(1973) 10 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1551 of 1973

Ishar Das and Another APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 29-10-1973

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 104, 96
Constitution of India, 1950 — Article 14

Citation : AIR 1975 P&H 29

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : Gobinder Singh, for the Appellant; H.N. Mehtani, Asstt. A.G. and Sardara Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Nath Mittal, J.—This writ petition has been filed under Articles 226 and 227 of the Constitution of India for quashing the notices, dated April 17, 1973 (copies Annexures ''A'' and ''B'' to the petition) issued by the Assistant Registrar Co-operative Societies, respondent No. 3.

2. The facts of the writ petition are that the petitioners are the members of the Metlan Co-operative Agricultural Service Society, Metlan, tehsil and district Ambala (now under winding up) (hereinafter referred to as ''the ''Society'') which is registered under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as ''the Act''). Respondent No. 3 who directed the winding up of the Society appointed respondent No. 4 as its Liquidator under Sub-section (1) of Section 58 of the Act. A few days before the notices, dated April 17, 1973, (Copies Annexures ''A and ''B'') were issued to the petitioners, respondents 4 and 5 came to their village and asked them to pay the loans which were alleged to be outstanding in their names in the records of the Society. The petitioners informed them that whatever loan they had taken from the Society had been repaid from time to time and no amount was, then due to the Society from them.

Respondents 4 and 5 moved an application u/s 67-A of the Act under which the amount could be recovered as arrears of land revenue. The Assistant Registrar sent the impugned notices, dated April 17, 1973, to the petitioners and asked the petitioners to appear before him on April 27, 1973, to represent their case. The case was adjourned on that date to May 3, 1973, and then to May 5, 1973. On May 5, 1973, a preliminary objection was raised by the petitioners before respondent No. 3 that as the Society was under winding up process, no action could be taken against them for recovery of any debt except by following a procedure u/s 59 of the Act read with Rules 58 and 59 of the Punjab Cooperative Societies Rules, 1963 (hereinafter referred to as ''the Rules''). They further stated that when a Society was under winding up, the loan due from any person could be recovered by the Liquidator, by an order passed under Clause (b) of Sub-section (2) of Section 59 of the Act. Respondent No. 3 overruled the objections of the petitioners. Respondent No. 3 has no jurisdiction and power to issue any notices to the petitioners in respect of the alleged loan. Section 67-A of the Act is violative of Article 14 of the Constitution of India, 150, as uncontrolled and unbridled powers have been given to the Registrar under that section and no provision of appeal or revision against an order passed under that section has been provided in the Act. The petitioners have challenged the aforesaid notices marked as Annexures ''A'' and ''B'' on the ground that they are illegal, void and without jurisdiction. The respondents have contested the petition.

3. The first contention of the learned counsel for the petitioners is that the winding up of the Society has been ordered and a Liquidator has been appointed. He further submits that the amount which is recoveraable from the petitioners should be determined by the Liquidator u/s 59 of the Act and the same can be recovered u/s 64 of the Act. According to him, Section 67-A has no applicability to the present case. It is, therefore, argued toy him that the notices issued u/s 67-A are illegal and without jurisdiction. In order to appreciate the argument of the learned counsel for the writ petitioners, it is necessary to reproduce Sub-sections (1) and (2) of Section 58, Sub-section (1) and Clauses (a) and (b) of Subsection (2) of Section 59, Section 64 and Sub-sections (1) and (2) of Section 47-A of the Act, which are as follows:--

"58 (1) Where the Registrar has made an order u/s 57 for the winding up of a co-operative society, he may appoint a liquidator for the purpose and fix his remuneration.

(2) A liquidator shall, on appointment, take into his custody or under his control all the property, effects and actionable claims to which the society is or appears to be entitled and shall take such steps as he may deem necessary or expedient, to prevent loss on deterioration of, or damage to, such property, effects and claims. He may carry on the business of the society so far as may be necessary with the previous approval of the Registrar.

(3) xx xx xx

(4) xx xx xx

59. (1) Subject to any rules made in this behalf, the whole of the assets of a co-opera tive society, in respect of which an order for winding up has been made, shall vest in the liquidator appointed u/s 58 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise.

