

(1969) 08 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 958 of 1967

Ramchandra Mahadeorao Mahankal

APPELLANT

Vs

The Collector

RESPONDENT

Date of Decision : 07-08-1969

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 137(1)

Citation : (1970) 72 BOMLR 666 : (1970) MhLj 116

Hon'ble Judges : Bhole, J;Abhyankar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhyankar, J.—The two petitioners, Ramchandra son of Mahadeorao Mahankal and Sharadchandra son of Ramchandra Mahankal, seek quashing of a certificate issued by respondent No. 4, the District Deputy Registrar, Co-operative Societies, Nagpur, u/s 137(1) of the Maharashtra Co-operative Societies Act, 1960, in favour of respondent No. 5, the Nagpur District Land Development Bank, Ltd., Nagpur, and as a consequence the sale of Khasra No. 78/1 of village Narayanpur at an auction and purchase by respondent No. 6 Shaliram. The petitioners have also impleaded respondents Nos. 7 to 11 who are said to be subsequent transferees of interest in the property, and respondent No. 12 who is alleged to be a lessee of the field. The petitioners, as members of their joint Hindu family, were share-holders of respondent No. 5 Co-operative Bank originally incorporated under the Co-operative Societies Act, 1912. By virtue of the provisions of the Maharashtra Co-operative Societies Act, 1960, respondent No. 5 Bank is now deemed to be a Society within the meaning of that Act. It is to be deemed a Co-operative Bank and registered as such under the Maharashtra Co-operative Societies Act, 1960.

2. The petitioners, along with one Haribhau who was also a member of their joint Hindu family, borrowed a loan for agricultural purposes and for payment of certain Government dues, from respondent No. 5 Bank against mortgage of their

properties. Respondent No. 5 Bank made an advance of Rs. 8,000 and the transaction was witnessed by a duly executed and registered document dated May 11, 1954. The petitioners have filed a copy of that mortgage deed as Annexure 5 to the petition. Under the terms of the mortgage, the loan was to be repaid in 12 equal installments each of Rs. 1,007-8-3. The rate of interest was agreed to be 7 per cent, per annum and there was a clause under which the borrowers were liable to pay interest at the rate of 9 per cent, per annum if the amount was required to be realized compulsorily. There are other terms usually to be found in such transactions of mortgage. It may be mentioned that there is a specific agreement in Clause (7) of the mortgage disabling the mortgagors from alienating the property until full repayment of the loan has been made either by sale, gift, re-mortgage, transfer or theka. There is also a default Clause (9) giving the mortgage bank a right to recover the entire amount due together with interest and other dues by selling the mortgaged property. The mortgagors also agreed to be personally liable in case of a short-fall after the sale of the mortgaged property.

3. It appears a dispute arose between the petitioners and respondent No. 5 Bank as to the liability of the petitioners to pay what is called penal interest and the amount claimed as surcharge and also in respect of the repayment of a sum of Rs. 1,100 alleged to have been made by the petitioners to the then Manager of respondent No. 5 Bank on April 17, 1963. The total amount in dispute between the parties, according to the petitioners, was considerable. The petitioners filed a civil suit, being Regular Civil Suit No. 368 of 1965 in the Court of the Joint Civil Judge, Senior Division, Nagpur, claiming a declaration in respect of the payment of Rs. 1,100 alleged to have been made by the petitioners to respondent No. 5 Bank on April 17, 1963. In this suit, an objection was raised to the competence of the civil Court to entertain the claim on the ground that the jurisdiction of the civil Court was barred in view of the provisions of Section 91 of the Maharashtra Co-operative Societies Act, under which such a dispute was liable to be referred for decision to the Registrar. This contention was accepted in the civil Court and the civil Court held that the suit was not tenable but a curious order seems to have been passed in the operative part, namely, a direction that the plaint shall be returned to the plaintiff for presentation to the proper forum, meaning possibly in this case the Registrar u/s 91 of the Maharashtra Co-operative Societies Act. But it does not appear that this direction was pursued or the plaint was presented to the Registrar. The suit was decided on April 30, 1966.

