
(1968) 09 RAJ CK 0009
In the Rajasthan High Court

Kashi Nath Joshi	Vs	APPELLANT
Satish Chandra Sharma and Another		RESPONDENT

Date of Decision : 25-09-1968

Acts Referred:

Contempt of Courts Act, 1952 — Section 8, 8(1)
Rajasthan Co-operative Societies Act, 1965 — Section 37, 77(3)

Citation : (1969) CriLJ 1193 : (1968) WLN 41

Hon'ble Judges : L.S. Mehta, J;C.M. Lodha, J

Bench : Division Bench

Judgement

C.M. Lodha, J.—This is an application by Shri Kashi Nath Joshi, Advocate against Shri Satish Chander Sharma, Assistant Registrar, Go-operative Department, Jodhpur, and Shri Aidan Chowdhary, Deputy Registrar, Co-operative Department, Jodhpur, u/s 8 of the Contempt of Courts Act, 1952 (Act No. 82 of 1952), praying that both the non-petitioners may be punished for committing contempt of Court.

2. The facts giving rise to this application lie within a narrow compass and may be stated as under:--The election for the office of the President, Sahakari Upbhogta, Bhandar, Jodhpur, took place on 21st January, 1968, and one Shri Ramdev was elected as the President of the Bhandar. He made an application u/s 37 of the Rajasthan Co. operative Societies Act, 1965 (which, for the sake of brevity, will be hereinafter called as the Act) to the City Magistrate, Jodhpur, for issuing a direction to the officers of the Department as well as the members of the previous Board for handing over charge of the records and the property of the Society to the new President. This application was allowed on 25th March, 1968, and it is alleged, that the order passed by the City Magistrate, Jodhpur, was executed. It appears that on the very next day, i.e., on 26th March, 1968, one Shri Liyakatullah Khan made an application to the learned City Magistrate that the order passed by him the previous day for handing over the charge of the property of the Society to Shri Ramdev may be vacated. Notice of this application was given to Shri Ramdev and Shri Kashinath, outgoing President, to show cause against the application and to appear before the City Magistrate on 21st April,

1968.

3. It further appears that on 8th February" 1968, one Pratapmal Sharma, raised a dispute before the Registrar, Co operative Societies, Rajasthan, Jaipur, in connection with the election of Shri Ramdev as President of the Bhandar, u/s 75(1)(c) of the Act, and the Registrar, in exercise of the powers confened upon him by Section 77(2) of the Act, transferred the case for arbitration to the Assistant Registrar, Shri Satish Chander Sharma, non-petitioner No. 1. Shri Pratapmal also made an application u/s 77(8) of the Act praying that an interim injunction, restraining Shri Kashi Nath and Shri Ramdev from proceeding with the matter pending in the Court of the City Magistrate, Jodbpur; u/s 87 of the Act may be issued. On that application on 28th March, 1868, the Assistant Registrar, acting as an arbitrator, issued an interim injunction against Shri Ramdev and Shri Kashi Nath Joshi restraining them from proceeding with the matter pending u/s 87 of the Act before the City Magistrate, Jodhpur. On service of notice in respect of this interio3utory injunction, Shri Kashi Nath Joshi has filed this application before this Court for punishing the Assistant Registrar as well as the Deputy Registrar, Co-operative Department, Jodhpur, for committing contempt of Court.

4. The contention of the petitioner is that the non-petitioners had no jurisdiction to interfere with the proceedings pending before the City Magistrate, Jodhpur, and by issuing the injunction dated March 28th, 1968, the Assistant Registrar has committed contempt. So far as the non-petitioner No. 2 Shri Aidan, Deputy Registrar, is concerned, the allegation against him is that the injunction was issued under the direction and in consultation with him, as the Deputy Registrar and the Assistant Registrar sit in the same office.

5. So far as Shri Aidan, Daputy Registrar, is concerned, the petitioner has not made any allegation against him in his affidavit. Thus, there is absolutely nothing on the record to show that it was under the instigation of Shri Aidan that the injunction was issued by the Assistant Registrar, Only a bald statement not supported by even an affidavit or any other material has been made against Shri Aidan in para. 10 of the petition and we are of the opinion that he has been unnecessarily impleaded as a non-petitioner in this case. The notice issued against him is, therefore, discharged.