(2) Such liquidator shall also have power, subject to the control of the Registrar,

(a) to institute and defend suits and other legal proceedings on behalf of the co-operative society by the name of his office;

(b) to determine from time to time the contribution (including debts due and costs of liquidation) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers, to the assets of the society.

64. The orders of the liquidator u/s 59 shall be executed according to the Act and under the rules for the time being in force for the recovery of arrears of land revenue.

67-A (1) Notwithstanding anything contained in Section 55 or Section 56 or Section 63 a co-operative society, undertaking the financing of crops or seasonal agricultural finance, may apply to the Registrar for the recovery of arrears of any sum advanced by the society to any of its members on account of the financing of crop or seasonal agricultural finance and shall attach with such application a statement of accounts in respect of such arrears.

(2) On receiving an application under Sub-section (1), the Registrar may, after making such inquiries as he deems fit and after affording the member concerned an opportunity of being heard, grant a certificate for the recovery of the amount stated therein to be due as such arrears."

4. The Registrar passes an order of winding up a co-operative society u/s 57 of the Act and appoints a Liquidator for the purpose of winding up of the society under Sub-section (1) of Section 58. Sub-section (2) of Section 58 authorizes a Liquidator to take into his custody or under his control all the property, effects and actionable claims to which the society is or appears to be entitled and to take such steps as he may deem necessary to prevent loss or deterioration or damage to such property, effects and claims. He is also authorized to carry on business of the society so far as may be necessary. Clause (b) of Sub-section (2) of Section 59 of the Act empowers the Liquidator to determine from time to time the contribution (including debts due and costs of liquidation) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers, to the assets of the society. Rule 59 of the Rules says that an order passed by the Liquidator under Clause (b) of Sub-section (2) of Section 59

shall be submitted by him to the Registrar for approval. It is further provided therein that the Registrar may modify such order or refer it back to the Liquidator for further inquiry or action. Section 68 relates to appeals. Sub-clause (j) of Section 68 provides that an appeal shall lie against any order made by the Liquidator of a co-operative society in exercise of the powers conferred on him by Section 59. u/s 69, a revision is maintainable against the order passed in appeal u/s 68 of the Act. Section 67-A deals with recovery of crop loans. It says that notwithstanding anything contained in Section 55 or Section 56 or Section 63, a co-operative society undertaking the financing of crops of seasonal agricultural finance, may apply to the Registrar for the recovery of arrears of any sum advanced by the society to any of its members on account of the financing of crops or seasonal agricultural finance and shall attach with such application a statement of accounts in respect of such arrears. Sub-section (2) of Section 67-A provides the procedure for determining the amount and granting a certificate for recovery of the amount stated therein to be due as such arrears. No appeal has been provided against an order passed u/s 67-A of the Act. The contention of the learned counsel for the writ-petitioners is that if the amount due is to be determined by the Liquidator u/s 59 of the Act, then the order passed by him (the Liquidator), in the first instance, requires approval of the Registrar under Rule 59 of the Rules and thereafter if the party is aggrieved from his order, he can go up in appeal whereas if the order is passed u/s 67-A of the Act, no remedy is available to the person against whom an order has been made. According to the scheme of the Act, Chapter VIII (Sections 55 and 56) relates to settlement of disputes. Chapter IX (Sections 57 to 61) relates to winding up of co-operative societies and Chapter X (Sections 62 to 67-A) to execution of awards, decrees, orders and decisions. It is not disputed by the learned counsel for the respondents that the Liquidator can determine the contributions himself u/s 59 of the Act. The word ''contribution'' has not been defined but according to Clause (b) of Sub-section (2) of Section 59 of the Act, it includes debts due and costs of liquidation. If the word ''debts due'' is read in the context of the sub-section, it will be seen that it includes debts which are recoverable from its members. Thus the word ''contribution'' has a wide scope which includes the debts which are recoverable from the members of society. A Co-operative society remains into existence till the Registrar cancels its registration u/s 61 of the Act. A society under liquidation can recover loans mentioned in Section 67-A, namely, relating to the financing of crops, seasonal agricultural finance or the purchase of much cattle under that section. Thus there are two remedies for such a society, namely, (1) the general remedy u/s 59 and (2) a specific remedy, for recovering the loans mentioned in Section 67-A. If two remedies of recovery are provided in the Act, one for all the debts and the other for specified debts, then there is sufficient guidance for the officer concerned to know as to which provision of the Act is to be applied for recovery of a particular debt. A sufficient guidance has been provided in the Act for the Liquidator in what circumstances he has to proceed u/s 59 or 67-A of the Act. Section 59 does not exclude the jurisdiction of the Liquidator to recover the loan u/s 67-A. No doubt, it has not been stated that

