

(1985) 11 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 17256 of 1985

Muddebihal Housing Co-operative Society

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 15-11-1985

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 108, 113 (2), 30

Citation : (1986) ILR (Kar) 2291

Hon'ble Judges : K.A. Swamy, J

Bench : Single Bench

Advocate : A.B. Patil, for the Appellant; B.J. Somayaji, HCGP, for the Respondent

Judgement

K.A. Swami, J.—This Petition is filed by the Muddebihal Housing Cooperative Society Ltd, Muddebihal, under Articles 226 and 227 of the Constitution of India for quashing the order dated 17-10-1985 passed by the State Government in No. RDC 131 CAP 82 produced as Annexure-E. The Petitioner has also sought for a direction to the 3rd respondent to hand over books and records seized by him on 1-2-1982 as per Annexure "H".

2. By the order dated 29-1-1982 bearing No. D/SSN/CR. 8/81-82, the Deputy Registrar of Co-operative Societies, Bijapur, superseded the Managing Committee of the petitioner-Society in exercise of the power u/s 30 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "the Act") and appointed an Administrator for a period of one year. The 3rd respondent was appointed as the Administrator. There was an appeal filed by the Petitioner-Society. No member of the Managing Committee -in the instant case the Board of Directors-has challenged the order. It is very pertinent to notice that in an order passed under Sub-section (1) of Section 30 of the Act, it is the right of the members of Managing Committee that is affected and not of the Co-operative Society which is a corporate body and continues to exist inspite of the order appointing the Administrator. It is the Committee of Management that is removed. Thus it is the members of the Committee of Management of the Co-

operative Society, who are directly affected. In the instant case, the members of the Committee of Management have not challenged the order removing them from the Committee of Management and appointing an Administrator. The Writ petition is filed by the Society and not by the members of the Managing Committee. In the appeal filed before the Joint Registrar of Co-operative Societies, the order passed by the Deputy Registrar of Cooperative Societies was set aside on 6th September, 1982. There was a revision filed by a member of the Society before the State Government u/s 108 of the Act. The State Government, on examining the charges levelled against the Board of Management, has found that out of 9 charges 7 charges are proved. Relevant portion of the order of the State Government is as follows :

"6. In the order dated 29-1-1982 of the Deputy Registrar of Co-operative Societies, Bijapur, the charges levelled against the Board of Management are nine. Out of these seven charges are proved and four of them are serious. They are (1) A sum of Rs. 12,500/- collected from the public has not been taken to Society's account, but was retained with P.V. Nashi. When the public insisted to refund P.V. Nashi and N.K. Malagi (deceased) have given a joint statement informing that the amount would be taken to Society's account and paid to Revenue Department. But the Board of Directors did not agree to take this amount to the society's account. When this matter came up before them and allowed it to remain with Sri P.V. Nashi. This amounts to temporary misappropriation. The Board of Management has thus failed to take care of the society's fund and allot sites to the members. (2) Annual General Meetings for the years 1976-77, 1977-78 and 1978-79 have not been convened. Hence the Board of Management have violated Section 27 of the K.C.S. Act 1959. Further (3) the Board of Management have failed to protect the interest of the members. (4) It has allowed Shri P. V. Nashi as Chairman from 8-10-1966 to 11-4-1981 in violation of Section 29(d) of the K.C.S. Act 1959 and (5) it has failed to obtain permission to conduct the annual general meetings outside the society premises in the office of Shri P.V. Nashi violating Section 113(2) of the Act. The Board of Management has therefore failed to discharge its duties and responsibilities cast upon them as per the Act, Rules and the Bye-laws of the society attracting action u/s 30 of the K.C.S. Act, 1959."

3. It is contended by Sri A. B. Patil, learned Counsel for the Petitioner that the State Government while exercising its revisional jurisdiction is not justified in going into the facts and recording a finding contrary to those recorded by the appellate authority ; that the revision petition before the State Government was filed by the petitioner who was not a member of the Society on the date the order was passed by the Deputy Registrar of Co-operative Societies appointing an Administrator, therefore, he was not competent to file a revision before the State Government, therefore the revision was incompetent ; that originally the administrator was appointed for a period of one year by the Deputy Registrar and that period had not been extended ; therefore, the order passed by the State Government directing the administrator to hold election and hand over the

Management to the newly elected Board of Directors is also without jurisdiction. Learned Government Pleader Sri Somayaji disputes the correctness of these submissions.