4. It appears that respondent No. 5 Bank had already taken steps and obtained a certificate u/s 137 of the Maharashtra Co-operative Societies Act, and on the basis of that certificate which was apparently for recovery of a sum of Rs. 2,014-42 P a revenue case (Rev. Case No. 288/115 of 55-56) was already pending for recovery of the amount from the petitioners pertaining to the installments due for a prior period. After the decision of the civil Court against the petitioners, respondent No. 5 Bank sent a notice on or about December 21, 1966 to the petitioners calling upon them to pay the amount under the mortgage

which had become due. A copy of that notice has been filed and the demand made in this notice is for a sum of Rs. 5,891.26 P. together with penal interest and costs up to date. The amount of Rs. 5,891.26 P. is made up of Rs. 4,800.94 P. as principal and Rs. 990.32 P. as interest. The notice also states that if the amount is not paid, the Bank will be compelled to make recovery as arrears of land revenue as per Section 137 of the Act and that for that purpose an application for revenue recovery certificate will be made to the Deputy Registrar, Co-operative Societies, Nagpur.

5. The petitioners have not stated whether they sent any reply to this notice; but it appears that respondent No. 5 Bank made an application to respondent No. 4, the District Deputy Registrar, Co-operative Societies, Nagpur, who is also described as Assistant Registrar of Co-operative Societies, Nagpur. For the time being one Mr. Bobde was holding that post. In spite of our attempt to find out the date on which respondent No. 5 Bank made the application to respondent No. 4 for revenue recovery certificate, that information was not available either in the return or at the Bar. On the basis of this application respondent No. 4, i.e. the Assistant Registrar, Co-operative Societies, issued a certificate u/s 137(1) of the Maharashtra Co-operative Societies Act. The copy of the certificate filed with the petition does not bear any date, but the learned Counsel appearing for the State and the authorities informed us that the certificate was apparently issued on February 2, 1967. As the petitioners have impugned the validity of this certificate, it is necessary to reproduce the contents of the certificate in full. The certificate is as follows :

Read:

Application No.

dated 196

made by the Nagpur District Co-operative Land Development Bank Ltd., Nagpur, for arrears of sum advanced to its members and the statement of accounts in respect (1) Shri Ramchandra Mahadeo Mahankal of Paradsinga, Post Paradsinga, Tahsil Katol, District Nagpur.

K3G8

CERTIFICATE

I have gone through the statement of accounts of the members of the Nagpur District Land Development Bank Ltd., Nagpur and on going through the statement of accounts and the relevant documents, I am satisfied that the amount as shown by the Society for the said members are overdues.

Under section 137 (1) of the Maharashtra Co-operative Societies Act, 1960, to be read with the Government notification in the Co-operation and Rural Development No. GSI/1402-2342-G, dated 27th January 1982, it is certified that the total amount of Rs. (5,791-26,) (Five Thousand seven hundred, ninety one

and Twenty six paise) mentioned in the statement of accounts furnished by the Bank is due from the defaulter/s as arrears and arc to be recovered according to the law for time being in force for recovery of arrears of land revenue as provided u/s 137 (2) of the said Act, together with interest @ 9% till the date of repayments of amount.

(2) In recovery of the amount it should be paid to the Bank directly and regular receipt from the Chairman of the Bank stating the amount actually recovered with additional note that the Bank's claim mentioned in para. 1 above is fully satisfied, should be obtained and sent to this office for record.

(3) The details of the property of the defaulter which is taken in the mortgage and against which action for recovery, as well as precautionary measure in accordance with provision of subsection (3) of section 137 of the Maharashtra Co-operative Societies Act of 1960 should be taken, are also furnished by the Bank.

(4) When the recoveries are effected through the Special Recovery Officer, he should recover the 10% over the total recoverable amount and should credit the amount in the Government treasury.

Sd/ S. K. Bobde, Assistant Registrar, Seal, Co-op. Societies, Nagpur.

Copy forwarded to the Special Recovery Officer, c/o the Nagpur District Co-operative Land Development Bank, Nagpur along with the application from the Bank with a request to recover the amount in accordance with the above certificate.

Copy to the Chairman, Nagpur District Co-operative Land Development Bank Ltd., Nagpur for information.