Section 67-A overrides Section 59 of the Act but if the scheme of the sections is seen, it is abundantly clear for recovering loans specified in Section 67-A, the Liquidator can proceed under that section. In the circumstances, I do not find force in the contention of the teamed counsel for the writ-petitioners and reject the same.

5. The second contention of the learned counsel for the writ-petitioners is that Section 67-A is ultra vires Article 14 of the Constitution as it does not lay any guiding principle as to in what circumstances, Sections 55, 59 and 67-A of the Act are applicable. He also submits that the remedy u/s 67-A is very harsh as no appeal or revision has been provided for an order passed under that section whereas remedies of appeal and revision have been provided for orders passed under Sections 55 and 59 of the Act. He further states that no procedure has been prescribed for the Registrar u/s 67-A of the Act to make the enquiries.

6. There is a general presumption in favour of constitutionality of a atom. If any party challenges the constitutionality of any provision, it is for him to show ft as unconstitutional. u/s 55, all disputes touching the constitution, management or the business of a co-operative society, are referred to arbitration. Under Clause (b) of Sub-section (2) of Section 59, the Liquidator of a Society under Liquidation determine the contributions to be made by the members or past members or by the estates or nominees, heirs or legal representatives of the deceased members. Section 67-A specifically relates to certain types of loans mentioned therein. The aforesaid provisions, as I have already observed, clearly show that sufficient guidance has been provided as to in what circumstances which provision of the Act is to be applied. It is a settled principle of interpretation of statutes that the various provisions of the Act are to be interpreted harmoniously. In the present case, both the sections, namely, Sections 59 and 67-A, can exist side by side. The Legislature wanted that maximum benefit of loans should be given to a large number of agriculturists. That can be done only if the recovery of the loans is not delayed. The reasons for introducing Section 67-A as given in the Statement of Objects and Reasons published in Haryana Government Gazette (Extraordinary) dated February 13, 1971 is the speedy recovery of co-operative dues etc. The loans mentioned in the section appear to be short-term loans and the loanee is required to pay it within the prescribed period so that the same could be advanced again to the needy persons. In case, a lengthy procedure is adopted to recover loans, the circulation of amount remains limited to a few persons and the object of co-operative movement which has become a vital movement stands frustrated. Under Sub-section (2) of Section 67-A, it has been provided that the Registrar may after making such enquiries as he deems fit and after affording the member concerned an opportunity of being heard, grant a certificate for the recovery of the amount stated therein to be due as such arrears. He has been given powers to investigate into the matter under the said sub-section, which he has to do according to the principles of natural justice. In case, he does not give an adequate opportunity to the party concerned and thus commits breach of

