

(1977) 08 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition Case No. 129 of 1971

Gurudayal Singh alias Munshi Singh

APPELLANT

Vs

Faqulrchand, Member, Board of Revenue Madhya Pradesh,
Gwalior and others

RESPONDENT

Date of Decision : 03-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64, 64(1)(c), 64(2), 82(1)(c)

Citation : (1981) ILR (MP) 26 : (1977) JLJ 805

Hon'ble Judges : R.L. Murab, J;C.M. Lodha, J

Bench : Division Bench

Advocate : R.A. Roman, for the Appellant; D.K. Katare and S.K. Dube for Co-operative Marketing Society, for the Respondent

Final Decision : Allowed

Judgement

Lodha, J.—This is a petition under Article 226 of the Constitution of India, challenging the order passed by the Board of Revenue for Madhya Pradesh dated 12-2-1971, by which the learned Member of the Board held that the petitioner should file a civil suit to get damages in respect of his claim against the Co-operative Marketing Society, Basoda, which will hereinafter be referred to as the Society.

2. The petitioner's case is that he is a member of the Society and had pledged 36 bags and 35 Kilograms of "Gulabi Chana" with the Society in lieu of a loan of Rs. 1,100. He gave instructions to the Society on 29-8-1964 to sell the gram in the market but he was informed that the gram had already been sold. His case is that the gram was sold mala fide and for a lessor price. According to him, the price of the gram was Rs. 4,110. He, therefore, made an application before the Assistant Registrar, Co-operative Societies, on 17-6-1967 u/s 64 of the M. P. Co-operative Societies Act, 1960, (which will hereinafter be called the Act) for

awarding the amount due to him. The Assistant Registrar, however, by his order dated 17-8-1968 dismissed the petitioner's application. The petitioner then filed appeal before the Registrar, Co-operative Societies, which was ultimately decided by the Joint Registrar, Co-operative Societies, by his order dated 28-5-1969. The Joint Registrar held that the petitioner had been put to a loss on account of the illegal and unauthorised sale of the gram by the Society. But he did not award any amount to the petitioner on the ground that he had not specified the amount to be awarded to him.

3. Aggrieved by the order of the Joint Registrar, the petitioner filed second appeal before the Board of Revenue, which, as already stated above, did not grant any relief to the petitioner on the ground that the proper remedy for him was to file a civil suit.

4. The petition has been resisted by Shri D.K. Katare, learned counsel for the Society, and it has been urged that the petitioner's claim does not fall u/s 64(2) of the Act. On the other hand, Shri R.K. Roman, learned counsel for the petitioner, has submitted that the jurisdiction of the Civil Court in respect of a claim, like the present one, is barred u/s 82(1)(c) of the Act. It is argued that the petitioner was a member of the Society at the time of the relevant transaction, and the dispute between the petitioner and the Society is one touching the business of the Society. In support of his contention, learned counsel has relied on *Bubulal v. Ballabh Bhai Sahakari Krishi Samiti, Dhau 1970 M P L J Note 104*.

5. In *Pentakota Srirakulu Vs. The Co-Operative Marketing Society Ltd.*, it was held that the sale of the produce belonging to the member of the Society is part of the business of the Society, and then the charging of commission for those sales and the crediting of the Society's accounts with that commission would equally be the business of the Society. It was further observed that it is not capable of argument that the failure on the part of the appellant to credit to the Society the full amount of commission due on the sales effected by him on behalf of the Society and the resistance by him of that demand, would not be a dispute touching the business of the Society.

6. In *Damodar Das Vs. Co-Operative Seeds Store, Sakit and Others*, ; the applicant had borrowed grain from Co-operative Society and agreed to return it by a certain date. The applicant sent back the grain within the extended time but the Society refused to accept it, and the District Co-operative Officer informed the applicant that he had incurred penalty provided in the agreement. Thereupon, the applicant applied to the Registrar to refer the case to arbitration but the application was refused. In these circumstances, it was held that the dispute was one touching the business of the Society and the Registrar's refusal to refer the case to arbitration was against law.

7. In *Babulal v. Ballabh Bhai Sahakari Krishi Samiti, Dhau (supra)* where the appellant has filed a suit for refund against the Society on the allegation that the Society had agreed to sell grass of its land and obtained money in advance as

payment of its price, but, subsequently, its members did not permit him to cut and remove the grass, an ex-parte decree was passed against the Society. But on an objection being raised in the course of execution that the decree was without jurisdiction, it was held that the decree was a nullity, as the dispute was between a member of the Society and the Society touching the business of the Society and the jurisdiction of the civil Court was barred by section 82(1)(c) of the Act.

8. From the aforesaid authorities, with which we respectfully agree, it is clear that the dispute in the present case was raised by a member of the Society against the Society touching the business of the Society and, therefore, the matter clearly fell u/s 64(1)(c) of the Act.

9. Learned counsel for the Society, however, relied upon Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, in support of his contention. We have gone through this ruling and are of opinion that it is distinguishable on facts. In the first place, the dispute raised in that case was not in respect of the business of the Society, but was in respect of certain premises taken on rent by the Society. The other distinguishing feature in that case was that the transaction in dispute took place at a time when the person concerned was not a member of the Society, but became a member subsequently. In this view of the matter, the rationale of the decision in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, has no application to the facts of the present case.

10. Lastly, it was argued by the learned counsel for the Society that the case does not fall within the ambit of the various types of disputes mentioned in section 64(2) of the Act. It is enough to point out that the words used in sub-section (2) of section 64 of the Act are "a dispute shall include." The word "include" is generally used in interpretation clause in order to enlarge the meaning of words or phrases occurring in the body of a statute, and when it is so used, those words or phrases must be construed as comprehending not only such things, as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include. The use of the word "include" does not make the definition exhaustive but the definition is to be understood as extensive.

11. The various types of disputes enumerated in clauses (i) to (v) of sub-section (2) of section 64, therefore, cannot be interpreted as restrictive. The definition was merely employed for the purpose of adding to the natural significance of the word "dispute".

12. In this view of the matter, the Board was clearly in error in holding that the dispute does not fall under sub-section (2) of section 64 of the Act, and, therefore, the only remedy open to the petitioner was to file a civil suit.

13. The result of the foregoing discussion is that the only remedy open to the petitioner is to pursue his claim u/s 64 of the Act. However, since the Board has

held that it had no jurisdiction in the matter and we have come to the conclusion that it has, the case must go back to the Board for decision, according to law.

14. Accordingly, we allow the petition, set aside the impugned order of the Board dated 12-2-1971 and send the case back to it for disposal according to law. There will be no order as to costs of this petition. The security amount shall be refunded to the petitioner.