(2014) 07 KL CK 0018

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 22600 of 2008

Kunnamangalam Co-operative Housing Society Ltd. APPELLANT

Vs

Vasantha Kumari RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Act, 1969 — Section 69, 70(1)
Kerala Farmers Debt Relief Commission Act, 2006 — Section 2(i), 2(ii), 2(vii), 2(xiii), 6

Citation : (2014) 4 ILR 418 : (2014) 4 KLJ 77 : (2014) 4 KLT 65

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : Binu Mathew, Advocate for the Appellant; P. Parameswaran Nair, Assistant Solicitor General of India, Jacob Abraham, Kochumol Koduvath, Abraham Varghese Tharakan, A.D. Raveendra Prasad and A.J. Jose Aedaiodi, Government Pleader, Advocate for the Respondent

Judgement

Anil K. Narendran, J.—The petitioner is a Primary Housing Co-operative Society incorporated under the Kerala Co-operative Societies Act, 1969. The main object of the petitioner-Society is to borrow money from its Apex Society namely, the Kerala State Co-operative Housing Federation, the 3rd respondent herein, and lend money to its members for the construction/repair of residential buildings, for the purchase of residential plots, etc. The 3rd respondent borrows money from approved financial agencies like the Life Insurance Corporation of India Ltd. (LIC) and the National Bank for Agriculture and Rural Development (NABARD), the 6th and 7th respondents herein. The disbursement of housing Joans by the petitioner-Society is regulated by Exhibit PI regulations framed by the 3rd respondent. The 1st and 2nd respondents are members of the petitioner-Society. The 1st respondent submitted Exhibit P2 application before the petitioner-Society to avail a housing loan for Rs. 90,000/-, for construction of a new residential building with an estimate of Rs. 1,87,500/-. Along with Exhibit P2 application, the 1st respondent has also produced Exhibit P2(E) income certificate dated

5.8.1999 issued by the Village Officer, Madavoor, as per which, the annual family income of the 1st and 2nd respondents is Rs. 42,000/- out of which Rs. 35,000/- is income from business.

2. On 29.11.1999, the Board of Directors of the petitioner-Society resolved to sanction the loan applied for by the 1st respondent and forwarded the loan application to the Apex Society. The Apex Society sanctioned a loan for Rs. 90,000/- to the 1st respondent, with a tenure of 15 years and repayable in 56 quarterly installments. Exhibit P3 is the Loan Processing Sheet and Exhibit P4 is the Loan Sanctioning Order. The 2nd respondent stood as guarantor and the 1st and 2nd respondents executed a registered mortgage bond in favour of the petitioner-Society. The petitioner-Society sub-mortgaged its mortgage right in favour of the Apex Society. The Apex Society in turn executed hypothecation bond with the 6th and 7th respondents. Thereafter, the loan amount was disbursed to the 1st respondent as evident from Exhibit P5 Loan Release Processing Sheet of the Apex Society and the 1st respondent utilised the said amount for the construction of her residential building, as evident from Exhibits P6 and P6(a) utilisation certificates issued by Secretary of the petitioner-Society and the Engineer concerned respectively.

3. When the 1st and 2nd respondents defaulted repayment of the housing loan, the petitioner-Society referred the dispute to arbitration, under S. 69 of the Kerala Co-operative Societies Act, 1969, which resulted in passing of Exhibit P7 award by the Joint Registrar of Co-operative Societies, Kozhikode, for Rs. 1,15,252/-, permitting the petitioner-Society to realise the aforesaid amount together with interest at the rate of 17.5% for the principal amount of Rs. 86,400/- from 1.11.2002 until realisation, by proceeding against the 1st and 2nd respondents personally or by selling the mortgaged property. In the absence of any appeal filed under S. 70(1) of the aforesaid Act, Exhibit P7 award has attained finality.

