

(1967) 03 AP CK 0009

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 400 of 1962

Karmam Swami Rao and Another

APPELLANT

Vs

Kurnool Sanskruth Vidyadana Samajam

RESPONDENT

Date of Decision : 02-03-1967

Acts Referred:

General Clauses Act, 1897 — Section 3(29)
Reserve Bank of India Act, 1934 — Section 2
Transfer of Property Act, 1882 — Section 55

Citation : AIR 1968 AP 147

Hon'ble Judges : P. Jaganmohan Reddy, C.J.;Kumarayya, J;Krishna Rao, J

Bench : Full Bench

Advocate : R.V. Subbarao, for the Appellant; A.R. Krishna Swamy, for the Respondent

Final Decision : Allowed

Judgement

P. Jaganmohan Reddy, C.J.—This revision petition has been referred to a Full Bench by our learned brothers Basi Reddy and Gopal Rao Ekbote. JJ. as raising the following two important questions for determination, viz.

1. Whether a Society registered under the Societies Registration Act (XXI of 1860) is a corporation? And
2. If the answer is in the affirmative, whether it is a corporation formed in pursuance of a special Indian Law? Initially the revision petition came up for hearing before Manohar Pershad. J. (as he then was), before whom it was contended that the lower court was wrongs in relying on Boppana Rukminamma and Another Vs. Maganti Venkata Ramadas, distinguishing the case of Bank of Bapatla v. Manvam Bibi. 1954 2 M LJ (Andh.) 215 which contention according to the learned Judge though devoid of sufficient force, nonetheless, having regard to the divergence of opinion was sufficiently important to be referred to a Bench,
2. The relevant provisions of the Madras Agriculturists (herein after referred to as

the Act) Relief Act (IV of 1938) upon which the determination of the questions referred to UK would depend, are Sections 4 and 10, which we give below:

"Section 4: Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads:

(a) any revenue, tax or cess payable to the State Government or any other sum due to them, by way of loan or otherwise:

(b) any revenue, tax or cess payable to the Central Government or any other sum due to them, by way of loan or otherwise;

(c) any tax or cess payable to any local authority or any other sum due to them, by way of loan or otherwise;

(d) any debt contracted on the security of house property alone in a municipality, a cantonment, or a panchayat which was a union before the 26th August, 1930.

(e) any liability in respect of any sum due to any co-operative society, including a land mortgage bank, registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, or any debt due to any corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any special Indian Law or Royal Charter or Letters Patent:

(f) any liability arising out of a breach of trust;

(g) any liability in respect of maintenance whether under decree of Court or otherwise: (h) any debt or debts due to a woman on the 1st October 1937 (Provided that the value of the property owned by her on that date, including the principal amount of the debt or debts so due, did not exceed six thousand rupees.

Explanation: For the purpose of this clause the house in which creditor woman lived, or any furniture therein, or her household utensils, wearing apparel, jewellery or such like personal belongings shall not be regarded as property.

(i) any wages due to an agricultural or other rural labourer;

Provided that where the liabilities mentioned in Clause (e) arise by reason of an assignment to the co-operative society, such assignment has taken place before the 1st October 1937, or is an assignment to such society of a loan granted by a co-operative society".

Section 10: (1) The provisions of Sections 8 and 9 shall not apply to any person who, though an agriculturist as defined in Section 3(ii), did not on the 1st October, 1937, hold an interest in, or a lease or sub-lease of, any land as specified in that section.

(2). Nothing contained in Sections 8 and 9 shall affect:

(i) any mortgage of the description referred to in Sub-section (1) of Section 9-A except to the extent provided for in that Section;

(ii) any liability for which a charge is provided u/s 55, Clause (4), Sub-clause (b) of the Transfer of Property Act: or

(iii) any liability in respect of any sum due to any public company as defined in the Indian Companies Act, 1913 or to any scheduled bank as defined by Section 2(e) of the Reserve Bank of India Act, 1934, if the interest payable in respect of the liability is not more than nine per cent per annum."