6. As regards the Assistant Registrar, non-petitioner No. 1, the allegation of the petitioner is that the City Magistrate, before whom an application had been made u/s 87 by Shri Ramdev, was exercising the functions of a Court and by issuing an interim injunction dated March 28, 1968, the Assistant Registrar interfered with the judicial functions of the Magistrate. We have heard the petitioner at some length and are of the opinion that the petitioner is not correct in his contention that the Magistrate while exercising functions u/s 37of the Act constituted a Court. Section 87 of the Act reads as under:-

37. Securing possession of records etc.,:

(1) If the committee of a co-operative society is reconstitute at a general

meeting of the society or the committee of a co-operative society is removed by the Registrar u/s 36 or if the society is ordered to be wound up u/s 73, and the outgoing members of the committee refuse to hand over charge of the records and property of the society to the new committee or the administrator or the liquidator, as the case may be, the new committee or the administrator or the liquidator may apply to the Magistrate, within whose jurisdiction the society functions, for securing the records and property of the society.

(2) Where the Registrar is satisfied that the books and records of a society are likely to be suppressed, tampered with, or destroyed, or the funds and property of a society are likely to be misappropriated or misapplied, the Registrar or the person authorised by him may apply to the Magistrate within whose jurisdiction the society is functioning for seizing and taking possession of the records and property of the society.

(3) On receipt of an application under Sub-section (1) or Sub-section (2), the Magistrate may, by a warrant authorise any police officer, not below the rank of a Sub-Inspector, to enter and search any place where the records and the property are kept or are believed to be kept and to seize such records and property; and the records and property so seized shall be handed over to the new committee or administrator of the society or the liquidator or the Registrar, or the person authorised by him as the case may be.

This section occurs in Chap. IV of the Act, the heading of which is "Management of Cooperative Societies". It is in the course of the management of the Societies that the power has been given to the new committee or the administrator or the liquidator for applying to the Magistrate, within whose jurisdiction the society functions, for securing the records and property of the society. On receipt of an application under Sub-section (1) or Sub-section (2) of Section 87 of the Act, the Magistrate is empowered to issue a warrant authorising a police officer not below the rank of a Sub-Inspector to enter and search any place where the records and the property are kept and to seize the same BO as to hand them over to the new committee or the administrator or the liquidator or the Registrar, as the case may be. Thus, this section creates a special jurisdiction in the Magistrate administrative in nature. The question arises whether a Magistrate, while functioning in exercise of the powers u/s 87 of the Act, is a Court? The word "court" is not defined in the Contempt of Courts Act. Section 8(1) of the Contempt of Courts Act provides as follows:

Subject to the provisions of Sub-section (2), every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself. The expression "Courts subordinate to the High Court", in Section 8(1) of the Contempt of Courts Act, would prior facie mean the courts of law subordinate to the High Court in the hierarchy of Courts. It was laid down by their Lordships of the Supreme Court in *Brajcandan Sinha v. Jyoti Narain* AIR 1955 SC 66, that in order to constitute a

court in the strict sense of the term, an essential condition is that the courts should have, apart from having some of the trappings of a judicial tribunal, powers to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. These tests, it was observed, must be applied for determining what is a Court strictly so called within the connotation of the term as used in the Const. temp of Courts Act. Thus, it would be important to look to the character of the proceedings before a particular officer or authority far coming to the conclusion whether it can be characterised as a Court. A very limited power has been conferred on the Magistrate by Section 87 of the Act to seize the records and the property of the society by issuing a war. rant and then to get them handed over to the applicant. In our opinion, by no stretch of imagination can it be said that the proceedings before the City Magistrate, Jodhpur, were of criminal or civil nature.

7. In this connection, we would also refer to certain observations made by their Lordships of the Supreme Court in *The Dargah Committee, Ajmer Vs. State of Rajasthan*, While dealing with the provisions of *Ajmer Merwara Municipalities Regulation (6 of 1925)*, their Lordships were pleased to observe as under : -

Now looking at Section 234, it is clear that the proceedings initiated before a Magistrate are no more than recovery proceedings. All questions which may legitimately be raised against the validity of the notice served u/s 158 or against the validity of the claim made by the Committee u/s 222 can and ought to be raised in an appeal u/s 98(i), and if no appeal is preferred or an appeal is preferred and is dismissed then all those points are concluded and can no more be raised in proceedings u/s 284. That is why the nature of the enquiry contemplated by Section 284 is very limited and it prima facie partakes of the character of a ministerial inquiry rather than judicial enquiry. In any event it is difficult to hold that the Magistrate who entertains the application is an inferior criminal Court. The claim made before him is for the recovery of a tax and the order prayed for is for the recovery of the tax by distress and sale of the movable property of the defaulter. If at all, this would at best be a proceeding of a civil nature and not criminal. That is why, we think, whatever may be the character of the proceeding, whether it is purely ministerial or judicial or quasi-Judicial, the Magistrate who entertains the application and holds the enquiry does so because he is designated in that behalf and so he must be treated as a persons designates and not a Magistrate functioning and exercising his authority under the Code of Criminal Procedure. He cannot therefore be regarded as an inferior criminal, court.