Sd/ S. K. Bobde, Assistant Registrar, Co-operative Societies, Nagpur.

After the certificate was obtained by respondent No. 5 Bank, the certificate seems to have been forwarded to the Revenue Authorities for recovery of the amount indicated in the certificate by coercive process under the Land Revenue Code as arrears of land revenue. There is a special officer called the Revenue Recovery Officer for Nagpur district for respondent No. 5 Bank. He issued a notice of demand on March 1, 1967, and Annexure 7-A is a copy of that notice. That notice of demand requires the petitioners to pay a sum of Rs. 5,791.26 P within eight days of the receipt of the notice, and on failure to do so, the notice states that that amount together with a fine of Rs. 2 per cent, by way of surcharges according to rules and penal interest at 9 per cent, till realization will be recovered by sale of fields at Khapri, Paradsinga and Naigaon. It appears that these properties were already under attachment in previous proceedings for recovery under similar revenue recovery certificate.

6. On receipt of this notice, the petitioners made an application to the Revenue Recovery Officer on March 13, 1967 complaining" that they are not liable to pay penal interest as no such interest was charged by the Divisional Joint Registrar

and that they are entitled to adjustment of a sum of Rs. 1,100 alleged to be paid on April 17, 1963 by the petitioners. The petitioners also approached the District Deputy Registrar by an application dated May 19, 1967 as per Annexure 10. The District Deputy Registrar replied to this application on the same date informing the petitioners that the District Deputy Registrar was not delegated the powers of Land Revenue Code and as such he was not authorised to issue stay orders on the amounts to be recovered as land revenue. The petitioners thereafter approached the Collector, Nagpur, praying for stay of the sale proceedings on the basis of the revenue recovery certificate issued by respondent No. 4. The Collector sent a reply on June 10, 1967 to the petitioners taking the view that it was the District Deputy Registrar who could examine the grievance made by petitioners in the application regarding the liability or the quantum of the amount recoverable etc. and amend the certificate issued by him, if necessary, or even withdraw the same if he found it necessary and proper. It was the District Deputy Registrar, the Collector pointed out, who was equally competent to request the Special Recovery Officer to stay the proceedings. Accordingly, the Collector informed the petitioners that their application was forwarded to the District Deputy Registrar for disposal. It appears that the sale of the field was held on May 25, 1967 and confirmed on August 21, 1967, the sale having been knocked down in favour of respondent No. 6. The petitioners preferred an appeal against the confirmation of the sale. While the appeal was pending, the petitioners filed this petition in this Court on September 18, 1967. After the rule was issued in this case, we are informed that the Collector dismissed the appeal filed by the petitioners.

7. There is one more fact to be noticed and that is the contents of the proclamation of sale dated March 17, 1967. A copy of the proclamation of sale is filed as Annexure 8-A and it shows in the column for installments due to the Bank the following sums :

(1) Rs. 57,81.26

Besides,

(2) Penal interest at 9%

(3) Surcharge as per rule 10%

(4) Process fee.

These are the amounts for the realization of which the property is proclaimed to be sold as per this proclamation of sale.

8. The petitioners challenge the certificate issued by respondent No. 4, namely, the Assistant Registrar, Co-operative Societies, exercising his powers u/s 137 of the Maharashtra Co-operative Societies Act, on the ground that the exercise of the powers and jurisdiction by the Assistant Registrar is validated because the Assistant Registrar has not held any inquiry, nor is regard a notice to the petitioners before issuing the certificate, and the issuance: of the certificate