3. It may not be out of place to say that this Act was enacted with the object of relieving an agricultural debtor of his impecunious condition brought about by the groaning debts and to rehabilitate agriculture which is the basic industry in that State But while the legislature enacted the Act with that object, nonetheless it took care to keep out of purview of that Act certain transactions and certain payments, debts and liabilities due to the Government, whether of the State or the Centre, local authority, co-operative societies including Land Mortgage Bank, etc. It has, u/s 10, also made the provisions of Sections 8 and 9, (under which past debts can be reopened, reappropriated and re-adjusted) inapplicable to certain persons, transactions and liabilities.

4. In this case it is admitted that the petitioner is an agriculturist, and consequently the provisions of the Act would be applicable to him; and if the respondent, a society registered under the Societies Registration Act is not a "corporation" within the meaning of Section 4(e) of the Act. the petitioner could claim the benefits of that Act: otherwise not

5. The short question which we have to consider is whether under Clause (e) of Section 4 of the Act, a society registered under the Societies Registration Act could be said to be a "corporation formed in pursuanceof any special Indian Law". Even assuming for a moment that a society registered under the Societies Registration Act is a corporation, though we are not to be understood as holding so--is It the intention of the Legislature to exempt corporations registered under a general Act or is its intention only to exempt those corporations which are created by a special Act. In other words, what is meant by the words "corporation formed in pursuance of any special Indian Law"

6. It is sufficient to state that a corporation is a collection of natural persons coming together voluntarily by an agreement or created specially by an Act of Legislature, or registrable under it or authorised by a Charter having the attributes of perpetual succession, and a corporate name by which it may make contracts and sue and be sued. As Salmond (3) Salmond on Jurisprudence, 1957. P. 371 says.

"The birth and death of legal persons are determined not by nature, but by the law, and they endure during its good pleasure. Corporations may be established by royal charter, by statute, by immemorial custom, and in recent years by agreement of their members expressed in statutory forms and subject to statutory provisions and limitations. They are in their own nature capable of indefinite duration, this being indeed one of their chief virtues as compared with

humanity, but they are not incapable of destruction. The extinction of a body corporate is called its dissolution--the severing of that legal bond by which its members are knit together into a unity..... a legal person does not of necessity lose its life with the destruction or disappearance of its corpus or bodily substance. There is no reason why a corporation should not continue to live, although the last of its members is dead; and a corporation sole is merely dormant, not extinct, during the interval between two successive occupants of the office".

Ordinarily a collection of individuals can come together without being incorporated and there is probably nothing which the law can do by the aid of the concept of incorporation, which it could not do without it. But by incorporation certain things can be done better and more easily than would otherwise be possible: for instance, in respect of ownership of property. If a large number of persons hold property jointly, filing of suits by and against them, or transfer of property so held would cause great inconveniences. It will be difficult for a large number of individuals to manage its common interests and affairs. Further, the liability in the event of insolvency or bankruptcy of some of them or the rights of infants or insane persons are all matter which will raise considerable difficulties. In order to obviate ownership and action to the simple and typical form of individual ownership and action, the law had devised the mode of incorporation, by which effective expression and recognition of the elements of unity and permanence involved in the shifting multitude with whose common interests and activities it has to deal are realised.

7. In Halsbury's Laws of England (3rd Edn. Vol 9 P 4) "corporation aggregate" has been defined as follows:

"A corporation aggregate has been defined as a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of law with the capacity of acting in several respects as an individual particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities- in common, and of exercising a variety of political rights, more or less extensive according to the design of its institution or the powers conferred upon it, either at the time of its creation or at any subsequent period has only one capacity, namely its corporate capacity, so that a conveyance to a corporation aggregate can only be to it in its corporate capacity".

