
(1984) 10 MAD CK 0007
In the Madras High Court
Case No : S.A. No. 894 of 1984

Musiri Cooperative Land Development Bank Ltd. APPELLANT
Vs
Ranganathan and Others RESPONDENT

Date of Decision : 19-10-1984

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 18

Citation : (1985) 2 LLJ 128 : (1984) 97 LW 548 : (1985) 1 MLJ 67

Hon'ble Judges : G. Maheswaran, J

Bench : Single Bench

Judgement

1. The third defendant is the appellant. The suit out of which this second appeal arises was filed by the first respondent for declaring that the order

of the third defendant, dated 10th November, 1979 and the order of the second defendant, dated 29th March, 1980 and also the order of the

third defendant, dated 6th May, 1980 are ab initio void, illegal, without jurisdiction and ultra vires and for a permanent injunction restraining the

defendants from enforcing the said orders.

2. The plaintiff-first respondent was the Secretary of the third defendant-Co-operative Land Development Bank at Musiri, Disciplinary action was

taken against the plaintiff and charges were framed against him for certain acts of omission and commission on the part of the plaintiff. The third

defendant appointed an Enquiry Officer and on basis of the report dismissed the plaintiff on 10th November, 1979. On appeal preferred by the

plaintiff, the second defendant, Deputy Registrar of Co-operative Societies. Musiri, set aside the order of dismissal, but remitted the matter for

disposal de novo. But the third defendant again passed an order dismissal the plaintiff from service. According to the plaintiff the order of the third

defendant (1) is ab initio void, (2) is vitiated by violation of the rule of audi alteram partem, (3) is mala fide as no show-cause notice was issued

prior to framing of charges, (4) is vitiated as the punishment by the first defendant is without enquiry, (5) is bad as the order was based on the

report of the Enquiry Officer, a member of the Musiri Bar, who was appointed by the third defendant and who has not furnished him with details

asked for by him. The further contention is that the order of the second defendant is vitiated as no notice or summons was issued by the second

defendant and the appeal was disposed of summarily and the order is also bad as the second defendant has no jurisdiction to remit the matter once

he is convinced that the order of the third defendant has to be aside. It is in those circumstances that the plaintiff prayed for the reliefs extracted.

3. The suit was resisted by the defendants. The second defendant in his answer contended that the allegation that the second defendant has no

jurisdiction to remit the matter is wrong and that the order of remit has been made according to the provision of the by laws of the Land

Development Bank and that the suit is bad for want of notice under S. 80, civil Procedure Code, and it is also barred under S. 100 of the Tamil

Nadu Co-operative societies Act. The first defendant adopts the written statement of the second defendant. The third defendant would deny the

allegation of mala fides. He also denied that the Special Officer was exhibiting a hostile attitude towards the plaintiff. He stated that the Enquiry

Officer appointed by the third defendant summoned the plaintiff to appear on 7th August, 1979 and on 16th August, 1979, that as he has not

appeared, he has proceeded ex parte and that the allegation that no enquiry was conducted by the Enquiry Officer is wrong. The third defendant

also denied the allegation that the documents were withheld from the plaintiff and stated that the suit is also bad for want of notice.

4. The trial Judge was of the view that the suit will not be barred by S. 100 of the Co-operative Societies Act, 1961 and therefore the Court has

jurisdiction to try the suit and that the order of the defendants are void and therefore the plaintiff is entitled to the injunction prayed for. The

appellate Court has merely followed the judgment of the trial Court and confirmed the judgment of the trial Court. This appeal is preferred by the

third defendant.

5. A learned Judge of this Court while admitting the second appeal framed the following substantial questions of law :

1. Whether the suit out of which the second appeal arises, is maintainable in a civil Court in the face of S. 100 of the Tamil Nadu Act 53 of 1961,

as it specifically says that in case of any order or award passed or decision or action taken by the authorities under the Act, including the

Government, the same cannot be questioned in any Court law ? and

2. Whether the failure of the appellant to produce the records of investigation made by the Registrar under S. 65 of the Co-operative Societies

Act, which is not in his possession, will vitiate the enquiry before the Enquiry Officer ?

