

(2016) 06 KL CK 0042
In the High Court Of Kerala
Case No : W.P. (C) .No. 27124 of 2008 (D)

K.A. Pramod

APPELLANT

Vs

Joint Registrar of Co-Operative Societies

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 68

Citation : (2016) 3 KHC 489 : (2016) 3 KLT 37

Hon'ble Judges : Shaji P.Chaly, J.

Bench : Single Bench

Advocate : P.N. Mohanan, Advocate, for the Appellant; A.J. Jose, Aedaiodi, Government Pleader, R. Bindu (Sasthamangalam) and M. Sunilkumar, Advocates, George Poonthottam, S.C. and P.K. Vijayamohanan, Smt. Dhanya P. Ashokan, P.S. Pradeep and Alan Papali, Advocates, f

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.—This writ petition is filed by the petitioners seeking to quash Ext.P11 proceedings initiated by the 1st respondent against the petitioners to recover an amount of Rs. 15,34,786/- on the basis of the surcharge proceedings initiated against the petitioners. Brief facts for the disposal of the writ petition are as follows:

2. Petitioners 1 to 3 are former committee members of the 3rd respondent Co-operative Society, who took charge on 04.09.2004 and was superseded under Sec.32 of the Kerala Co-operative Societies Act, 1969 [hereinafter called "the Act"]. Petitioners 4 and 5 were the then Secretaries of the 3rd respondent Bank. The 4th petitioner retired from service on 31.01.2005. The 5th petitioner was the Secretary of the Bank while filing the writ petition. The 6th and 7th petitioners were the committee members during the period 1994-95. The 3rd respondent is registered under the Co-operative Societies Act and Rules, having about 3500 members and doing all the banking business.

3. During the period 16.12.1987 to 30.06.1990, for the development of an area

namely "R Block Kayal area" held by 217 agriculturists, who are members of the bank, to whom the 3rd respondent Bank had made advances as per the norms. The loan was grant by the then committee in office [hereinafter called "the previous committee"] and the committee superseded [hereinafter called the "superseded committee" for the sake of brevity]. To these 217 loanees, an amount of Rs. 28,83,786/- was disbursed on the strength of mortgage of above properties extended in favour of the Bank. Except one member, nobody has cared to re-pay the loan amount. So the previous committee in office filed Arbitration cases during 1998 and obtained awards in favour of the Bank to realize the amounts from these loanees. In order to execute the decree, the properties mortgaged in favour of the Bank was put in auction by the Sale Officer. In the meanwhile, the loan amount with interest was increased to Rs. 70,00,313/- [Rs. 28,83,786/- + Rs. 41,16,527/- interest]. As the loanees failed to pay the amount, the previous committee auctioned the entire property of 216 loanees, having an extent of 151.55 Acres in "R Block Kayal area" for a total amount of Rs. 70,00,313/- in its favour, in the absence of other bidders, and in order to avoid the difficulties of the loanees in future, even though the market value of the property at that point of time was not that high.

4. As the 3rd respondent had taken advances from the 4th respondent District Co-operative Bank to disburse loan amount to 217 members, the previous committee decided to sell the aforesaid property to discharge the liability under the One Time Settlement scheme with the District Co-operative Bank, Alappuzha. The General Body of the Bank in its meeting held on 29.10.2001, permitted the Managing Committee to sell the entire property, evident from Ext.P1. Accordingly, a sale notice was published in two newspapers. Thereupon, two quotations were received amounting to Rs. 29,000/- and Rs. 29,500/- per Acre. So the total land value according to the offer received will come only to about Rs. 45 lakhs. While matters remaining so, the 4th respondent District Co-operative Bank took steps against the Bank in question to realize the amount of Rs. 72,90,819/-.

5. Therefore, the previous committee decided to negotiate with third parties and finally with the 2nd respondent, and decided to sell the property for an amount of Rs. 60 lakhs at the prevailing market rate and therefore decided to enter into an agreement for sale with the 2nd respondent. As the property was purchased by the Bank in auction for Rs. 70 lakhs, the valuation certificate issued by the Tahsildar was above that value, the Joint Registrar by a letter dated 06.07.2004 grant permission to sell the property above the value fixed by the Tahsildar. Considering exigency of the situation that the interest for the finance secured from the 4th respondent was accumulating day by day, the previous committee decided to sell the property and entered agreement with the 2nd respondent, evident from Ext.P2. Thereafter, the General Body meeting held on 22.08.2004, considered the situation to sell the property for Rs. 60 lakhs and accordingly resolved to write off the capital loss sustained in that deal considering the exigency of the situation, evident from Ext.P3 resolution. It is the contention of

the petitioners that, the General Body is a final authority of the society as provided under Sec.27 of the Act to take such decision. In the meanwhile, the term of the previous committee was over and the superseded committee took charge on 04.09.2004.

