

(1986) 02 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 25008 of 1981

Kalappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-02-1986

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 32, 32 (1), 70, 71, 99

Citation : (1986) ILR (Kar) 1252

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : B.M. Krishna Bhat, for the Appellant; Chandrasekharaiah, HCGP, for the Respondent

Judgement

Rama Jois, J.—In this Writ Petition, the petitioners have questioned the constitutional validity of Section 99 of the Karnataka Cooperative Societies Act, 1959, ("the Act" for short) as also an order made under the said Section on an application presented by the 3rd respondent - Society.

2. The facts of the case in brief as stated in the petition are as follows: The petitioners had jointly borrowed in the year 1980 a sum of Rs. 13.000/- from the 3rd respondent-Vyavasaya Seva Sahakari Sangha Niyamitha, Chowdal, Somwarpet, which is a Co-operative Society constituted and functioning under the provisions of the Act.

3. On an application made by the 3rd respondent Society, the Assistant Registrar issued a notice dated 16-9-1981, u/s 99 of the Act, to the petitioners calling upon them to pay an amount of Rs. 14,820/-, together with further interest. Thereafter the petitioners presented this petition questioning the legality of the notice as also the constitutional validity of Section 99 of the Act. The contention of the petitioners is that Section 99 confers arbitrary power to recover whatever amount is claimed by the society without even verifying after notice to the parties concerned as to whether the said amount was due or not and therefore violative of Article 14 and therefore the notice issued thereunder is also invalid.

4. Section 99 has been incorporated into the Act, for the purpose of speedy recovery of the amounts due to a Society from an individual by sale of the property which is subject to a charge under Sub section-(1) of Section 32, Sections 32(1) and 99 read :

"32. First charge of co-operative society on certain assets.-(1) Notwithstanding anything contained in any law for the time being in force, but subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue, any debt or outstanding demand owing to a co-operative society by any member or past member or deceased member shall be a first charge upon the crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished products manufactured from such raw materials, belonging to such member, past member or forming part of the estate of the deceased member, as the case may be."

"99. Enforcement of charge :- Notwithstanding anything contained in Chapter IX, or any other law for the time being in force but without prejudice to any other mode of recovery provided in this Act, the Registrar or any person subordinate to him empowered by the Registrar in this behalf, may, on the application of a co-operative society, make an order directing the payment of any debt or outstanding demand due to the society by any member or past or deceased member, by sale of the Property which is subject to a charge under Sub-section (1) of Section 32 :

Provided that no order shall be made under this Section, unless the member, past members or the nominee, heir or legal representative of the deceased member, has been served with a notice of the application and has failed to pay the debt or outstanding demand within seven days from the date of such service."

A reading of Sections 32 and 99 would indicate that when a particular individual has taken a loan from a co-operative institution and any of his properties are subject to a charge as provided in Section 32 of the Act and he fails to repay the loan, according to the terms of Loan, Section 99 provides that the Society may approach the Registrar with an application praying for recovering the amount due and the Registrar could proceed to recover the amount due to a Society by bringing the property which is subject to a charge u/s 32(1) of the Act, for sale. However, the proviso to Section 99, requires, that before proceeding to take the coercive steps for recovering the amount a notice giving 7 days time to pay the amount has to be served on the person concerned and if he fails to pay the amount as demanded within 7 days, the Registrar is given the power to proceed to recover the amount by the sale of the property after the expiry of 7 days.

The contention of the petitioners however is the Section merely provides, the giving of the 7 days notice without the requirement of giving opportunity to the person concerned to make out that the amount demanded was not due from him, if it was so, and therefore it is void as offending Article 14, on the ground it

confers arbitrary power.