4. It appears to me that it is not possible to accept the contentions raised on behalf of the petitioner. Section 108 of the Act provides that subject to the provisions of Section 108A the State Government suo motu at any time, and, on application of any person aggrieved, within a period of six months from the date of any order, may call for and examine the records of any case or proceedings of any Officer subordinate to it except those subject to appeal or revision by the Tribunal or those in respect of which an appeal has been made to the State Government u/s 106, and the State Government after such enquiry as it deems fit is satisfied that the order of the Officer is contrary to law and has resulted in a miscarriage of justice, pass such orders thereon as the State Government deems just. No doubt power of revision cannot be equated to power of appeal ; but at the same time the scope of revisional jurisdiction depends upon the language of the statute providing revision. In the instant case Section 108 of the Act empowers the State Government to go into the legality of the order under revision and also to prevent the miscarriage of justice. Therefore, the State Government was justified in going into the charges levelled against the Board of Directors. In addition to this, in the instant case the original authority i.e. Deputy Registrar of So-operative Societies has gone into all the charges and has recorded clear, positive findings ; but the Appellate authority has not considered the case on merits. A reading of the order of the Joint Registrar of Co-operative Societies (appellate authority) shows that there is no application of mind. The relevant portion of the order reads thus :

"The Learned Advocate has argued that the first point is not correct. The transactions mentioned in para one is made in the individual capacity of the appellant. Further advocate for the appellant argued that the society has not violated bye-law No. 7 in admitting the members. These persons are resident of Muddebihal taluk and they are houseless persons are resident of Muddebihal and admitted charge No. 7, 8, 9 and but stated that, there was no houses in these years and has in good faith avoided the unnecessary expenses of the society for Annual General Meeting and elections etc., Further the Learned Advocate argued that the charge of the society has not taken by the senior Inspector of C.S. (housing) as per the order of the Deputy Registrar of C. S. Bijapur, but unauthorisedly ceased some old books of the Society. All the current books are with the society.

Further the Learned Advocate argued that after the supersession order issued by the Deputy Registrar C. S. Bijapur. The Society has made good progress and lastly submitted that no doubt there are some mistakes in the working of the society, the same may not be viewed seriously and prayed a chance to the appellant to rectify all the defects. He further submitted that the order under appeal is passed without giving full opportunity for producing the evidence and

no hearing is given.

The points raised in the appeal petitions were examined with reference to the supersession order and with the connected records of case. I, therefore inclined to accept the contention put forth by the Learned Advocate."

Thus from the aforesaid order of the Joint Registrar, it is clear that the charges levelled against the Managing Committee are not at all considered. Under such circumstances, it was open to the State Government to go into the question as to whether the charges levelled against the Managing Committee were proved or not. The State Government has gone into the charges and has specifically found that 7 out of 9 charges are established. That being so, I do not see any justification to interfere with the order passed by the State Government.

5. The Petitioner before the State Government was admitted as a member of the Petitioner Society on 3-2-1982. Thus he became a member of the petitioner Society even before the appeal was filed by the Society before the Joint Registrar of Co-operative Societies. Therefore, the petitioner before the State Government was competent to file the revision Petition. A member of a Co-operative Society is entitled to move the appropriate authority for removing the Committee of Management which is guilty of charges attracting the provisions of Section 30 of the Act. Therefore the Revision Petitioner before the State Government being a member of the Cooperative Society, was entitled to challenge the order of the appellate authority in question. As such the revision petition was competent. Thus the second contention is also rejected.

6. The last contention is that the administrator was appointed for a period of one year and that period had not been extended, hence, the direction issued by the State Government is invalid in law. This contention also cannot be accepted. It is one and the same proceeding that is continued from the date of the order passed by the Deputy Registrar of Co-operative Societies. When the State Government while disposing of the revision Petition directs that the administrator must hold election within a period of six months from the date of its order, the only effect of such a direction is to extend the term of the administrator upto that period. Section 30 of the Act, as it stood on the date the proceeding in question was initiated or on 29-1-1982, the date on which the order superseding the Committee of Management was passed, did provide for continuation of the administrator for a period of four years. In the instant case, the administrator was appointed for the first time on 29-1-1982. From that date, four years are not yet over. Nevertheless the direction issued by the State Government to hold the election within six months from 17th October, 1985 exceeds the period of four years because the administrator was appointed on 29th January, 1982, and he assumed charge on 1-2-1982. From 1-2-1982 the period of four years comes to an end on 31-1-1986. Therefore, the administrator can be allowed to continue in office only upto 31-1-1986. The order of the State Government to this extent requires to be modified.

7. Accordingly, this Writ Petition is disposed of on the following terms :

(i) The order of the State Government (Annexure-E) in so far it affirms the order passed by the Deputy Registrar of Cooperative Societies, Bangalore, appointing the administrator does not call for interference and it is not disturbed. In other respects it is modified as below :

(ii) The administrator is continued till the end of 31-1-1986 and he is further directed to hold the elections to the Committee of Management of the petitioner-Society on or before 31-1-1986 and handover the charge of the Society to the newly constituted Managing Committee.