being in the nature of adjudication, the certificate issued in such circumstances is ultra vires and in excess of the powers and the authority u/s 137. According to the petitioners, a certificate for recovery of the .".mount which the authority duly empowered by the Registrar can issue has very serious consequences. The certificate is made final and conclusive as to the arrears shown to be due in the certificate and the arrears stated to be due are recoverable according to the law for the time being in force as arrears of land revenue. In other words, once the revenue recovery certificate is issued u/s 137, the debtor against whom such a certificate is issued and is operative cannot challenge anywhere the liability to pay the amount of arrears which are shown to be due in the revenue recovery certificate. There are other serious consequences ,namely, that not only the mortgaged property but other property of the petitioners is liable to be proceeded against as if the arrears were arrears of land revenue. In such a procedure, the property is liable to be sold free of any encumbrance. Thus, very serious and penal consequences flow once a revenue recovery certificate is obtained against the petitioner by the Land Development Bank concerned. According to the petitioners, the very provisions of Section 137(7) which vests the Registrar or any person authorised by him or the State Government to exercise the powers of the Registrar under this section with adjudicatory powers, make it incumbent, both by reason of the specific provisions of the section as well as on the normal accepted principles of natural justice, that the officer empowered to issue a revenue recovery certificate should hear both the parties and then arrive at his decision about the amount which could be said to be in arrears and recoverable from the debtor like the petitioners in this case.

9. The petitioners have also contended that the revenue recovery certificate in such cases, as it seems to be proper, must be in respect of a specific amount which are found to be arrears due and must not contain a direction for payment of an unspecified amount because it is for the arrears due that a certificate can be issued. In other words, this branch of the contention is that the revenue recovery certificate can be for a specific sum and there cannot be a general direction for payment of interest unless the amount in respect of which such interest is payable is specifically indicated.

10. On the other hand, it is urged on behalf of respondent No. 4 Bank as well as the auction-purchaser i.e. respondent No. 6, that the provisions of Section 137 do not contemplate any inquiry as such as a matter of course. The power to make an inquiry is required to be exercised at his discretion by the Registrar and if no inquiry is considered necessary in a given case or no inquiry is in fact held by the Registrar that fact by itself would not vitiate the certificate for recovery. In other words, it is contended that the proceedings for issuance of a certificate for recovery on an application made by the Land Development Bank before the Registrar are merely in the nature of execution proceedings and at that stage no inquiry is either compulsory or inevitable in all cases. It is also urged on behalf of the contesting respondents i.e. respondents Nos. 4 and 6 in particular, that in this particular case, the petitioners should have no grievance because they did

not take any steps to establish their claim for any repayment or against liability for payment of interest or surcharge when the notice making- a demand was issued by the Bank. They also did not take any steps to challenge the amount claimed in this notice. Though the petitioners had previously filed a civil suit, that suit having been dismissed, the petitioners could, if they so intended, have raised the dispute u/s 91 of the Maharashtra Co-operative Societies Act, and the petitioners having failed to raise the dispute u/s 91, are now precluded from challenging the recovery on the other ground either that no notice was issued by the Assistant Registrar or that no inquiry was made by the Assistant Registrar before issuing the certificate for recovery.

11. It may also be stated that the learned Counsel appearing for the auction-purchaser wanted to say that in fact the Assistant Registrar had satisfied himself about the correctness of the demand when inquiry was made from him by the Revenue Officer before whom the application for setting aside the sale was made, and if the Assistant Registrar was in fact satisfied about the correctness of the demand, the mere fact that no inquiry was made before the issuance of the certificate should not entitle the petitioners to invoke the extraordinary jurisdiction of this Court in view of what the Assistant Registrar is said to have stated before the Revenue Officer. So far as this part of the argument is concerned, we pointed out to the learned Counsel that his client had not placed any document or material before the Court to find out whether in fact the Assistant Registrar had made any statement as to the manner in which it is said that he was satisfied about the correctness of the claim of the Bank before the certificate for recovery of the amount was issued. There it* no such averment in the return either and we are not inclined to go further into this matter except to mention that such an argument was advanced. We are not at all satisfied that the Assistant Registrar might have ever said anything to that effect or that that would preclude examination of the scheme of Section 137 to find out the procedure to be followed before the certificate of recovery can be issued.

12. Before we consider in some detail the contention of the petitioners as to the true construction to be put on Section 137, it will be useful to examine some of the provisions of the Maharashtra Co-operative Societies Act, 1900, which is a special legislation to regulate the functions, affairs and working of co-operative banks and co-operative societies in this State. Here, it may be mentioned that though the petitioners have raised some other contentions about the validity of certain provisions of the Act, no arguments were advanced before us in respect of those challenges and the challenges are not the subject-matter of this petition for adjudication.

