mills. The liability of the lessee to pay the said amount due to R1-Society was not the "property of the Mills". On the other hand, it was its liability. Therefore, this provision is of no avail to the lessee.

25. On the other hand, a combined reading of material provisions in Sections 6(1), 7, 17(3) and 20(2) of the Act clearly bring this legal position to the fore that the liability incurred by the lessee out of the transactions done in relation to the lessee Mills in respect of any period prior to the appointed day shall remain the liability of the lessee firm itself and it continues to be enforceable against them and not against the Government or the company, as the case may be. But, the mode of enforcement of this liability would be subject to the mode provided by Sections 8, 18, 19 and 20 of the Act. Furthermore, there is no express provision in the Act ousting the jurisdiction of any authority under any other enactment to entertain adjudication of the claim of R1-Society, and exclusively vesting this jurisdiction with the Commissioner appointed under the Act of 1986. On the other hand, the import of Sub-section (2) of Section 20 makes it abundantly clear that when the Commissioner finds that the said amount deposited by the Government is not sufficient to meet the liabilities mentioned in any lower category of the Schedule, then the Commissioner is not required to examine the claims in respect of such category, with the result, in such an eventuality, the concerned claimant will have the right and would be at liberty to prosecute his claim before any other Competent Authority or forum as provided under any other particular enactment or in accordance with the provisions of the Code of Civil Procedure, as the case may be.

26. This view of mine finds complete accord with the decision of this Court rendered in G. Mahadevappa and Sons case, *supra*. In that case, the order dated 31-5-1990 of the Regional Provident Fund Commissioner, Bangalore, directing the concerned Deputy Commissioner of Provident Fund to levy the provident fund amount due from the lessee from its ex-partners was challenged by the lessee and was sought to be quashed on the ground that it was an invalid order by reason of the aforementioned provisions of the Act. Having considered those provisions, the Court did not declare that impugned order invalid and it was not quashed as prayed. On the other hand, its operation was held in abeyance till the claim of the Provident Fund Commissioner against the lessee was examined and determined by the Commissioner under the Act in accordance with the provisions thereof, leaving further liberty to the Provident Fund Commissioner to enforce his impugned order in case if the claim was not fully met by the decision of the Commissioner under the Act. The same legal position holds good in the instant case also. Admittedly, R1-Society has laid its claim for the said "amount due"

before the Commissioner under the Act and his decision thereon is awaited. The legal position relating to the choice of forum for R1-Society to enforce its claim against the lessee, which emerges from the aforementioned relevant provision of the Act is that, the Commissioner under the Act and R2-Registrar under the Co-operative Societies Act are both competent to entertain and adjudicate the claim of R1-Society, with this distinguishing feature, that the forum of the Commissioner under the Act shall find precedence over the arbitral forum of R2-Registrar u/s 70 of the Karnataka Co-operative Societies Act. In other words, the forum of R2-Registrar is and remains supplemental to the forum of Commissioner under the Act for the purpose of enforcement of the liabilities against the lessor or the lessee by any claimant, and that any such claimant shall first approach the Commissioner for enforcement of the claim and after spending this remedy, if the claim of any claimant remains undetermined or not fully satisfied by reason of Sub-section (2) of Section 20, then it is open for the claimant to turn to any other competent forum for enforcement of such claim or the remainder thereof, as the case may be, against the lessor or the lessee.

27. In that view of the legal position, it necessarily follows that R1-Society will have to, in the first instance, approach the Commissioner for adjudication of its claim against the lessee and in fact, it having already filed its claim petition before him, it will have to wait till final verdict of the Commissioner thereon is pronounced. Till then, the proceeding initiated by R1-Society before R2-Registrar u/s 70 of the Act in dispute No. B.DDS.DAM.28/1978-79 shall remain in abeyance. In case, if the Commissioner under the Act of 1986 does not proceed to examine the claim of R1-Society by reason of Sub-section (2) of Section 20, or if that claim is not fully met out of the said amount deposited with the Commissioner by the Government, then the said dispute before R2-Registrar shall stand revived and R1-Society would be entitled to further prosecute the same against the lessee and its ex-partners. The material question Nos. (i) and (ii) are answered thus and the writ petition stands disposed off accordingly.

Parties to bear their own costs in the circumstances.