(1994) 11 MAD CK 0022

In the Madras High Court

Case No : C.R.P. No. 1873 of 1994

P. Palaniappan APPELLANT

Vs

The Co-operative Land Development Bank Limited RESPONDENT

Date of Decision : 25-11-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Constitution of India, 1950 — Article 227
Madras Revenue Recovery Act, 1864 — Section 14(A)

Citation : (1995) 1 CTC 326 : (1995) 2 LW 247 : (1995) 2 MLJ 108

Hon'ble Judges : Thangamani, J

Bench : Single Bench

Advocate : S. Thiruvengadasamy and R. Vijayashanker, for the Appellant; Sounder Rajan, for the Respondent

Final Decision : Allowed

Judgement

Thangamani, J.—Revision petition under Article 227 of the Constitution of India against the order and decree passed by the Special Court

of Co- operative Appellate Tribunal (District Judge) Madurai in C.M.A.(CS) No. 125/93 dated 31.1.1994.

2. The petitioner was sanctioned a loan of Rs. 1,08,500/- in the year 1985 for the purchase of a tractor. He was not prompt in paying the

instalments. He fell into arrears. So the Special Officer cum Sub Registrar of Co-operative Societies by his order dated 29.6.1993 in RRA No.

433/92-93 attached his movable and immovable properties and brought them for sale by invoking the provisions of Revenue Recovery Act as

contemplated u/s 120 of the Co-operative Societies Act. The five items of movable properties attached include one easy chair, one Lakshmi Wet

Grinder and 7 kuppama of paddy. The petitioner challenged the said attachment before the Special Tribunal for Co-operative Cases, Madurai in

C.M.A (CS) No. 125/93. Holding that Section 152 of the Co-operative Societies Act is a bar to the maintainability of the appeal the Tribunal

dismissed the appeal. Hence this revision.

3. Section 120 of the Tamil Nadu Co-operative Societies Act states that without prejudice to any other made of recovery which is being taken

under that Act or any other Law for the time being in force, any money due to a primary land development bank may be recovered as if it were an

arrear of land revenue. And Section 152 of the Co-operative Societies Act mentions that any person aggrieved by any decision or award passed

under certain specified sections of the Co-operative Societies Act can appeal to the Tribunal. But Section 120 is not one among the provisions

mentioned in Section 152. So the Tribunal had held that no appeal lies against the order of the Sub Registrar in R.R.A. No. 433/92-93 dated

29.6.1993.

4. Now there is no dispute that an appeal u/s 152 of Tamil Nadu Co-operative Societies Act before the Tribunal is not maintainable. It is the

argument of Mr. Thiruvengadasamy, learned counsel for the Revision Petitioner that a revision before the Registrar also does not lie u/s 153(1) of

the aforesaid Act. This section reads:

''The Registrar may of his own motion or an application, call for and excuse the record of any officer subordinate to him or any officer of registered

society or of the competent authority constituted under sub-section (3) of Section 75 and the Government may, of their own notion or on

application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the rules or the by-laws not being a

proceeding in respect of which appeal to the Tribunal is provided by sub section (1) of Section 152 to satisfy himself or themselves as to regularity

of such proceedings, or the correctness, legality or propriety of any decision passed or order and therein; and, is, in any case, it appears to the

Registrar or the Government that any such decisions or order should be modified, annulled, reversed or remitted for reconsideration, he or they

may pass orders accordingly.

According to learned counsel, provisions of Section 153 could be invoked by the Registrar only against the order of any officer subordinate to him in respect of any proceedings under the Co-operative Societies Act. The language of the Section supports the said plea. Section 120 (1) of the

Act enables Registrar or any officer of a primary land development bank authorised by him in this behalf to exercise the powers of a Collector

under Tamil Nadu Revenue Act for the purpose of recovery of money due to the said bank. In this case also the Deputy Registrar by his

proceedings dated 28.3.1993 by virtue of the powers delegated to him u/s 120(1) of the Act has authorised the Special Officer of the Aranthangi

Co-operative and Development Bank to exercise such powers to execute the R.R. application filed by the above said Bank in his office. So the

Special Officer in his distraint proceedings against the revision petitioner has acted and exercised his power only under Revenue Recovery Act.

Whereas the revision contemplated u/s 153 of the Act is in respect of any proceedings under the Co-operative Societies Act. Since the Special

Officer has exercised his powers in the impugned proceedings not under the Co-operative Societies Act, the provisions of Section 153 of the Act

are not attracted. Besides u/s 120(1) it is the Registrar or any officer of the land development bank authorised by the Registrar in this behalf who

has to exercise the powers of a Collector under the Revenue Recovery Act for the purpose of the said recovery. And as per Rule 164(3) (b) of

the Tamil Nadu Co-operative Societies Rules the said officer of the land development bank shall be subject to such control or direction as the

Registrar may give from time to time in the exercise of power and discharge of the functions u/s 120. So the quasi judicial function contemplated

under Revenue Recovery Act is virtually exercised by the Registrar and evidently there cannot be any revision to the Registrar himself against the

said exercise of powers.

