

(1957) 01 AHC CK 0046
In the Allahabad High Court
Case No : Second Appeal No. 249 of 1950

Jhansi Co-operative Oil Mills

APPELLANT

Vs

Lala Makhan Lal

RESPONDENT

Date of Decision : 16-01-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(17), 80, 9
Uttar Pradesh Land Revenue Act, 1901 — Section 233

Citation : AIR 1957 All 492

Hon'ble Judges : Gurtu, J

Bench : Single Bench

Advocate : S.K. Varma, for the Appellant; J. Swarup and H. Swarup, for the Respondent

Final Decision : Dismissed

Judgement

Gurtu, J.—These are two appeals arising out of two different suits which were both decreed and from which decrees appeals were preferred and both the appeals were disposed of by one judgment.

2. It appears that Kumaris Pushpa, Shakuntla, Indra and Padma as also Padam Chand, all minors, were members of the Jhansi Co-operative Oil Mills Ltd. (hereinafter to be referred to as the Mills). Smt. Kundan Bai and Smt. Suraj Bai were also members. The plaintiff, Makhan Lal, was also a member.

3. It appears that the Mills were dissolved by the Registrar of Co-operatives Societies under the Co-operative Societies Act, 1912 and a liquidator was appointed u/s 42(1) of the said Act. The liquidator passed contributory orders against Kumaris Pushpa, Shankuntla, Indra and Padma as also against Padam Chand u/s 42(2)(b) of the Act. All these persons, as already pointed out, were minors. Later, he discharged the contributory orders against these minors and prepared fresh contributory orders in respect of the shares held by the minors against the plaintiff. The liquidator also prepared contributory orders in respect of the shares held by Smt. Kundan Bai and Smt. Suraj Bai against the plaintiff, Smt.

Kundan Bai and Smt. Suraj Bai being dead.

4. The plaintiff filed two suits, suit No. 390 of 1946 which relates to the contributory order against the plaintiff in respect of the shares held by the minors and suit No. 391 of 1946 which is in respect of the contributory order relative to the shares held by Smt. Kundan Bai and Smt. Suraj Bai deceased. In these suits, the plaintiff sought a declaration that the contributory orders issued by the official liquidator against him in respect of the aforesaid shares were null and void as also the attachment of his property under the said orders.

The Mills, through the liquidator, pleaded that the Civil Court had no jurisdiction to try the suit, that the suit was barred by Section 42(6) of the Cooperative Societies Act, 1912 and by Section 233 of the U. P. Land Revenue Act and that the suit was bad for want of notice u/s 80 of the Civil Procedure Code.

5. The court below has come to the conclusion that there was no bar to the suit on any of the grounds taken by the defendant. It, therefore, dismissed the appeal by the Society and has confirmed the judgment of the trial court in both the suits. Thus the plaintiff has obtained a declaration in both the suits as prayed for.

6. These are two appeals by the liquidator of the Mills. It is urged that the objections taken by the defendant ought to have been sustained and the suit should have been dismissed.

7. The first question that has to be considered in this appeal is whether the suit should fail for want of notice u/s 80 of the CPC (hereinafter to be referred to as the Code). This would depend upon whether the liquidator was a public officer purporting to act as such in his official capacity. "Public officer" has been defined in Section 2 of the Code.

It is claimed on behalf of the Society that the liquidator is a public officer as defined by Section 2(17), Sub-clause (h) thereof, namely, that he is an officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty. There is a difference of opinion so far as the decided cases are concerned in regard to whether a liquidator appointed u/s 42(1) of the Co-operative Societies Act, 1912 is or is not a public servant.

8. In AIR 1934 201 (Nagpur) as also in AIR 1939 232 (Nagpur) , and in Abdul Ghani v. Anjuman Dehi Imdad Bahmi Ghuinke Sharqi, AIR 1942 Lah 287 (C) the view taken was that the liquidator is a public officer. On the other hand in Kuppu Govinda Chettiar Vs. Uttukottai Co-operative Society, , the view taken is that the liquidator is not a public officer.

In this last mentioned Kuppu Govinda Chettiar Vs. Uttukottai Co-operative Society, it was pointed out that even though a person, who was a public officer, was appointed liquidator, it was not necessary that qua liquidator he should be a public officer. In that case, as in this case, the person who had been appointed liquidator was a person who, otherwise, was a public officer, but there as here

also there was no evidence that he had received any remuneration qua liquidator. It was pointed out in the abovenoted Madras case that the liquidator was not appointed by the Government but by the Registrar of Co-operative Societies.

