(2004) 09 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No''s. 7965, 7968, 7971, 7974 and 7975 of 2004

Mamvada Seva Sahkari Mandali Limited APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 81, 81(6)
Gujarat Co-operative Societies Rules, 1965 — Rule 34

Citation : (2004) 09 GUJ CK 0044

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

Bench : Single Bench

Advocate : Harin P. Raval, for Petitioner Nos. 1-2, for the Appellant; Kamal Trivedi, AAG and Sangeeta Vishen, AGP for Respondent Nos. 1-4, 7-8 and S.N. Thakkar, for the Respondent

Judgement

M.R. Shah, J.—Draft amendment is granted. The petitioners may carry the draft amendment by 14.9.2004.

2. In all these petitions, the respective petitioners have challenged the legality and validity of the order passed by the District Registrar confirmed by the State Government in appeal superceding the Managing Committee of the respective cooperative society and appointing Mehsana District Central Cooperative Bank Ltd. as Administrator of the respective society who is the financial and funding agency of the petitioner society.

3. Due to paucity of time, it is not possible to give the detailed reasons today as these matters are being heard since last two days and there is no time left with the Court to give a detailed and reasoned order. However, some broad reasons are assigned and the detailed reasoned order will be passed in each Special Civil Application separately hereinafter.

4. As these petitioners are agricultural credit dispensing societies, their main object and purpose is to give credit to the needy agriculturists. In SCA No. 7974

of 2004 and SCA No. 7975 of 2004, the finding against the respective cooperative societies of those Special Civil Applications is that the aforesaid societies have not tried to give finance/credit to the agriculturists and therefore, they have neglected in the performance of their duties cast upon them and the purpose for which the society is formed has not achieved its objects.

5. So far as the other Special Civil Applications are concerned, the main argument on behalf of the petitioners was that the impugned order passed by the District Registrar confirmed by the State Government superceding the Committee of the cooperative societies and appointing the Administrator is hit by Section 81(6) of the Gujarat Cooperative Societies Act to the extent that before passing the order, the Cooperative Financial Institution to which the cooperative societies are indebted are not ulted. Though Shri K.B. Trivedi, Ld. Addl. Advocate General who appears on behalf of the State Government has submitted that while passing the appellate order, the Appellate Authority has infact ulted the financial institution to which the respective cooperative societies are indebted. However, Shri H.P. Raval, Learned Advocate appearing for the petitioners has submitted that the Cooperative Financial Institution is ulted by the Appellate Authority and not by the District Registrar and that too, behind the back of the respective petitioners and therefore, it cannot be said to be a compliance of Section 81(6) of the Gujarat Cooperative Societies Act. The main object of ulting the Cooperative Financial Institution to which the society is indebted is that before passing the order of superceding the Committee and appointment of Administrator, the view of the Cooperative Financial Institutions are required to be idered as ultimately, the fund of the very cooperative financial institution is at stake and they can suggest the mode and make other suggestions also. However, in the present case, the administrator who is appointed is a very cooperative financial institution to which the petitioner societies are indebted i.e. Mehsana District Central Cooperative Bank. In that view of the matter, when the Cooperative Financial Institution to which the society is indebted which is likely to be superceded and the Administrator is to be appointed itself is appointed as Administrator, in that eventuality, non-compliance of Section 81(6) will not make order of supersession of society bad and/or illegal, as the very cooperative financial institution will be able take care of their own funds as they themselves are appointed as Administrators. Therefore, according to me, merely on the ground that the cooperative financing institution to which the petitioner societies are indebted are not ulted by the Registrar, the impugned order of superceding the committee and appointment of Administrator is not vitiated.

6. The other allegations and findings against some of the petitioner societies are that there are outstanding dues and no efforts have been made by the Committee members and there is negligence on the part of the members of the Committee in not making efforts to recover the loans. Under Rule 34 of the Gujarat Cooperative Societies Rules, there are certain duties cast upon the Managing Committee of the cooperative society such as (1) to receive and disburse the money, (2) to prepare for submission for the annual general

meeting on annual report of the working of the society and all such annual statements of accounts required to be placed before the general meeting under the Act, rules and bye-laws, (3) to watch the recovery of loans and examine the application of loan (4) to examine and take prompt action in case of all arrears and defaults in repayment of loans and advances. Thus, if the managing committee of the cooperative society has not performed its duty to receive and disburse money, to watch the recovery of loan and examine the application of loans and and to examine and take prompt action in cases of default and repayment of loans and advances, then it can be said that the Managing Committee of that society is negligent in performance of the duties. u/s 81 of the Gujarat Cooperative Societies Act, if in respect of a committee of a society, if the Registrar is of the opinion that the Committee is negligent in performance of the duties cast on it by this Act i.e. Cooperative Societies Act or it was anything which is prejudicial to the interest of the society or its members then an order of supersession of the society can be passed. In the present case, as stated above, the finding of both the authorities below are that in two cases, there was no agricultural credit at all, in some cases, credit was given to the members of the managing committee prompt actins were not taken for recovery of the credit/ loans for sufficient time and in some cases, the amount is recovered within a short period after issuance of the show cause notice by the District Registrar. Therefore, it is found by the Authority that the committee of the society were negligent in the performance of their duties imposed on it by the Act and that the same is prejudicial to the interest of the society or its members. Broadly considering the judgments of the Honourable Supreme Court reported in Hiralal Vallabhram Vs. Kastorbhai Lalbhai and Others, and Sampat Prakash Vs. The State of Jammu and Kashmir and Another, and the judgement of the Division Bench of this Court reported in Varvabhai Nathabhai Rabari and Others Vs. State of Gujarat and Others, all the present Special Civil Applications are dismissed. Adinterim relief granted earlier stands vacated forthwith.

7. At this stage, Shri Harin P Raval, Learned Advocate appearing on behalf of the respective cooperative societies requests to continue the adinterim relief granted earlier. However, in view of the fact that the continuation of interim relief is likely to create irreversible situation, the prayer to continue the adinterim relief is rejected.