6. In terms of Ext.P2 agreement, the superseded committee signed the sale document to avoid unnecessary litigation with the 2nd respondent, as the agreement for sale was in the best interest of the 3rd respondent Bank. Moreover, the 1st respondent has grant permission to sell the property and has not restrained the Bank from doing so at any point of time, is the contention. Regular audit under Sec.63 and inspection under Sec.66 were being conducted by the 1st respondent. Since 29.10.2001 to 04.09.2004 or thereafter up to 07.11.2007 no objections were made by the 1st respondent in proceeding with the sale of the property. While executing the sale agreement, the 2nd respondent executed another additional agreement on 30.01.2006 to indemnify the Bank, if any loss found to be sustained by the Bank in fixing the market value, in audit and enquiry. The relevant clause in Ext.P4 additional agreement dated 30.01.2006 translated to English read thus:

"If there is any deficiency caused in the sale transaction found out in future by audit or any other legal proceedings and if the same is pointed out, to the extent of loss suffered, the 1st party and the signatories in Ext.P4 agreement will be liable and the loss suffered will be reimbursed and it is accordingly undertaken".

7. Then all on a sudden, Sec.66 enquiry was conducted by the 1st respondent and issued Ext.P5 show cause notice dated 15.11.2007 under Rule 66(5) of the KCS Rules. Ext.P5 notice was replied by the superseded committee, evident from Ext.P6. As directed in the notice, the Managing Committee members appeared before the 1st respondent on 28.11.2007 and explained their innocence in the matter. Then the committee received a show cause notice under Sec.32(1) to show cause as to why the committee shall not be superseded, evident from Ext.P7 notice dated 10.12.2007. A reply dated 18.12.2007 was filed to the said supersession show cause notice, evident from Ext.P8. A hearing was provided and the petitioners appeared before the 1st respondent on 18.12.2007 and explained that they are not responsible for the alleged sale agreement and it is done by the previous committee.

8. While matters being so, as the 1st respondent initiated steps to supersede the committee, the sale of an extent of 7 Acres of land, which was left over, was not executed by the superseded committee. So, the 2nd respondent issued a lawyer notice dated 15.12.2007, seeking to execute the sale deed in respect of 7 Acres of land, evident from Ext.P9. While so, the 1st respondent issued Ext.P10 order dated 24.12.2007 appointing an Administrator under Sec.32, superseding the managing committee. Ext.P10 order of supersession was challenged before this Court in W.P.(C) No.10 of 2008 and the same was admitted to the files of this Court on 02.01.2008. Thereafter, 1st respondent initiated surcharge proceedings invoking the powers conferred under Sec.68 of the Act, surcharging the

superseded committee members and the Secretary, directing to pay Rs. 80,778/- from each individual towards the alleged loss sustained to the Bank, evident from Ext.P11.

9. Therefore, it is the contention of the petitioners that, as per Ext.P4 additional agreement executed by the 2nd respondent, the 2nd respondent has undertaken to reimburse the Bank any amount found due in audit or enquiry and in that circumstances, the amount found under the enquiry by the 1st respondent can be recovered from the 2nd respondent. Moreover, it is contended that petitioners are not liable to pay the amount demanded by them as the sale was effected with bonafides and with the approval of the General Body to settle the liability of the 4th respondent. That apart, it is contended that, while settling the liability, the Bank has saved an amount of Rs. 16,97,838/- as interest relief under the One Time Settlement Scheme, evident from Ext.P12. Therefore, it is the contention of the petitioners that the action initiated as per Ext.P11 to surcharge is without any bonafides and liable to be set aside. It is under this background, petitioners have approached this Court, challenging Ext.P11 surcharge order issued by the 1st respondent.

10. The 2nd respondent has filed a counter affidavit, basically denying all the allegations and claims and demands made by the petitioners against him. But however, the agreement executed by the 2nd respondent with the 3rd respondent is admitted, with respect to the purchase of the property. The 2nd respondent became interested to purchase the property since he is an agriculturist. That apart, it is contended that the Bank has negotiated for sale of the property with 20 other interested persons, and ultimately the sale price was fixed at Rs. 60 lakhs. Thereafter, on behalf of these 20 persons and himself, the 2nd respondent had executed the agreement with the Bank for the sale of the property. That apart, it is contended by the 2nd respondent that himself and 20 others have purchased the property strictly in compliance with the provisions of law and absolutely there is no violation of the provisions of Kerala Land Reforms Act or any other Rules or Regulations. It is also contended that the 2nd respondent is a bona fide purchaser of the property for and on behalf of himself and other 20 persons. The execution of Ext.P4 additional agreement is also admitted. But, it is contended that the indemnification clause was incorporated in the agreement only to ensure that the property was purchased by the respondent and others for the market price only. Further, it is urged by the 2nd respondent that, 2nd respondent and others have invested considerable amounts for the purpose of putting up boundaries and also for making the properties suitable for agricultural purposes. Therefore, it is the contention of the 2nd respondent that, 2nd respondent is not bound by Ext.P11 surcharge proceedings initiated by the 1st respondent. The 4th respondent has also filed a counter affidavit traversing through the factual circumstances with respect to the financial aid provided by the 4th respondent Bank to the 3rd respondent and also narrating the whole episode with respect to the reasons for the sale of the property by the 3rd respondent Bank. Therefore, the 4th respondent has, in

