

(2011) 03 MAD CK 0158

In the Madras High Court

Case No : Writ Petition No. 7351 of 2011

Mr. S. Selvam

APPELLANT

Vs

The President, Saidapet Co-operative Primary Agriculture and
Rural Development Bank Ltd.

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2011) 03 MAD CK 0158

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : M.K. Kannan, for the Appellant; S. Shivashanmugam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—Writ Petition is filed to issue a Writ of Mandamus, directing the Respondent to execute and register a deed of

discharge/cancellation of the mortgage deed dated 14.2.2000 registered on 16.2.2000 as document No. 457/2000 in the Office of the Sub

Registrar, Velachery insofar as the Petitioner's land in Plot No. 147 comprised in Survey Nos. 89/3B and 90/2B in Srinivasa Layout,

Puzhuthivakkam Village.

2. Mr. S. Shivashanmugam, learned Government Advocate takes notice on behalf of the Respondent.

3. Petitioner claims to be the owner of the property in Puzhuthivakkam Village in Survey Nos. 89/3B and 90/2B and states that he has purchased

a property under sale deed dated 26.10.1988 as document No. 3910/88 from one Mr. K. Venkatapathy. When he sought approval from the

local authorities for construction of building and when he applied for an encumbrance certificate, it came to light that the property was mortgaged on 14.2.2000 by one Mr. Ravi for and on behalf of his minor son Sivashankaran in favour of the Respondent bank and the mortgage deed was registered as document No. 457/2000 in the office of the Sub Registrar, Velacherry. Petitioner claims that the said Ravi has played fraud on the Respondent bank. Petitioner issued a legal notice dated 28.10.2010 to the Respondent bank calling upon the Respondent to execute and register the deed of discharge/cancellation in respect of the land which allegedly mortgaged by one Mr. Ravi. It is also stated by the Petitioner that the Respondent bank has lodged a complaint to the police against the said Ravi alleging cheating and misappropriation of the funds of the Respondent bank by submitting fake sale deed followed by a mortgage. In these circumstances, since the Respondent bank has not replied to the legal notice dated 28.10.2010, the present writ petition has been filed for the above stated relief.

4. Prima facie, this Court is not inclined to entertain a writ petition of this nature. Admittedly, the Respondent bank is a Co-operative Primary Agriculture and Rural Development Bank Ltd., and the decision of the Larger Bench of this Court in K. Marappan Vs. The Deputy Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, will apply to the facts of the present case. Para 21 of the larger Bench decision of this Court reads as follows:

21. From the above discussion, the following propositions emerge:

- (i) If a particular co-operative society can be characterised as a "State" within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be "an authority" within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.
- (ii) Applying the tests in *Ajay Hasia* it is held that the Respondent society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution.
- (iii) Even if a society cannot be characterised as a "State" within the meaning of Article 12 of the Constitution, even so a writ would lie against it to

enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as

a "person" or an "authority" within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed

upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can

reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a "State" would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain

circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all

concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a "State" a writ would lie when the

case falls under Clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of

law. Hence, where a society cannot be characterised as a "State", the service conditions of its employees governed by its bye-laws cannot be

enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the

Act provides for an alternative remedy.

(viii) The decision in *M. Thanikachalam and others Vs. Maduranthakam Agricultural Producers co-operative Marketing Society and others*, is no

longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in *Pradeep Kumar Biswas* case and the other decisions

referred to here before.

The reference is answered accordingly. Registry is directed to place the paper before the appropriate bench for its disposal.

This Court, in the absence of special circumstances, is not inclined to exercise power under Article 226 of the Constitution of India as admittedly,

the Petitioner has a remedy under the Co-operative Societies Act. Furthermore,

the narration of the facts clearly reveal that the Respondent bank has initiated some action against the said Ravi and that proceedings have not concluded. If that be so, the outcome of the criminal case between the Respondent bank and the said Ravi will have a bearing with regard to the claim of the Petitioner.

5. In an issue in which the Petitioner, bank and the third party are involved with regard to right of the land in question, the Court is not inclined to go into disputed facts. Furthermore, Petitioner has not established before this Court that the Respondent bank has committed any violation of the statutory provision in order to invoke Clause (iv) of para 21 of the Larger Bench decision referred to supra. For these reasons, the writ petition is not maintainable.

6. The decision of the Supreme Court in Zonal Manager, Central Bank of India v. Devi Ispat Ltd. and Ors. reported in 2010 (5) LW 151 relied upon by the Petitioner will not be applicable to the facts of the present case. As the disputed questions of fact, which are evident in this case, itself will disentitle the Petitioner for a remedy under Article 226 of the Constitution of India. Whereas in the Apex Court's decision relied upon by the Petitioner it has been clearly held in para 17 that questions of fact raised by the Petitioner in that case are elementary in nature. There is a different between the facts in the Apex Court decision and the present case on hand. Therefore, the said plea is also rejected.

7. In view of the above, the Writ Petition is dismissed. No costs.