(2011) 11 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 3411 of 2001

Khemabhai H. Patel and 15 — APPELLANT

Vs

Joint Registrar (Comm) and 4 — RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Co-operative Societies Act, 1961 — Section 71, 93

Citation : (2011) 11 GUJ CK 0001

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : B.S. Patel for Petitioners 1-2, 2.2.1-3, 3.2.1, 5, 5.2.1, 7, 9 -10, 12, 12.2.1, 15-16, Mrs. Ranjan Bpatel for Petitioners 1-3, 5, 7, 9-10, 12, 15-16 and Notice Served for Petitioners 4, 6, 8, 11, 13-14, for the Appellant; Mini Nair, AGP. for Respondent(s) 1, Mr. Nair For Mr. Ashish H. Shah for Respondent(s) 1, 4-5 and Rule Served by DS for Respondent(s) 2-3, for the Respondent

Final Decision : Allowed

Judgement

R.M. Chhaya, J.—By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order dated 20.8.1999 passed by Joint Registrar, Cooperative Societies in pursuance to the show cause notice dated 9-1/2-1998 issued u/section 93 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as ''the Act'') as well as order passed by Gujarat Cooperative Societies Tribunal in Appeal No. 505 of 1999 dated 30.4.2001 confirming the order passed by Jt. Registrar dated 20.8.1999.

2. The original petitioners were Members of the Managing Committee of the Sabarkantha Jilla Sahakari Divela Telibia Utpadak Sangh Limited. By notice dated 9-1/2-1998 the Joint Registrar, Gujarat State Cooperative Societies, Gandhinagar, directed the petitioners, through Chairman and Managing Director of the society, to show cause as to why action as contemplated u/ section 93 of the Act should not be initiated and further alleging that by investing sum of Rs.40 lacs in Sardar Regional Telibia Sangh Ltd., Idar, which provided for interest

@ 14% and whereas obtained loan for construction from Gujarat State Cooperative Bank Ltd., Ahmedabad at a interest rate of 16% p.a. and such action is dehors the provisions of section 71 of the Act and that too without any permission as contemplated u/ section 71 of the Act and the same has resulted into loss of Rs.1,13,671/-to the society of the petitioners. The petitioners filed reply to the Show Cause Notice vide communication dated 3.4.1998 and interalia pointed out that both the sections are not attracted inasmuch as that even though the society had made investment without taking any permission as contemplated u/ section 71 of the Act with Sardar Regional Oil Seeds Union Ltd., the same has not resulted into loss and in fact it was a commercial decision taken by the Society in furtherance of the interest of the society.

3. The authority vide order dated 7-6/7-1998 directed inquiry u/ section 93 of the Act. An Inquiry Officer thereafter issued notice dated 24.11.1998, through the Chairman and Managing Director of the Society of the petitioners. The Inquiry Officer was appointed before whom the petitioners also made written submissions and more particularly pointed out that no actual loss has occurred and therefore the very initiation of the proceedings u/ section 93 of the Act are unwarranted. After considering the report so submitted, the Joint Registrar (Commercial), Cooperative Societies, Gujarat State, Gandhinagar vide order dated 20.8.1999, came to the conclusion that because of the investment made by the petitioners and obtaining loan as aforesaid has resulted into loss of Rs.1,13,671/-to the Society and held the petitioners liable u/ section 93 of the Act. Aggrieved by the said order the petitioners preferred appeal before the Gujarat State Cooperative Tribunal being Appeal No. 505 of 1999. Even before the Tribunal the petitioners pointed out that there was no actual loss and that the provisions of section 93 as well as 71 of the Act are wrongly constituted and applied by Additional Registrar and that the Additional Registrar has not appreciated the findings arrived at by the Inquiry Officer. However, the Tribunal vide order dated 30.4.2001 dismissed the appeal. Being aggrieved by the said order of the Tribunal, confirming the order passed by the Joint Registrar (Commercial), the present petition is filed.

4. Heard Mr. B.S. Patel, learned Counsel for the petitioners and Mr. Nair, for Mr. Ashish Shah, learned Advocate for respondent nos. 4 and 5 as also learned Assistant Government Pleader Ms. Mini Nair.

5. At the outset, Mr. Patel for the petitioners submitted that respondent no.5, has expired and the heirs of Bhikhabhai S. Patel have not been added as party to the present petition. Mr. Nair, under instructions from respondent no.4, states before the Court that even though the respondents have been added subsequently by order dated 9.5.2001, they are not necessary parties and therefore, no submissions are made on behalf of respondent no.4.

6. Mr. Patel has vehemently submitted that both the authorities i.e. Additional Registrar as well as the Tribunal have not examined the most important aspect viz. to the effect that, whether there was actual loss because of the investment

made by the petitioner society and obtaining of loan as aforesaid. He further submitted that the petitioners in their capacity being the members of the Managing Committee had taken conscious decision which was in the interest of the Society and as averred in the reply to the show cause notice has further pointed out before the Inquiry Officer as well as the Tribunal, both the authorities have not considered the fact that there was no actual loss and therefore, the findings arrived at by both the authorities that once the investment is made dehors u/ section 71, provisions of section 93 of the Act would apply, is erroneous.

7. On perusal of the reply to the Show Cause Notice as well as the written arguments submitted before the Tribunal, the petitioners had given explanation as averred by Mr. Patel, however, the same have not been considered and therefore, both authorities have committed an error apparent on the face of it by not considering the vital evidence on record and has straight way come to the conclusion that once the investment is made dehors the provisions of section 71 of the Act and no permission is applied post facto the petitioners as the Members of the Managing Committee of the Society would amount to misapplication of funds is incorrect. This Court is conscious of the fact that the issue is pending since 1998, however, the material on record placed before both the authorities have not examined and considered therefore, this Court deems it fit to quash and set aside both the orders dated 20.08.1999 passed by the Addl. Registrar as well as order dated 30.04.2001 passed by Gujarat State Cooperative Tribunal in Appeal No. 505 of 1999 and remand the matter to the Joint Registrar, Gujarat State. The Joint Registrar shall re-examine the matter in light of the evidence led before it and pass a fresh order after affording an opportunity of hearing to the petitioners. It is further observed that the amount of Rs.60,000/-deposited before this Court as per order dated 9.5.2001 shall be remitted to the Joint Registrar (Commercial), Gujarat State, who shall pass appropriate order after rehearing as aforesaid.

8. The petition, therefore succeeds. Rule made absolute to the aforesaid extent with no order as to costs.