effect, contended that the 4th respondent has no manner of liability or involvement against the surcharge proceedings initiated by the 1st respondent against the petitioners.

11. Heard learned counsel for the petitioner, learned Government Pleader for the 1st respondent and the respective counsel appearing for other respondents.

12. I have perused the pleadings put forth by the petitioners, respondents 2 and 4 and the documents on record. The question to be considered in this writ petition is how far Ext.P4 agreement and the undertaking made by the 2nd respondent in the said agreement to indemnify the 3rd respondent Bank, if any loss found out in future by audit or other legal proceedings can play a role in the surcharge action. Ext.P4 is an additional agreement evidently executed by the 2nd respondent and presumably some persons out of the twenty persons allegedly joined for purchasing the property. On a perusal of Ext.P4, what is discernible is that, consequent to the sale effected by the 3rd respondent Bank, represented by its executive committee members, apprehending loss suffered by the Bank in future found out in audit or other legal proceedings, agreed to be indemnified by 2nd respondent and the signatories thereto. That apart, Ext.P4 agreement is a unilateral agreement executed by the 2nd respondent as well as other signatories in favour of the 2nd respondent. True, it is an omnibus undertaking made by the 2nd respondent and other signatories. But however, the question that is to be decided is whether, from the action initiated by the 1st respondent by resorting to surcharge proceedings under the Act and Rules, can the petitioners sneak out of the liability by putting forth Ext.P4 agreement as a defence. Even assuming for the sake of considering the question that the 2nd respondent and the signatories to Ext.P4 agreement is liable to indemnify the loss suffered by the Bank, it will not detain the 1st respondent from initiating action against the executive committee members of the 3rd respondent Bank in accordance with law. There is no allegation by the petitioners that the 1st respondent has committed any illegality, gross injustice or acted in any manner violative of the provisions of the Act and the relevant Rules. If at all, the 2nd respondent and other signatories have any sort of liability as agreed in Ext.P4, cannot be a barricade to the 1st respondent to proceed against the respective persons who are responsible for the loss caused to the Bank. Since the contention raised in the writ petition is only with respect to the liability created as per Ext.P4, I do not think that the petitioners are entitled to seek any relief against Ext.P11 order passed by the 1st respondent. That apart, Ext.P4 agreement will not in any manner bind the 1st respondent to execute the surcharge order against petitioners.

13. Ext.P11 is an order passed by the 1st respondent invoking the powers conferred on the 1st respondent under Sec.68 of the Act. Sec.68 of the Act read thus:

"68. Surcharge. - (1) If in the course of an audit, inquiry, inspection or the winding up of a society, it is found that any person, who is or was entrusted with

the organization or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws, or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society or has destroyed or caused the destruction of the records, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in this behalf, to inquire into the conduct of such person.

(2) Where an inquiry is made under sub-section (1), the Registrar may, after giving the persons concerned an opportunity of being heard, by order in writing, require him to repay or restore the money or other property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable."

14. So, going by Sec.68, it is categoric and clear that in the course of an audit enquiry or inspection, if it is found that any person, who is or was entrusted with the organization or management of such society or who is or who has at any time been an officer or an employee of the society, has made any payment contrary to the Act, the rules or the bye-laws, or has caused any deficiency in the assets of the society by breach of trust or wilful negligence etc. etc., the 1st respondent is vested with powers to proceed against such persons who have caused the loss and recover the same. The action initiated by the 1st respondent as per Ext.P11 is in accordance with law, after providing opportunity to the petitioners to contest the proceedings. True, the 3rd respondent Bank may have a remedy in terms of Ext.P4 agreement, but that will not in any manner circumscribe or whittle down the powers of the 1st respondent to proceed under Sec.68 of the Act.

15. Taking into account the aforesaid cumulative circumstances, I have no hesitation to arrive at the conclusion that the entire action initiated by the 1st respondent which culminated in Ext.P11 surcharge order is in accordance with law. Petitioners have not brought out any circumstances of illegality, gross injustice or other legal infirmities warranting this Court to exercise the powers of judicial review conferred, under Article 226 of the Constitution of India.

16. Resultantly, the writ petition fails and the same is accordingly dismissed.