4. In the execution proceedings, the Special Sales Officer of the Apex Society issued notice dated 12.6.2007 for the sale of the mortgaged property. At that juncture, the 1st and 2nd respondents approached the Kerala State Farmers'' Debt Relief Commission, the 4th respondent herein, seeking relief under the Kerala Farmers'' Debt Relief Commission Act, 2006 (hereinafter referred to as ''the Act''), and the Commission by Exhibit P8 order stayed all further proceedings pursuant to sale notice referred to above, on a prima facie finding that the 1st and 2nd respondents herein are ''farmers'' as defined in the Act. The order of stay was on condition of remitting an amount of Rs. 5,000/- each on or before 5.9.2007 and 5.10.2007 respectively and a further sum of Rs. 4,000/- on or before 5.11.2007.

5. The petitioner-Society entered appearance before the Debt Relief Commission and filed Exhibit P9 counter statement contending, inter alia, that the 1st and 2nd respondents herein are neither farmers nor agricultural labourers. There is also no Government declaration under S. 6 of the Act declaring the area/crop as

distress affected area/crop. The housing loan availed by the 1st respondent would fall under the exclusionary clause in S. 2(vii) of the Act. The petitioner-Society has also filed Exhibit P10 additional objections, pointing out the non-compliance of Exhibit P8 conditional order passed by the Debt Relief Commission. It was further pointed out that, the 1st and 2nd respondents herein would not fall under the definition of ''agricultural labourer'' in S. 2(ii) or ''farmer'' in S. 2(xiii) of the Act. The file relating to the housing loan availed by the 1st respondent was also made available for the perusal of the Commission.

6. On 18.1.2008, the Debt Relief Commission passed Exhibit P11 final order on the application filed by the 1st and 2nd respondents herein, and paragraphs 2 and 3 of the said order read thus;

"The family availed of a loan of Rs. 90,000/- on 22.3.2003 for agricultural purposes and is being remitted. But due to heavy distress they could not completely repay the loan and as on today the balance together with interest is Rs. 2,08,554/-. The arbitrator award amount is Rs. 1,15,252/- as on 31.3.2006.

Considering the plight of the family this Commission make an award of Rs. 50,000/- and Debt Relief amount of Rs. 5,252/- for bank to waive and balance Rs. 60,000/- for the party to remit to clear off the debt on or before 31.3.2009."

It is aggrieved by Exhibits P8 and P11 orders passed by the Debt Relief Commission, the petitioner-Society is before this Court in this Writ Petition, seeking various reliefs.

7. On 28.7.2008, while admitting the Writ Petition, this Court has ordered as follows; "Respondents 1 and 2 may make a deposit, as directed in Exhibits P8 and P11. However, the petitioner will not release any documents on such deposit; who shall only issue due receipt, in accordance with law."

8. The 1st and 2nd respondents have not chosen to file any counter affidavit. The 3rd respondent has filed a counter affidavit supporting the writ petitioner.

9. Heard the arguments of the learned counsel for the petitioner, the learned counsel for the 1st and 2nd respondents, the learned Standing Counsel for the 3rd respondent and also the learned Government Pleader appearing for the 5th respondent.

10. The learned counsel for the petitioner-Society contended that, the application filed by the 1st and 2nd respondents before the Debt Relief Commission is not maintainable as they are not ''farmers'' as defined under S. 2(xiii) of the Act. As evident from the documents on record their principal means of livelihood is not ''agriculture'' as defined under S. 2(i) of the Act. The loan availed of by the 1st respondent in which the 2nd respondent stood as guarantor is a housing loan and the liability arising out of the said loan transaction is not a ''debt'' as defined under S. 2(vii) of the Act. Moreover, there is no Government declaration under S. 6 of the Act declaring the area/crop as distress affected area/crop. In addition to this, the procedure adopted by the Commission in proceeding with the