8. These corporations can be chartered companies, companies incorporated by special Acts of Parliament, such as water companies, municipalities, electric companies, or companies registered under the Companies Act and societies registered under certain Acts, such as the Cooperative Societies Act, Industrial and Provident Societies Acts etc. according to the character and nature of the societies registered thereunder by which the attributes of a corporation are conferred by the provisions of that Act.

9. As we have said earlier, a corporation can be created by a statute or by a general statute wider which it obtains the attributes of a corporation by complying with the terms thereof, such as for instance, the Companies Act etc. We may again refer to the same volume of Halsbury's Laws of England (page 26) where the position is succinctly stated:

"A corporation may be created by the authority of Parliament, expressed either in a special statute creating a particular corporation of Corporations, or in a general statute, Under which any number of corporations may be created on complying with its terms. To constitute creation, however, it is not necessary that any particular form of words should be used in the statute; it Is sufficient if the intent to incorporate be evident. Where by an ancient statute a body of persons is empowered to sue and be sued by a special name, it is strong evidence that they constitute a corporation. Where a number of persons are so constituted by Act of Parliament that they have perpetual succession, are to continue for all time, take land, make contracts which shall be binding, not upon themselves, but upon the persons filling office, and are authorised to sue or be sued in the name of their treasurer, they are in the nature of a corporation aggregate at least for the purposes of the Act"

10. It appears to us on a reading of Section 4(e) of the Act that the Legislature had intended to exempt the corporations formed and created by Acts of Parliament of the United Kingdom or of any special Indian Law or Royal Charter of Letters Patent. In our view, "corporations" referred therein must owe their origin and birth to these special Acts or Charters and not to the compliance of certain conditions and terms as a sine qua non for their obtaining the attributes of a corporation. The words "formed in pursuance of" have significance in conveying the intention that they are formed by the Act

11. This view is further reinforced by two other circumstances referred in Section 4(e) itself. One is the use of the Word "special" in "relation to Indian Law and the other is the inclusion of corporations formed in pursuance of a royal charter or "Letters Patent, which could only mean corporations created by them. The words "formed in pursuance of" likewise mean that they are termed by the special law and not registered or or incorporated under the general law.

12. If the intention of the words "formed in pursuance of" could, as contended by the learned advocate for the respondent mean corporations formed and registered under general law, there was no need in Section 4(e) for specifying that a co-operative society registered or deemed to be registered u/s 3(29) of the General Clauses Act (X of 1697) is an Indian law as it would be exempt from the operation of the Act. If the contention of the respondent's advocate is accepted, even companies registered under the Companies Act, On which are conferred the attributes of a corporation, Would be exempt from the operation of the Act. That this is not so is also evident from the fact that u/s 10(2)(iii) public companies defined in the Indian Companies Act, 1913 and banks included in the schedule to the Reserve Bank of India Act, are treated as if they are not exempt

from the provisions, of the Act, but are only given a limited relief, namely, exempting them from the operation of Sections 8 and 9 and that too if they satisfy certain conditions specified therein. On a plain reading of the provisions referred to above, we are clear in our minds that what was intended to be exempt u/s 4(e) from the operation of the Act are corporations formed and created by the special law and not merely registered under the general law, notwithstanding the fact that they also may be corporations.

13. Of the two decisions to which a reference" hits been made by Manohar Pershad, J. (as he then was); in the first, namely Boppana Rukminamma and Another Vs. Maganti Venkata Ramadas, Horwill J. merely disposed of the contention that a society registered Under the Societies Registration Act is not a corporation, in this summary manner:

".....but I am unable to see why. A perusal of the Societies Registration Act makes it clear that a society formed under that Act is a corporation and that it has a Separate existence apart from its members and can sue and be sued in its corporate capacity."

14. The learned Judge did not deal with the question whether a society registered under the Societies Registration Act was a society formed in pursuance of a special Indian Law; nor did he consider the question whether a society so registered has the attributes of a corporation.