6. It is only on these two points that the decisions of the Court below are challenged. The question whether the suit by an employee of a Co-

operative Society against the Society challenging the order of dismissal passed by the Society, is barred by the provisions of S. 100 of the Tamil

Nadu Co-operative Societies Act. 53 of 1961 is bereft of direct authority. Madurai District Co-operative Supply and Marketing Society Limited

Vs. S. Sankaranarayanan and Others, , was a case where the plaintiff in each of the four suits was an employee of the Madurai Co-operative

Supply and Marketing, Society. Each of them was in charges of godowns of the Society storing foodgrains, After a domestic enquiry, all of them

were dismissed as there was a shortage in the stock and a suit was filed by each of them. A learned single Judge of this Court took the view that

the suit filed by the dismissed employee of the Co-operative Society against the Society must be held to be maintainable and not barred by the

Industrial Disputes Act. According to the learned Judge, the issue as to maintainability of the suit vested with the Court on two different statutory

provisions. One was under S. 73 read with S. 100 of the Tamil Nadu Co-operative Societies Act and the other was under the Industrial Disputes

Act, 1947. The learned Judge pointed out that no argument, however, was addressed before him by the counsel for the Society on the basis of S.

73 of the Tamil Nadu Co-operative Society Act. It is not clear from the judgment whether the bar under S. 100 of the Tamil Nadu Co-operative

Societies Act was argued before the learned Judge. In those circumstance, the learned Judge held that the suit filed by the employee must be held

to be not barred by the Industrial Disputes Act. This ruling is of no help.

7. Section 100 of the Tamil Nadu Co-operative Societies Act runs thus :

"No order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer

authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any

Court.

It is not disputed that S. 73 of the Tamil Nadu Co-operative Societies Act is not attracted as disputes arising out of disciplinary action by the

Society or its committee against the paid servants of the Society are specifically excluded by S. 73, Learned counsel for the appellants invited my

attention to the ruling in *K. Satyanarayanan v. Motu Industries* (1963) 1 A.W.R. 323 where a Division Bench of Andhra High Court had to deal

with S. 48 of the Madras Co-operative Societies Act, VI of 1932, which corresponds to S. 100 of the present Act 53 of 1961. This was a case

where the Godavari Central Co-operative Stores (in liquidation) (first defendant in that suit) obtained a decree against one Satyanarayanamurti (the

third defendant and judgment debtor) before the Registrar of Co-operative Societies in a claim. The said Society brought the house belonging to

the judgment-debtor, namely, Satyanarayanamurthi to sale and one K. Satyanarayana the first defendant, purchased it and the sale was confirmed

by the Registrar. One Motu Industries Private Limited, one of the several creditors of the judgment-debtor was the plaintiff. Godavari Central Co-

operative Stores, after releasing the amount went in to liquidation. Motu Industries, one of the creditors of the judgment-debtor, without obtaining

sanction of the Registrar, brought a suit against the Co-operative Stores and the judgment-debtor, challenged the decree obtained by the Co-

operative Stores and the sale held in execution on the ground that the Deputy Registrar had no jurisdiction to entertain the claim and the execution

proceedings were vitiated by fraud and irregularity. The question in that case whether the suit for setting aside the sale was barred and whether the

leave of the Registrar for proceeding with the application is a condition precedent for the institution of the suit. On these two questions, the Bench

held that it is not open to the plaintiff to challenge the correctness of the award passed under S. 51 of the Madras Co-operative Societies Act,

1932 or the sale held in pursuance of the said award and that S. 51(6) of the Act VI of 1932 expressly bars the jurisdiction of civil and revenue

courts to call in question the decision under S. 51. It was held that failure to obtain sanction of the Registrar for institution of the suit is fatal to its

maintainability. The trial Court found in that case that award proceedings taken out by the Society before the Deputy Registrar were invalid, that

the sale in pursuance of the decree is also a nullity and that plaintiff can maintain the suit in civil court for declaration that the sale is void and the civil

court has jurisdiction to entertain the suit and ultimately granted decree. In that case, the High Court, as a fact, found that :-

It has not been alleged, much less proved in the instant case that any of the provision of the Act had not been complied with or that there has been

a violations of any principles of judicial procedure"".

It is in those circumstances and in view of certain authorities cited before it, that it came to the conclusion that the suit for declaration that the sale is

void and is not binding on the plaintiff, is barred by the provisions of Act VI of 1932 and is not maintainable. The question about the exclusion of

jurisdiction of civil courts to entertain civil actions by virtue of specific provisions contained in the Act has been judicially considered in AIR 1940

105 (Privy Council) , Lord Thankerton observed :

It is settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either be explicitly

expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases

whether the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles

of judicial procedure.

