
(1978) 02 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 10 of 1978

Jagir Singh

APPELLANT

Vs

The Assistant Registrar and others

RESPONDENT

Date of Decision : 17-02-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) 02 P&H CK 0012

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : B.S. Khoji, for the Appellant; G.S. Gandhi for Respondent Nos. 1 and 2 and Mr. Bachhittar Singh for Respondent Nos. 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This petition presumably under Article 226 of the Constitution for a writ in the nature of habeas corpus is presented by Jagir Singh who is stated to be in civil prison, as he has not paid certain dues to the Co-operative Society. It is alleged on his behalf, that neither any proceedings started forgiving award nor, in fact, any award was made. According to the petitioner he applied for the copy of the award which was not supplied to him. He further denied that any notice of arbitration proceeding was served upon him. The petitioner asserted that, no doubt, he had taken a loan of Rs. 4974.26 from the Society but he paid back that amount and "an entry was made by the Secretary in the pass-book of the Society showing the above mentioned recoveries." He invokes Articles 21 and 22 of the Constitution as, according to him, he is deprived of his liberty without any process of law being invoked against him. He has also made certain allegations against Shri Nanuinder Singh, Deputy Registrar, respondent No. 2 as, according to him, he is the person behind these proceedings. Thereafter, the petitioner narrated the proceedings concerned several writ-petitions which were filed on his behalf because the Managing Committee of the Society was disbanded and relief was sought that the order disbanding the Managing Committee was illegal. With

these allegations, the petitioner claims that he should be set at liberty.

2. The respondents have filed their returns and one need look to the returns filed by the respondents Nos. 1 and 2 who have mainly contested the petition. According to respondent No. 1, the Assistant Registrar of the Co-operative Societies, proceeding started against the petitioner for payments that became due from him to the Society. An arbitrator was appointed under the Punjab Co-operative Societies Act, 1961, and notices were served upon the petitioner. However, he did not appear before the arbitrator and, therefore, an award was given against him. In fact, a copy of the award also given to the petitioner on 3rd February 1978. When he applied for that copy. Since the petitioner did not make the payment, u/s 63 (c) of the Act proceedings were taken for execution according to law and under the Rules for the time being in force for recoveries of arrears as land revenue. u/s 69 of the Punjab Land Revenue Act, the petitioner being a defaulter, was brought before the Revenue Officer and he was detained for 10 days. Thereafter, he was brought before the Collector who issued the order for the detention of the petitioner in the Civil jail of the district. At that stage, the present petition was filed by the petitioner. According to respondent No. 1, there was a provision in the Punjab Co-operative Societies Act, 1961, for appeal u/s 68 (h) and also for revision u/s (6) and since the petitioner has not availed of these two remedies, under Article 226 (3) of the Constitution, the petition for redress of any injury referred to in subclauses (h) and (c) of clause (1) of that Article could not be entertained. It was further pleaded that the petitioner did not make any payment to the appropriate authorities and, at any rate, his payment is not recorded in the books of the Society. If any payment was, in fact, made by the petitioner to the Secretary, it would not be a valid discharge of debt due to the Society. About the notices, it was pleaded that the same were sent through post-office and the petitioner refused to take service. There was no alternative left with the arbitrator but to pass the award in fact, the petitioner was asked to produce the account books which he was keeping in his custody. The petitioner did not produce any of the account books. Respondent No. 2 the Deputy Registrar, strenuously contended that he has nothing to do with the personal animosity claimed by the petitioner. He was performing his official duties. He denied all the allegations of enmity made by the petitioner against him. The returns filed by the Superintendent of jail, indicated that under the order made by the Collector, presumably u/s 69 of the Punjab Land Revenue Act, he got interned the petitioner in the civil jail.