5. On the other hand learned counsel for the respondent submitted that a revision lies to the Government u/s 153 of the Act and so the contention

of the revision petitioner that no alternative remedy is available to him is unsustainable. A careful reading of Section 153 would indicate that the

Government is empowered to call for and examine the record of the Registrar in respect of any proceedings under the Act or the Rules or the by-

laws to satisfy themselves as to regularity of such proceedings or the correctness, legality or propriety of any decision passed or order made therein. So, normally there is no impediment to prefer a revision to the Government under this section against the orders of Registrar However

since the revision contemplated u/s 153 is only regarding the regularity, correctness, legality or propriety of any decision or proceedings under the

Co-operative Societies Act, no revision lies u/s 153 to the Government in this case.

6. Learned counsel for the respondent argued that in this Civil Revision Petition the revision petitioner has not only challenged the order of the

Special Tribunal for Co-operative Cases. Madurai in C.M.A.(CS) No. 125 of 1993 but also the order of the Special Officer dated 29.6.1993 in

R.R.A.No. 435/92-93. According to him the petitioner cannot combine both the reliefs in the same Civil Revision Petition. However, in substance

what is sought to be assailed in this revision petition is the order of attachment of certain movable items passed by the Special Officer in R.R.A.

No. 43 3/92-93. As we have already seen the appeal preferred by the revision petitioner against the said order has been held not maintainable by

the Special Tribunal and this view of the Tribunal is not disputed at present. And in view of the absence of any alternate remedy provided for in the

Co-operative Societies Act the revision petitioner is entitled to invoke Article 227 of the Constitution and seek redress.

7. Learned counsel for the respondent resisted this revision petition also on the ground that no writ can lie against a Co- operative Society. In The

Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, the High Court of Orisaa set aside the order passed by

the Registrar of Co-operative Societies regarding the termination of services of the Secretary of the Bank. The High Court allowed the writ

petition. When the Central Bank took up the matter before the Apex Court it was contended on behalf of the applicants that the High Court was in

error in taking the view that a writ application under Article 226 of the Constitution of India can lie against a Co-operative Societies Act. The

Supreme Court was not inclined to accept the view of the High Court and observed that judgment of the High Court should not be treated as an

authority for the proposition that a writ petition is maintainable against a co-operative society. In Kannan, Tamilrasan v. Director of Sugars 1991 2

L.W. 409 it has been held that a writ petition under Article 226 against a co-operative society is not maintainable. However, these two citations are of no assistance to us since we are now concerned only with the maintainability of a revision under Article 227 and not on the issuance of a writ

under Article 226 of the Constitution.

8. Learned counsel for the respondent placed reliance on he decision of Nainar Sundaram, J. (as he then was) in V. Savarimuthu Vs. Special

Director of Enforcement and Others, . There the learned Judge has held that the powers under Article 227 may be exercised in the following

contingencies; (1) Lack of jurisdiction, erroneous assumption of jurisdiction or excess of jurisdiction or fusal to exercise jurisdictions; (2) grave

dereliction of duty of flagrant violation of law or error of law apparent on the face of the record as distinguished from a mere mistake of law or an

erroneous decision of law; (3) violation of the principles of natural justice; (4) perverse finding founded on no material whatsoever and (5) arbitrary

or capricious exercise of authority or discretion. On the basis of this decision learned counsel for the respondent argued that there is no error

apparent on the face of the record in the order of the special Officer and that an erroneous view taken on the question of law could not be

challenged under Article 227. The order of attachment of the three movable items can at best be only an error of law committed by the Tribunal.

9. In Baijnath Kathal Vs. M.K. Qureishi and Others, cited by learned counsel for respondent a Division Bench of the Madhya Pradesh High Court

has held that under Article 227 Constitution of India, the High Court would interfere only under limited circumstances, such as, arbitrary or

capricious exercise of jurisdiction, where there is violation of rules of natural justice, or where the findings are perverse, or based on no evidence at

all. Even if there are mistakes of facts or law, that cannot be corrected under Article 227 Constitution of India. The High Court cannot convert

itself into a Court of appeal or a Court of revision sitting over the decisions of the inferior courts in exercise of powers under Article 227.

10. In Mohd. Yunus Vs. Mohd. Mustaqim and Others, the Apex Court has held that a more wrong decision without anything mere is not enough

to attract the jurisdiction of the High Court under Article 227. The supervisory jurisdiction conferred on the High Courts under Article 227 of the

constitution is limited ""to seeing that an inferior Court or Tribunal functions within the limits of its authority"", and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act an an

Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to

be based or to correct errors of law in the decisions.