15. Boppana Rukminamma and Another Vs. Maganti Venkata Ramadas, was considered by Subba Rao C. J. (as he then was) in 1954 2 M LJ (Andh.) 215 in which a similar contention was again considered. The learned Chief Justice dealing with the decision of Horwill, J; in Rukminiamina"s case stated that that decision did not strike a different note, "for in that case the question raised and decided by the learned Judge was only whether the plaintiff society was a corporation". Nonetheless, he held that a company registered under the Indian Companies Act was not a corporation formed under a special law. He posed the question; "Whether a company registered under the Companies Act is a corporation formed in pursuance of a special Indian Act", and observed:

"It appears to me that the words "formed in pursuance of any special Indian law" are intended to take in companies constituted by an Act such as a University. Corporation, Port Trust and similar other institutions formed under special Acts. A company formed by a Private arrangement and registered under a special Act, though by being registered under the Companies Act, certain statutory Conditions are annexed to functioning of the said company."

This matter came up later before a Bench of the Madras High Court in Aravala Chinapapinaidu and Others Vs. Imperial Bank of India, Vizianagaram and Others, decided on 17-4-1953. Govinda Menon and Basheer Ahmed Sayeed, JJ. held that the words "special Indian Law" in Section 4(e) of the Act are not intended to apply to banks which come within the meaning of a scheduled bank as defined by Section 2(e) of the Reserve Bank of India Act 1934. It was contended before

them that the Imperial Bank of India is a corporation formed as a result of a special Indian Law and any debt to the Imperial Bank would therefore be exempt from the stringent provisions of the Act. Govinda Menon J. speaking for the Bench treated the question as resolving itself to this namely, whether the debt is due to the Bank and that if they are satisfied that the debt in question arose out of a liability in respect of a sum due to the Bank, and the point of time at which the applicability of the Act has to be considered is the moment when the liability originated, then there will be no necessity for invoking the aid of Section 4(e) of the Act at all, because the exemption provided u/s 10(2)(iii) of the Act clearly applies to the case. Having so stated he observed:

"It seems to us that the words "special Indian Law" are not intended to apply to Banks like the one in question which come within the meaning of a scheduled bank as defined by Section 2(e) Reserve Bank of India Act 1934. If the argument of tire learned counsel for the respondents is to be accepted, then all the hanks incorporated under the Indian Companies Act, or the recent Banking Companies Act, as well as the Imperial Bank, would be as a result of a special Indian Law, and the two provisions, viz., Section 4 (e) and Section 10(2)(iii) of Madras Act 4 of 1938 would overlap each other We therefore do not think that the wholesale exemption claimed by invoking Section 4(e) of the Act can be applied in favour of the respondents in this case."

16. While we cannot accept the conclusion that merely because the Imperial Bank of India, which was created by a special Indian law as a corporation is also a scheduled bank u/s 2(e) of the Reserve Bank of India, Act, it cannot be exempt but it only is entitled to relief u/s 10(2)(iii), no exception can be taken to the basis of the assumption that it must be a corporation created by a special Act. If a bank such as the Imperial Bank is a corporation created by a special Act it will be exempt from the provisions of Section 4(e), notwithstanding the fact that it may also be included in the schedule. In our view, we cannot by implication withdraw an exemption granted by the provisions of the Act merely because it could also be included under some other provision. Another Bench of the Madras High Court consisting of Wadsworth and Pataniali Sastri, JJ had earlier in *Tammi Reddy v Imperial Bank of India at Cocanada* 1940 2 M LJ (NEC) 51, held that Section 4(e) is a complete bar to any attempt to scale down a decree passed in favour of the Imperial Bank, This case does not seem to have been referred to by Govinda Menon, J Be that as it may, having regard to the view we have taken, a society registered under the Societies Registration Act cannot, even if it is a corporation, be said to be a corporation formed in pursuance of a special Indian Law. In this view, the other question namely, whether the society is a corporation, need not be considered.

17. In the result, the revision is allowed, the judgment of the Court below set aside and the matter is remanded for fresh disposal according to lay in the light of the above observations. Costs will abide the result.