application, even without furnishing the petitioner-Society a copy of the application filed by the 1st and 2nd respondents, is contrary to R.11 of the Kerala Farmers'' Debt Relief Commission Rules, 2007. The learned Counsel further contended that, the provisions of the Act cannot be made applicable to the debt or liability payable to a Primary Housing Co-operative Society and to the Apex Society/Federation, arising out of a housing loan and therefore the petitioner-Society is also entitled for the declaration and the consequential relief sought for in the Writ Petition. Per contra, learned counsel for the 1st and 2nd respondents contended that, the application filed before the Debt Relief Commission was maintainable under the Act and therefore Exhibits P8 and P11 orders passed by the Commission are perfectly legal. The learned Government Pleader appearing for the 5th respondent also contended that Exhibits P8 and P11 orders are perfectly legal and no interference of this Court is warranted.

11. The Kerala Farmers Debt Relief Commission Act, 2006, was enacted to provide relief to those farmers who are in distress out of indebtedness, by constituting a Commission with power to pass awards after adjudication and to recommend appropriate measures for the redressal of the grievances of such farmers through conciliation and negotiation and for matters connected therein or incidental thereto. Section 2(i) of the Act defines ''agriculture'', S. 2(ii) defines ''agricultural labourer'' and S. 2(xiii) defines ''farmer''. Ss. 2(i), 2(ii) and 2(xiii) of the Act read thus;

"2(i). ''agriculture'' includes horticulture, farming and growing of medicinal plants, crops and intercrops, fruits, vegetables, flowers, grass, fodder grass and trees or any kind of cultivation of soil, conducting nursery, breeding and keeping of livestock including fish, mussel, bees, silkworm, poultry, duck, cattle or pig and the use of land for agriculture allied activities or any other agricultural purposes.

2(ii). ''agricultural labourer'' means a person who, in consideration of the wages payable to him by a landowner, works on the agricultural land of such landowner or does any other agricultural operation.

2(xiii). ''farmer'' means a person who holds whether as owner, licensee, mortgagee in possession, oral lease, Government land lease "Kuthakapattam" or partly in one capacity and partly in another with possession of an extent of land not exceeding four hectares and whose principal means of livelihood is agriculture and whose annual income does not exceed rupees two lakhs and includes an agricultural labourer, Kudumbasree and self help group units doing cultivation by taking over agricultural land on lease agreement condition."

12. In order to fall within the meaning of ''farmer'' as defined under S. 2(xiii) of the Act, a person should hold whether as owner, licensee, etc., an extent of land not exceeding four hectares; his principal means of livelihood should be ''agriculture'' (as defined under S. 2(i) of the Act); and his annual income should not exceed rupees two lakhs. Going by S. 2(xiii) ''farmer'' includes an agricultural

labourer, Kudumbasree and self help group units doing cultivation by taking over agricultural land on lease agreement condition. In order to fall within the meaning of ''agricultural labourer'' as defined under Section 2(ii) of the Act, a person should work on the agricultural land or do any other agricultural operation in consideration of the wages payable to him by a landowner. Therefore, the term ''farmer'' as defined under S. 2(xiii) of the Act takes within its sweep (i) a holder of land whose principal means of livelihood is ''agriculture'' (as defined under Section 2(i) of the Act); (ii) an agricultural labourer working on agricultural lands or doing any other agricultural operation in consideration of the wages payable to him by a landowner; and (iii) Kudumbasree and self help group units doing cultivation by taking over agricultural land on lease agreement condition. Therefore, a holder of land not exceeding four hectares and whose annual income does not exceed rupees two lakhs, would fall within the sweep of ''farmer'' as defined under S. 2(xiii) of the Act only if it is shown that his principal means of livelihood is ''agriculture'', as defined under S. 2(i) of the Act.