principles of natural justice, that certificate can be quashed on that ground. It is not necessary that a long procedure should necessarily be provided by the enactment for resolving disputes between the parties. It is also not necessary for the Legislature that remedy of appeal should be given under the enactment. If the Legislature in its wisdom thinks in a particular case that no appeal should be provided, it cannot be held that the legislation is bad. The remedy of appeal is a creation of statute and is not an inherent right of a person. Some discretion has to be given to the persons who act under a particular enactment. For the exercise of discretion it is necessary that some guidance should be provided. In my view, there is sufficient guidance provided for application of Section 67-A. The learned counsel for the petitioners has submitted that even the provision of revision as given in Section 69 is not applicable to the present case whereas the learned counsel for the respondent state that the aforesaid section is applicable. This matter may be resolved in some other fit case. Even if it may be assumed that the remedy of revision has not been provided in the Act against the order of the Registrar u/s 67-A, the section cannot be struck down on this ground. It has been observed in Shri Harish Chand Vs. Collector of Amritsar and Another, that it is in the nature of things impossible that all laws should have universal application, and that the Legislature has to be constantly engaged in devising laws to suit various classes of persons and to meet differing circumstances. It is further observed that classification, is therefore, a necessary part of legislation and does not as such imply any discrimination intended to be prohibited by our Constitution. In that case, the constitutionality of Section 35 of the Punjab State Aid to Industries Act. 1935, was challenged, u/s 25 of the Act, the loan could be recovered by execution through the Civil Court after obtaining a declaration from the authorities concerned. Section 35 of the said Act provided that notwithstanding anything contained in Sections 23, 24 and 25 any amount payable to the State Government under that Act or by virtue of a contract entered into under that Act including interest and cost, if any, may with the previous sanction of the State Government, be recoverable as arrears of land revenue. While interpreting the said section, it was observed that the discretion given to the State Government u/s 35 of the said Act is wide but it is neither unguided nor arbitrary, Section 35 was consequently held to be constitutional. The learned counsel for the petitioners has mainly placed reliance on Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, by which Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, was struck down as discriminatory and violative of Article 14. The provisions of that Act are different. Section 4 of that Act provides that if Collector is of opinion that any person is in unauthorized occupation of any public premises and that he should be evicted, he shall issue a notice in writing calling upon such person to show cause why an order of eviction should not be passed. Section 5 provides that if after considering the cause and the evidence produced by such person and after giving him reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorised occupation, he may make an order of eviction. The contention that was raised was that the Act discriminated between the occupants of public premises and those of private property and also discriminated between the former inter se, and, therefore, infringed their right of equality before law and equal protection under Article 14 of the Constitution. No guidance has been provided in the enactment as to when the authority had to proceed u/s 5 and in what circumstances it could institute a civil suit. The observations were made by their Lordships of the Supreme Court in that context. A similar matter came up before the Andhra Pradesh High Court in Madadi Chennakesavareddy v. The Divisional Co-operative Officer, Karimnagar 1973 C LJ 4 (Andh Pra). In that case vires of Section 71 of the Andhra Pradesh Co-operative Societies Act, 1964, which is similar to Section 67-A of the Act, were challenged. That section says that notwithstanding anything in the Act or in any other law for the time being in force and without prejudice to any other mode of recovery which is being taken or may be taken the Registrar on the application made by a primary agricultural credit society for the recovery of arrears of any sum advanced by it to any of its members for seasonal agricultural operations or for medium term purposes, and on its furnishing a statement of accounts in respect of the arrears and after making such enquiry as he deems fit issue a certificate for the recovery of the amount stood therein to be due as arrears. There was another section in that Act which provided for a reference of any dispute to the Registrar. It was observed by the learned Bench as follows:--

"It was not disputed that the Legislature can provide specially for the recovery of certain specific debts separately for the general provisions made for such purpose. Such a classification it was agreed is permissible. If two procedures are prescribed for the recovery of two such classified debts, it is doubtful whether Article 14 would apply to such case.

xx xx xxxx xx xx If the debtor disputes the claim, an enquiry is necessarily to be held. It may be that the section leaves it to the discretion of the Registrar or the authorized authority to hold such enquiry as he deems fit. What is clear is that he was to hold an enquiry but the manner of such enquiry is left to the Registrar or the authorised person. It does not however make the Registrar or the authority a dictator out of that provision. He has to follow the requirement of a fair enquiry. That means the defaulter would have an opportunity to cross-examine the witnesses produced by the society and would have a right to adduce such evidence as he desires fit. After the completion of such an enquiry the principles of natural justice further require that the Registrar or the competent authority would pass a reasoned order."

7. The aforesaid observations are applicable to the present case. The learned Bench held that Article 14 of the Constitution does not hit Section 71 of that Act. In the circumstances stated above, in my view, Section 67-A of the Act, is not ultra vires Article 14 of the Constitution of India.

8. For the reasons recorded above, this writ petition fails and the same is dismissed with costs. Counsel''s fee Rs. 100/-.