8. In a Bench decision of this Court, to which one of us was a party, *Tarachand v. Kishan Gopal* 1963 RLW 262 : 1968 Cri LJ 714 it was held that a Magistrate on whom is conferred the power to take action u/s 17 of the *Rajasthan Premises (Control of Rent and Eviction) Act, 1950*, is not a Court and the same considerations. with added force, apply to an order passed by a District

Magistrate u/s 22(8) of the same Act. There is no doubt that the Magistrate, within whose jurisdiction the society functions, is appointed under the Criminal Procedure Code, and constitutes a criminal Court. However, power may be conferred on the presiding officer of such a criminal Court by a special or local statute. If this power is of executive or administrative character, such officer cannot be said to be exercising such power in judicial capacity and, as a necessary corollary, orders passed by such officer will not be orders of a criminal Court but must be considered as orders passed by an officer in executive or in an administrative capacity.

9. As we have already observed above, the power exercised by the Magistrate u/s 37 is administrative in nature. In this view of the matter we find it difficult to accept the contention advanced on behalf of the petitioner that the City Magistrate, Jodhpur, passing an order for handing over the records and the property of the society u/s 37 of the Act is a "Court." As a necessary consequence, the City Magistrate, Jodhpur, in the present case, while exercising powers u/s 87 of the Act, cannot be considered as a "Court" subordinate to the High Court.

10. It was held by Hon"ble Kan Singh J. in Criminal Revn. No. 804 of 1968 D/-24-9. 1968 (Raj) Shiv Charan Das v. Hakikatullah Khan that an order passed by a Magistrate under Sub-section (8) of Section 85 of the Act, is not amenable to the revisional jurisdiction of this Court under the Code of Criminal Procedure and, with respect, we agree with this view. Similarly, in our opinion, the Magistrate while acting under S 87 of the Act is not a Court for the purposes of the Contempt of Courts. Act also.

11. This petition, therefore, for taking action against the non-petitioner No. 1 for committing contempt of the Court of City Magistrate, Jodhpur, in respect of the proceedings pending before him u/s 87 of the Act cannot be allowed and must be dismissed as such.

12. However, in deference to the learned arguments advanced by the petitioner as well as the counsel for the non-petitioners, we would also like to make a few observations with respect to the nature of the order passed by the Assistant Registrar. The Assistant Registrar was seized of the dispute relating to the election of Shri Ramdev Chaudhary and in that connection an application was made to him by Shri Pratapmal Sharma that an interlocutory order may be passed to maintain the status quo, meaning thereby that during the pendency of the dispute regarding the validity of Ramdeo's election, the records and the property of the society should not be allowed to change hands and the Assistant Registrar, it appears, while purporting to exercise the power under Sub-section (S) of Section 77 of the Act, directed that Shri Ramdev Chaudhary and Shri Kashi Nath Joshi may be restrained from proceeding with respect to the proceedings u/s 37 of the Act before the City Magistrate, Jodhpur. He also directed that a copy of the said order may be sent to the City Magistrate, Jodhpur, for information. The sole purpose underlying this order seems to be to maintain the status quo.

There does not appear anything in this order to a how that the Assistant Registrar directed disobedience of any order of the Magistrate. All that was intended was that the proceedings pending u/s 87 before the City Magistrate, Jodhpur, may be stayed till further orders. A discretionary power has been conferred under Sub-section (3) of Section 77 on the Registrar or any other person to whom a dispute is referred for decision under that section to make such interlocutory orders, as he may deem necessary, in the interest of justice. We are clearly of the opinion that the Assistant Registrar while passing the impugned interlocutory order did not intend any interference with administration of justice. In this view of the matter also, we are satisfied that no case for contempt of Court is made out against the non-petitioner No. 1, Shri Satish Chander Sharma. We, therefore, do not see any force in this application and dismiss it. But in view of the fact that there is no decided case, on the point, of this Court or any other High Court, we think it proper to leave the parties to bear their own costs.