The learned Judges said that they found it difficult to accept the general proposition that because the liquidator was given quasi judicial powers, the duties which the liquidator performed must necessarily be regarded as being public duties and it was their view that every person who is appointed by the Government to perform public duties is not necessarily a public officer.

In the Lahore case AIR 1942 Lah 287 (C), referred to above, on the other hand, it was pointed out that the liquidator had the power to decide not only disputes between the members and the Society but, also the claims of third parties against the Co-operative Society and that, for this purpose, he has the power to enforce the attendance of the witnesses and to compel the production of documents in the same way as the civil court and it was pointed out that he is a special forum created for the purpose of determining disputes concerning the affairs of the society of which he is the liquidator and it was pointed out that it was impossible to suggest that, when exercising these powers, he was performing a private duty. It seems to have been the view in the said Lahore case that the liquidator is a public authority created for the purpose of performing statutory functions and he was, therefore, deemed, to be a public servant.

9. There are the two view-points which have been put to me by learned counsel on either side and I have to determine, in this case, as to which is the view which should be accepted in this Court. Section 2(17)(h) of the Code requires that a public officer to be a public officer should be in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty. There is no provision in the Cooperative Societies Act, 1912 which makes a liquidator, appointed by the Registrar, a servant of the Government amenable to dismissal and to control either directly or indirectly by the Government.

Nor is there any provision in the said Act for payment to the liquidator by the Government. Under Rule 155 of the Rules framed u/s 43 of the Co-operative Societies Act, 1912, the Registrar is required to fix such remuneration for the liquidator as he thinks proper and such amount has to be paid out of the costs of liquidation. In other words, this amount has got to be paid out of the realised assets of, the Company which the liquidator is liquidating. The liquidator is, therefore, not remunerated by the Government by any fees or commission coming out of any Government funds.

The payment is to be made out of the funds of the dissolved Co-operative society. It must not be overlooked that Section 18 of the Co-operative Societies Act, 1912 makes the Co-operative Society a body corporate. A Society incorporated under the Cooperative Societies Act is a separate entity and is not a

branch of Government, nor does the cancellation of registration have the effect of making the assets of the Co-operative Societies, the assets of the Government. It is true that the liquidator is given certain powers which a court has under the 1908 Civil Procedure Code.

The powers are that of summoning and enforcing the attendance of witnesses and of compelling production of documents. But these are very limited powers and it is nowhere laid down that he has to act as a court of law when exercising his powers u/s 42 of the Co-operative Societies Act. It is true that "under Section 42, Sub-clause (4) of the said Act where an appeal from any order made by a liquidator under the section is provided for by the rules; it shall lie to the court of the District Judge but no such rules in regard to appeals have been framed.

On the contrary, a rule has been framed, being Rule 152, which states that "Any person affected by an order passed by the liquidator under Rules 145 and 151 (which rules are amplifications of the statutory powers granted u/s 42 of the Act) may make such representations as he desires to the Registrar or Assistant Registrar-in-charge of the circle, who may pass such orders as he may think fit". It is noticeable that the word used is "representation" and not an appeal.

The effect of the failure to provide a rule which permits the filing of an appeal from the orders made u/s 42 by the liquidator and the effect of giving a mere, right of representation to the Registrar from the orders of the liquidator is that the orders u/s 42 at least partake of the nature of quasi administrative orders. Therefore, the emphasis on the quasi judicial aspect of the liquidator's orders laid in the Lahore case referred to above seems to require a certain amount of curtailment. Moreover, it is not here claimed that a liquidator is an officer of a court of justice and that, therefore, he is a public officer within the meaning of Section 2(17), Sub-section (d).

He is claimed merely to be such an officer u/s 2(17), Sub-clause (h). In the definition clause of officers given in the Act the liquidator is not included. In my view also, the duty that he performs is a duty of private character. It is a duty performed primarily in the interest of a dissolved Co-operative society and not a duty directly performed in the interest of the public. The proper liquidation of the affairs of a dissolved Cooperative society really concerns the society itself or such persons as have been in business or other relationship with the society.

