

(1995) 07 AHC CK 0007
In the Allahabad High Court
Case No : C.M.W.P. No. 6694 of 1984

Har Bhajan Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Citation : (1995) 3 UPLBEC 1359

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : M.B. Saxena, for the Appellant;

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The Petitioners had taken a loan of Rs. 18,781 long back from Respondent No. 4, District Co-operative Society. The Petitioners' case is that they had deposited the said amount, but the officials of the said Respondent-society did not make the respective entries in its respective ledgers and the impugned demand notice citation was issued against the Petitioners to recover the said amount as arrears of land revenue. For doing so the Registrar Co-operative Society, Respondent No. 2, had issued a certificate to the Collector in exercise of its power u/s 95A of the U.P. Co-operative Societies Act, 1965. Being apprehended of a rest and adoption of other coercive actions, the Petitioners filed the instant writ petition before this Court and this Court, vide its order dated 7th May, 1984, stayed the recovery.

2. The contention of the learned Counsel for the petitioner had been that Section 70 of the said Act of 1965 specifically provides a provision for referring any dispute to the arbitration and hence Respondent No. 2 should have not resorted to the provisions of Section 95A of the said Act. However, without going into this controversy, this case may be disposed of in terms of the judgment of this Court in the case of Ram Narain Him mat Ram and Anr. v. Jalaun Kraya Vikraya Sahkarl Samiti Ltd. and Ors. 1986 AU 570. The retention of the learned Counsel for the

Petitioners had been that the said demand notice/citation had been issued in contravention of the principles of natural justice as no opportunity of hearing was given to the petitioners. In the aforesaid case, this Court has held as under:

It is true that Under Sub-section(1) of Section 95A, after an application has been made to the Registrar for recovery of arrears of loan advanced by the society, the Registrar has been given discretion to hold such enquiry into the claim made by the society as he thinks fit. This provision, however, does not mean that while issuing recovery certificate, the Registrar can give a go-by to the principles of natural justice. As and when an Application is made to the Registrar to recover any balance or installments of loan from any debtor, the Registrar has to, in accordance with the principles of natural justice, inform the debtor, concerned about the claim made by the society so that the debtor may approach and satisfy him about the following matters:

- (1) that the debtor is not a member of the society;
- (2) that the amount sought to be recovered is not in fact a loan advanced by the society to him;
- (3) that the amount of loan has either been wholly or partly paid up.

And further observed that in such circumstances the Registrar was bound to, at least, inform the Petitioner about the claim made by the society and to hear him before issuing any recovery certificate in respect of the claim made by the co-operative society.

3. In view of the above, the writ petition succeeds and is allowed. The impugned recovery proceedings are quashed. The Registrar, Co operative Society-Respondent No. 2 shall be at liberty to issue fresh recovery certificate against the Petitioners after affording them an opportunity to substantiate their version. In the facts and circumstances of the case, there will be no order as to costs.