11. In Sigma Agencies (P) Ltd. Vs. P.V. Thomas and Others, a single Judge of the Kerala High Court has held that the jurisdiction exercised by

this Court under Article 227 in quality is not in the nature of a second-first appeal. The contours of the jurisdiction are well defined, and as

observed by Sabyasachi Mukherji, J. (as His Lordship then was) in Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, a rehearing on facts is

not contemplated under Article 227. The High Court must guard itself against using the jurisdiction of superinterdence, as an appellate power. A

finding cannot be interfered with, unless it is perverse, and perverse, it is, if it is a finding which no person reasonably instructed in law or facts

would have come to. As stated in India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another, , however erroneous a finding may be, it is not

liable to be interfered with under Article 227. Indeterminate rounds of hearing on facts is not in the contemplation of law, much less in the

contemplation of Article 227.

12. In Poosarilar Ekambaram Pillai Vs. Visalakshmi and others, Bakthavatasalam, J has pointed out that under Article 227 of the Constitution of

India, this Court should not interfere with the decisions of the Tribunal even if there is an error of law or on facts. It is also well settled that simply

because this Court can come to another conclusion, it will not be a ground for interfering with Article 227 of the Constitution.

13. In Chandrasekhar Singh and Others Vs. Siya Ram Singh and Others, the Supreme Court ordains that the power under Article 227 is to be

exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for

correcting mere errors.

14. Where as learned Counsel for the Revision Petition has placed reliance on State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and

Others etc., where a Constitution Bench of the Supreme Court has held that the power of superintendence over all courts and tribunals which the

High court has under Article 227 of the constitution extends to keeping the subordinate tribunals within the limits of their authority and to seeing that

they obey the law. In case, the Revenue Tribual decides an issue on a misreading of the provisions of the tenancy law the High Court cannot only

set aside the decision but also direct it to make further enquires after taking evidence.

15. In Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, lays down that the High Court will not review the discretion of the

Authority judicially exercised, but it may interfere if the exercise of the discretion is capricious or perverse or ultra vires.

16. In Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, the Apex Court has Held:

It is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in

procedure or law has crept in or where the order passed results in manifest injustice, then a court can justifiably intervene under Article 227 of the

Constitution"".

17. In Re: Annamalai Mudaliar, Ramaswami, J, had held that Article 227 confers upon the High Court a power of supervision over all judicial

matters decided by any court or tribunal within the State. All agencies whether Courts or not, performing the duty of deciding disputed questions of

right between parties on behalf of and under the sanction of the State and in accordance with State-made laws are placed under the administrative

and judicial control of the High Court. Thus, the High Court has got revisional jurisdiction under Article 227 by way of superintendence over the

judicial work of a duly constituted tribunal, like the Deputy Registrar under the Co- operative Societies Act. Superintendance include power to

guide, and encourage Judges of the subordinate Courts, to direct subordinate courts and tribunals to carry out orders of the High Court; and to

direct enquiry with a view to taking disciplinary action for flagrant maladmistration of justice.

18. A Tribunal or a Court cannot override the express provision of law. In such a case the general power of superintendence under Article 227 of

the constitution enables the High Court to remedy the mischief. It is now settled that the power of superintendence conferred upon the High Courts by Article 227 is not confined to administrative superintendence only but includes the power of judicial revision also even where no appeal or

revision lies to the High Court under the ordinary law. This power involves a duty on the High Court to keep the inferior courts and tribunals within

the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. The High Court can interfere in

Article 227 in case of error of law apparent on the face of the record as distinguished from a mere mistake of law or error of law relating to

jurisdiction and in case of an order resulting in manifest injuctice. The real object of superintendence is that the power may be exercised with

reference to the circumstances of each particular case in such a way as to secure the furtherance of justice. In order to achieve its and, the power

of superintendence under Article 227 Constitution must remain fluid. Grave miscarriage of justice and flagrant violation of law are the two

paramount considerations by which a petition under Article 227 is to be determined.

19. In this case the Special Officer has ignored the provisions of Section 14(A) of the Revenue Recovery Act in ordering attachment of the three

items of movable properties referred to above. An easy-chair is an item of bedding used for relaxation and so it is certainly an item of bedding

exempted u/s 14(A) (a) of the Revenue Recovery Act. Similarly, a wet-grinder has to be construed as a cooking vessel in the modern method of

cooking. The paddy attached is also exempted u/s 14(A) (b) of the R.R.Act as seed grain. The Special Officer below has exceeded his jurisdiction

and committed a flagrant violation of law in ordering attachment of these items which are exempted u/s 14 (A) of the R.R.Act. And it is not as if a

citizen is helpless without any remedy in case the Special Officer chooses to order attachment of items exempted from attachment under a statute.

To prevent the miscarriage of justice in the instant case this Court has to act under Article 227 of the Constitution.

20. In the result, the Civil Revision Petition is allowed and the proceedings dated 29.6.1993 of the Special Officer, Co-operative Land

Development Bank, Aranthangi in R.R.A..No. 433/92-93 regarding attachment of item 2 wooden easy-chair, item 4 wetgrinder and item 5 paddy

seeds are set aside. Since it is represented that these items have already been sold, the sale proceeds are directed to be adjusted towards amount due by the revision petitioner to the Bank, without prejudice to the other rights of the revision petition. No cost.