It is true that the Co-operative Societies Act empowers the liquidator to investigate all claims against the society and to accept such claims and to decide the question of priority arising between the claimants, but the powers are given in the interest of the society itself and in exercising those powers the duty performed is not of a public nature but involves the performance of a duty to the dissolved Co-operative society. Where a person has to look to the interest of a private corporation primarily, it cannot be said that, that individual has been appointed for the purpose of performing a public duty. I am, therefore, in respectful agreement with the view which has found favour in Madras and I,

therefore, hold that the court below was right in coming to the conclusion that Section 80 of the CPC was not attracted in this case.

10. The next question is whether the liquidator had power u/s 42, Sub-section 2 (b) of the Co-operative Societies Act, 1912 to determine as to who should be considered to be the members of the society for the purpose of determining their contribution. The liquidator has made contributory orders against the plaintiff in respect of the shares held by the five minor members. His right u/s 42, Sub-section 2 (b) is to determine the contribution to be made by the members. Members are those who are on the register of members u/s 25 read with the definition of "member" as given in Section 2, Sub-section (c) of the said Act.

Now, if a person is not a member within the meaning of the Act, then there is no authority granted u/s 42, Sub-section 2 (b) to make him liable for any contribution. There is no power given to the liquidator to say that a person, who is a member within the meaning of the Co-operative Societies Act, is, merely a benamidar. For the purposes of an order u/s 42, Sub-section 2 (b) the membership must be taken as it is in the books of the company and there is no authority, in any way, to rectify the register of members and to eliminate the name of the person who is entered as a member and substitute another and then to determine what contribution he should make.

The liquidator in making a contributory order against the plaintiff in respect of the minor members clearly acted beyond his jurisdiction. So far as the contributory order against the two ladies is concerned, they being dead, an order could be made against their legal representatives in the extent of the property of such member which has come to the former's hands as such. This is provided by Rule 144 of the Rules framed u/s 43 of the Co-operative Societies Act, 1912.

It was suggested that Rule 144 is ultra vires the Act, but I do not consider that it is so because it is covered by the powers given by Section 43, Sub-section (n) of the said Act. But, in this case, the liquidator has made an unqualified contributory order. The order is not limited to the assets in the hands of the plaintiff but is made directly against the plaintiff. That order, therefore, is also beyond the powers of the liquidator.

Whenever there is usurpation of jurisdiction and an authority exercises powers which cannot be spelled out of the particular enactment under which the powers are sought to be exercised, then the authority is not acting under the Act but outside the Act and, in such a case, there can be no exclusion of the jurisdiction of a civil court. This proposition is well-settled and I only need invite attention to the rule laid down in the case of AIR 1940 105 (Privy Council) Therefore, in my view, the court below was right in coming to the conclusion that Section 42, Sub-section (6) Of the Co-operative Societies Act, 1912 was no bar to the suit. That sub-section runs as follows:--

""Save in so far as is hereinbefore expressly provided, no civil court shall have any jurisdiction in respect of any matter connected with the dissolution of a

registered society under this Act."'' One must keep in mind that the jurisdiction must have been exercised under the Act. If it is not exercisable under the Act, then the civil court can intervene. Inasmuch as the particular orders were without jurisdiction, the amounts mentioned therein could not be recovered on a requisition being made by the Registrar, Co-operative Societies, in the same manner as land revenue. Section 233 (m) of the Land Revenue Act, 1901 provides that:--

"No person shall institute any suit.....with respect to..... claims connected with or arising out of, the collecting of revenue (other than claims u/s 183), of any process enforced on account of an arrear of revenue, or on account of any sum which is by this or any other Act realizable as revenue."

Before the prohibition contemplated by Section 233 (m) quoted above can operate, the claim must be realizable as revenue under the Act. This claim could only be realizable under the U. P. Land Revenue Act", 1901, if the Registrar, Co-operative Societies could ask for its recovery u/s 42(a) of the Co-operative Societies Act and whether the Registrar could do so would depend upon whether the sum could be properly ordered to be recovered as a contribution u/s 42, Sub-section 2, Clause (b) of the Act. If the liquidator could not make such an order then that order could not be sent to the Collector, nor could the Collector realize anything under that order. Nobody can be permitted to usurp a jurisdiction and then to claim that the usurpation cannot be challenged in a civil court.

11. Accordingly, these, appeals fail and are dismissed with costs.

12. Leave to file a special appeal is asked for and is granted.