3. The learned counsel for the petitioner contended that under Article 226 (1) (a) of the Constitution, the petitioner was enforcing one of his fundamental rights with reference to Articles 21 and 22 and, therefore, any alternative remedy provided for under sections 68 and 69 of the Punjab Co-operative Societies Act would not deprive him of the relief under those articles. To that extent, the argument may be sustained but the other part of the argument questioning the contravention of the provisions of the Co-operative Societies Act as well as questioning the legality of the proceedings before the arbitrator could not be

questioned in these proceedings. Obviously, the remedy of appeal u/s 68 and the remedy of revision u/s 69 was there. If the contravention of the provisions of the Act or the Rules thereunder or the illegality pointed out in the procedure were there, the pleas are open to the petitioner in the proceedings of the appeal or revision as provided for in the Act. To that extent, the preliminary objection raised by the learned counsel for the respondents should prevail

4. The crux of the matter would be, if the detention of the petitioner can be considered to be without a process under law. For that, it would have to be ascertained if an award was passed by the arbitrator under the Act. In that connection, there is the allegation on behalf of the petitioner, which is controverted on behalf of the respondents. The learned counsel for the respondents brought the record of the Society and, in fact, an award was found in that record. It is categorically submitted on behalf of the respondents that a copy of the award is already given to the petitioner. Therefore, the existence of the award could not be prima facie denied. As regards the notice, again the respondents brought their record and showed two notices which were served upon the petitioner. The learned counsel for the petitioner, however, questioned the correctness of these notices on a variety of grounds. It was even asserted that these notices were fabricated and the dates were altered and, in fact, no service was effected. All the same, the fact of the matter is that there is a record of service of notice upon the petitioner. When the award was passed and the amount was due to the Society, proceedings u/s 63(e) of the Act could be taken up. One of the modes of recovery was to realize the amount as arrears of land revenue. For that, section 69 of the Land Revenue Act existed. The order of arrest of the petitioner was presumably issued under that section and there is an affidavit of the Superintendent of Jail, which clearly indicates that the petitioner was kept in Civil Jail in pursuance of the order of the Collector under the Land Revenue Act. In my opinion, in the face of all these documents and the respective contentions made by the parties, it is not appropriate for the petitioner to say that he is arrested without due process of law having been exercised against him. There are provisions in the Punjab Co operative Societies Act as well as in the Land Revenue Act and if these provisions are exercised and the arrest is made, it cannot be stated that Articles 21 and 22 would be attracted. One has to take regard to a case which relates to inherent lack of jurisdiction and to another case which pleads for wrongful exercise of that jurisdiction. The utmost that can be stated in favour of the petitioner is that it was a case of wrongful exercise of jurisdiction. For that, the remedy lies elsewhere and not in a petition for a writ of habeas corpus. It cannot be stated that the provision of law either never existed or was not exercised, although, according to the petitioner, it may have been wrongfully exercised or exercised on insufficient grounds, nonetheless there was a law and that law was applied in case of the petitioner. His arrest cannot be considered without any process of law being exercised against him.

5. The learned counsel for the petitioner, however, pointed out that payments

were made to the Society. The argument on behalf of the respondents has been that these payments were not made to the appropriate authority. In that connection, reference was made to the bye-laws of the Society. As per allegation made by the petitioner, the payments were made to the Secretary and as the bye-laws prima facie indicate the Secretary had no power to receive the payments on behalf of the Society. Regarding the writ petitions filed between the parties, the plea would not be relevant. There may have been a history of long litigation between the parties. Nevertheless, if the law was set into motion and the arrest was made, it cannot be stated that Articles 21 and 22 of the Constitution were violated. The allegations made against Nanuinder Singh, the Deputy Registrar, respondent No. 2, prima facie remained unwarranted and unsubstantiated. In his affidavit, this officer has pointed out that he had nothing to do with the politics involved in the case. The learned counsel for the petitioner repeatedly emphasized that the award was not duly made but that argument again refers to the aspects of the wrongful exercise of jurisdiction and not inherent lack of jurisdiction. Failing that, no relief can be granted to the petitioner. It was then contended that the petitioner could not possibly be released even if an appeal was filed u/s 68 or a revision was preferred u/s 69 of the Act. That may be so, but the entire gamut of argument relating to the illegality in the procedure adopted, would be barred to the petitioner in these proceedings in view of sub-clause (3) of Article 226. All such pleas are amenable to the petitioner under an entirely different proceeding of an appeal or revision and in a writ of habeas corpus, these pleas would not be decided, more especially when the relief based on these pleas cannot be granted under Article 226(3) as there is an effective alternative remedy.

6. In this view of the matter, I do not find any merit in the petition and the same is dismissed with costs. Counsel fee Rs. 100/-