13. The Kerala Farmers'' Debt Relief Commission constituted under the Act is a creature of that statute. The Commission derives its power from the express provisions of the Act and it is bound by the provisions of that statute. The Commission is entitled to exercise only such powers which are specifically vested in it under the Act and regulated by the rules made thereunder. As the powers and functions of the Debt Relief Commission are defined and circumscribed by the Act, the Commission is bound to consider the issue regarding maintainability of the application, if any, raised by the opposite side, before proceeding on the merits of the said application. This is more so when S. 2(vii) of the Act defines ''debt'' as any liability, whether secured or unsecured due from a ''farmer''.

14. It was argued by the learned counsel for the 1st and 2nd respondents that, the application filed before the Debt Relief Commission was maintainable under the Act and therefore Exhibits P8 and P11 orders passed by the Commission are perfectly legal. Apart from this plea raised at the time of hearing, there is total dearth of materials to rebut the specific contention raised by the learned counsel for the petitioner-Society regarding maintainability of the application, relying on various documents already on record, which include the loan application submitted by the 1st petitioner and also the documents enclosed therewith. Though a specific contention regarding maintainability of the application was raised by petitioner-Society before the Commission in Exhibit P9 counter statement and Exhibit P10 additional objections and made available the loan file for the perusal of the Commission, the Commission issued Exhibit P11 final order even without adverting to the crucial question regarding maintainability of the application.

15. As borne out from Exhibits P8 and P11 orders passed by the Debt Relief Commission, the 1st and 2nd respondents herein had approached the said Commission seeking relief in respect of their loan transaction with the petitioner-Society. Initially, the Commission granted Exhibit P8 conditional order of stay on

a prima facie finding that the 1st and 2nd respondents herein are farmers as defined in the Act. The Petitioner-Society entered appearance before the Debt Relief Commission and filed Exhibit P9 counter statement, which was followed by Exhibit P10 additional objections. The file relating to the housing loan availed by the 1st respondent was also made available for the perusal of the Commission. But, the Commission passed Exhibit P11 final order, granting debt relief to the 1st and 2nd respondents, on a finding that agricultural distress has affected their family consisting of four members, having an annual income of Rs. 26,000/-. The Commission concluded that, the family availed a loan for Rs. 90,000/- on 22.3.2003 for agricultural purposes and they could not repay the loan completely due to heavy distress.

16. However, as evident from Exhibits P2 to P6, the documents forming part of the loan file made available for the perusal of the Debt Relief Commission, the loan availed of by the 1st respondent from the petitioner-Society is a housing loan for Rs. 90,000/-, sanctioned on 4.1.2000, for construction of a new residential building with an estimate of Rs. 1,87,000/-, and in the said loan transaction the 2nd respondent stood as guarantor. Going by Exhibit P2(E) income certificate produced along with Exhibit P2 loan application, the annual family income of the 1st and 2nd respondents is Rs. 42,000/-out of which Rs. 35,000/- is their income from business. The particulars furnished in Exhibit P2 loan application and the documents enclosed therewith make it abundantly clear that, neither the 1st respondent-borrower, nor the 2nd respondent-guarantor would fall within the sweep of ''farmer'' as defined under S. 2(xiii) of the Act, in order to maintain an application before the Debt Relief Commission, as their principal means of livelihood is not ''agriculture'', as defined under S. 2(i) of the Act. Therefore, the Commission acted absolutely without any jurisdiction and authority of law while entertaining the application and passing Exhibits P8 and P11 orders. The reasoning of the Commission in Exhibits P8 and P11 orders are manifestly erroneous and perverse, warranting interference of this Court in exercise of its writ jurisdiction under Art. 226 of the Constitution of India. In the result, the Writ Petition is allowed quashing Exhibits P8 and P11 orders passed by the Kerala Farmers'' Debt Relief Commission. As Exhibits P8 and P11 orders are quashed on the ground of maintainability of the application filed before the Kerala Farmers'' Debt Relief Commission, I find no necessity to consider the other contentions raised and the consequential reliefs sought for by the petitioner-Society in this Writ Petition and all such contentions are left open.

No order as to costs.