What is contended before me by the learned counsel appearing for the appellant is that there is an express prohibition under S. 100 of Act, 53 of

1961 and the prohibition is unambiguous and no order passed by an arbitrator, Registrar, or an officer authorised or empowered by him or by the

Government or any officer subordinate go Government shall be liable to be called in question in any Court and that by instituting the suit the plaintiff

really called the order of the officer in question. Though the relief of injunction is usually granted by the Court, he pointed out, that it is not the form

in which the relief is claimed that matters, but the substance of the relief claimed that should be looked into. In *Firm and Illuri Subbayya Chetty &*

Sons v. The State of Andhra Pradesh (1964) 1 M.L.J. (S.C.) 5, the Supreme Court had to consider S. 18-A suit was Madras General Sales Tax

Act, 1939. A suit was filed by the appellant in that case against the State of Andhra Pradesh for a for a certain sum of money on the ground that

the amount was illegally recovered from him under the Madras Sales Tax Act. The respondent in the appeal resisted the claim on the ground that

the suit was incompetent under S. 18-A of the Act. The Supreme Court held that S. 18-A excludes the jurisdiction of Civil Court to set aside or

modify any assessment made under the Act and there is no express provision in the Act under which the suit can be said to have been filed and it

falls under the probation in that section. It further pointed out that where an order of assessment has been made by any appropriate authority under

the provisions of the Act of any challenge to its correctness and any attempt either to have it set aside or modified must be made before the

appellate or revisional forum prescribed by the relevant provisions of the Act. Finally their Lordships held that the suit instituted for that purpose is

barred under S. 18-A. But their Lordships in dealing with the observations of Lord Thankerton in *Secretary of States v. Mask & Company*

(supra), made the following observations :

It is necessary to add that these observations, though made in somewhat wide terms, do not justify the assumption that if a decision has been

made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect

on the merits and as such, it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the

provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of

the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate

authority has acted in violation of the fundamental principles of judicial procedure, that may also tend to make the proceedings illegal and void and

this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in

the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps be invoked in support of the plea

that the civil Court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute.

The question now is whether in this case the order passed by the authority concerned suffers from infirmity such that the defect goes to the root of

the order and makes it in law invalid and void. The Enquiry Officer has passed an ex parte order. Both the Courts have found that on 16th August,

1979 the plaintiff was absent and the Enquiry Officer proceeded to record the evidence of the witnesses on 5th, 6th, 7th and 14th of September,

1979, in the absence of the plaintiff. The Courts also found that copies of documents were not granted to the plaintiff. The Courts below pointed

out that the plaintiff wrote a letter under Exhibit A-11 asking for certain particulars and also praying to adjourn the enquiry beyond 16th August,

1979, but the Enquiry Officer, D.W. 2. has proceeded ex parte on 16th August, 1979. Though this letter, Exhibit A-11, seeking adjournment was

sent on 13th August, 1979 as is evident from the postal receipt it was received and acknowledged by the Enquiry Officer only on 17th August,

1979. Both the delinquent and the Enquiry Officer are residing in Tiruchirapalli itself, and it is rather strange that it should have reached the Enquiry

Officer on 17th August, 1979. Both the Courts also say that the plaintiff was not given an opportunity to peruse the depositions recorded during

the enquiry under S. 60 of the Co-operative Societies Act on the ground that they are ""Government records and confidential records"". On a

consideration of these facts, both the Courts concurrently found that the enquiry by the Enquiry Officer is in violation of the principles of natural

justice and that the Enquiry Officer has acted without jurisdiction and his report is void. The Courts also found that the order of the second

defendant is also vitiated for not following the principles of natural justice and that the 2nd defendant as also wrong in keeping the order of

suspension in tact while setting aside the order of dismissal.

8. In this case there is no dispute that the documents of enquiry under S. 65 of the Tamil Nadu Co-operative Societies Act were not furnished to

the plaintiff. But it is not clear whether during the enquiry under S. 65 of the Act the plaintiff himself was examined by the Enquiry Officer. There

are no records produced in this case to show the terms of reference in respect of enquiry under S. 65. It cannot, therefore, be said that non-

finishing of copies of enquiry under S. 65 would have prejudiced the plaintiff, but it should be borne in mind that both the courts held that the

domestic enquiry officer acted without jurisdiction not merely because he has not furnished the copies of documents of enquiry under S. 65, but for

other reasons also such as violation of principles of natural justice, and not giving an opportunity to the plaintiff and examining the witnesses in his

absence and passing an ex parte order even when he was asked for an adjournment. In these circumstances, I am constrained to take the view that

the defect or the infirmity in the enquiry proceedings goes to the root of the order and makes it in law void and as such the suit by the plaintiff is

quite competent and not barred under S. 100 of the Tamil Nadu Co-operative Societies Act 53 of 1961.

9. For the foregoing reasons the second appeal fails and is dismissed with costs.