6. In our opinion, the principles of natural justice must be observed before proceeding to recover the amount demanded in a notice, issued u/s 99. Therefore when a demand notice is issued under Sub-section 1 of Section 99 to an individual on the application of a society praying for the recovery of any amount stating that it was due to it, and the individual to whom notice was issued does not dispute the amount due to the Society, as specified in the notice, the Registrar can straightaway proceed to recover the amount from the property which has been in view of Section 32 the subject matter of charge. In such a case, there is nothing unreasonable in the provision which confers power for recovery of the amount, due to a Society by the sale of the property, which had been the subject matter of a charge. But if in a given case after the receipt of demand notice, the person concerned comes forward with material to prove that the whole or part of the amount demanded, was not due from him and produces material evidence in support of such a plea, the Registrar is bound to consider the said representation after due notice to the Society concerned and only after coming to the conclusion that the amount either in part or in full was due, and after communicating his decision to the person concerned the Registrar can proceed to recover the same by the sale of the property, which has been the subject-matter of the charge. It is well settled principles of law that natural justice, must be regarded as superadded to a statutory provision, unless by express words or by necessary implication, the application of natural justice is excluded. (See A.K. Kraipak and Others Vs. Union of India (UOI) and Others, As the power given u/s 99 is to recover the amount due from a person to a society after issuing of a demand notice, it follows that if the person to whom notice is served were to say that the amount as demanded was not due from him and also produces evidence in support of his plea, the Section cannot be understood as conferring power to straightaway proceed to sell the property and to recover the amount, notwithstanding the objection by the concerned person. If Section is read as conferring power to recover the amount, without such inquiry, then it invites the criticism that it confers arbitrary power and therefore violative of Article 14 of the Constitution. It is well settled rule of interpretation that when two interpretations of a provision are plausible, one of which comes into conflict with the constitutional provisions and the other does not, the former should be eschewed and the latter should be accepted. In our view Section 99 should be read as not excluding rules of natural justice of holding enquiry as to the actual amount due from the person concerned, and so read the vice pointed out for the petitioner, in the Section would not exist, In this behalf, we also consider it useful to refer to Section 100 of the Act, which also provides for recovery of money due to approved societies. The said Section reads :

100. Recovery of moneys due to Societies :- Notwithstanding anything contained in Chapter IX or any other law for the time being in force, on an application made by an approved society for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crops or seasonal finance

and on its furnishing a statement of accounts in respect of the arrears, the Registrar may, after making an enquiry in such manner as may be prescribed, grant a certificate for the recovery of the amount stated therein to be due as arrears :

Provided that if the determination of the amount due from any person to the society depends upon decision on complicated questions of fact or law, the Registrar shall dispose of the case in accordance with the provisions of Section 71 as if it were a dispute referred to him for decision u/s 70.

(2) A certificate granted by the Registrar under Sub-section (1) shall be final and conclusive. The arrears stated to be due therein shall be recoverable as arrears of land revenue or according to the procedure provided in Section 101 :

Provided that any error in such certificate may be rectified by the Registrar suo motu or on the application of the society or the member affected by the certificate.

(underlining by us)

The underlined part of Sub-section (1) would indicate that in respect of approved societies, the Registrar is required to make an enquiry before granting a certificate for recovery. Though expressly such a provision has not been provided u/s 99, the Registrar would have to do the same thing by invoking the rules of natural justice. It is also open to the Registrar, if he finds that the request made by the Society for recovery of amount u/s 99 of the Act, is not free from doubt, in view of the objections raised by the party concerned, he can ask the society to raise a dispute u/s 70 of the Act, for the reason that Section 99 is an enabling provision which confers power on the Registrar and does not make it obligatory for him to recover in the manner provided in the Section, even if he is not satisfied with the truthfulness of the claim made by a society in an application made by a society u/s 99.

7. In the result, we make the following :

ORDER

(i) The Writ Petition is partly allowed.

(ii) A direction shall issue to the 2nd respondent to consider any representation of the petitioner, if made within one month from the date of receipt of the order as to the correctness of the demand made in the impugned notice after giving an opportunity of hearing to him.

(iii) The 2nd respondent shall be at liberty to proceed to recover the amount found due from the petitioner, after enquiry to the 3rd respondent society in the manner provided in Section 99 of the Act.