13. After the second reorganisation of States, the Maharashtra Legislature passed a comprehensive legislation and has put on the statute book the Maharashtra Co-operative Societies Act, 1960. Prior to that Act, statutes relating to co-operative societies were in force in the three regions of Maharashtra and all the Co-operative Societies Acts now cease to have effect, being replaced by the

Maharashtra Co-operative Societies Act, 1960, which governs the co-operative activities all over the State. Even a bare perusal of the different provisions of the new Act will show that elaborate provisions have been made in respect of constitution of societies at different levels for regulating the co-operative structure of the economy. Provisions have been made for appeals, reviews and revisions against various orders of a large hierarchy of officers staffing the Co-operative Department of the Government. Though the Registrar of Co-operative Societies is the apex officer, several subordinate officers and offices are created to assist the Registrar such as Assistant Registrars, Deputy Registrars, Joint Registrars and Deputy and Joint Registrars at district, regional and State levels. Special provision seems to have been made to protect and safeguard the interests of Land Mortgage Banks and Land Development Banks and special provision has been made in respect of the liabilities due to these Banks. Provision has been made for liquidation of societies, and for reconstruction, amalgamation and in some cases, abolition of societies after due inquiry, and the powers vesting in the different categories of officers have been carefully enumerated. In the matter of recovery of amounts due from debtors to the co-operative societies, special provisions have been made in Chapter XI which is a special chapter in respect of Land Development Banks. Land Development Banks are to be constituted or established for a variety of purposes, such as, land improvement and productive purposes, erection, rebuilding or repairing of houses for agricultural purposes ; purchase or acquisition of titles to agricultural lands ; liquidation of debts under the Bombay Agricultural Debtors Relief Act, 1947, or any corresponding law for the time being in force in any part of the State ; and numerous other projects which can be undertaken by such Banks. At the State level there is a Land Development Bank for the State and there are as many Primary Land Development Banks as may be deemed necessary at the district and other levels. One such Bank is respondent No. 5 Bank called the Nagpur District Land Development Bank Limited, Nagpur, for the Nagpur district. Elaborate provision is made in respect of the security for loans by way of mortgage being taken by the Land Development Banks. Priority is given to a mortgage executed in favour of a Land Mortgage Bank even against the claims of the Government in respect of loans granted and mortgages taken under the Land Improvement Loans Act or the Agricultural Loans Act. Separate provisions are made for registration of mortgages and even leases in favour of Land Development Banks. These mortgages are not liable to be questioned in proceedings for insolvency of the mortgagors and several such and similar special rights are created in favour of the Land Development Bank as a mortgagee.

14. Then follow the provisions for recovery of loans by the Land Development Bank from Section 181 onwards. u/s 132, if any installment is payable under a mortgage executed in favour of a Land Development Bank and has remained unpaid in whole or in part for more than a month from the date on which it falls due, the committee of the Bank, in addition to any other remedies available, can

apply to the Registrar or the Collector for recovery of such installment by distraint and sale of the produce of the mortgaged land, including the standing crops thereon. On receipt of such an application, the Registrar or the Collector may take action in the manner prescribed for the purpose of distraining and selling such produce ; but the proviso to Sub-section (2) of Section 132 enjoins that such distraint shall not be made after the expiry of twelve months from the date on which the installment fell due. u/s 133, notwithstanding anything contained in the provisions of the Transfer of Property Act, the Land Development Bank, in case of default of payment of mortgage money, is entitled to bring the mortgaged property to sale by public auction, but this power can be exercised only after being so previously authorised to exercise the power after hearing the objections, if any, of the mortgagor or mortgagors. Thus, the power of sale can be exercised only after hearing the mortgagors. Then follows Section 137 which is to the following effect:

137. (1) Notwithstanding anything contained in sections 131 and 138, on an application made by a Land Development Bank for the recovery of arrears of any sum advanced by it to any of its members and on its furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) A certificate by the Registrar under Sub-section (1) shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall be recoverable according to the law for the time being in force for the recovery of arrears of land revenue.

(3) It shall, be lawful to the Collector to take precautionary measures authorised by sections 140 to 144 of the Bombay Land Revenue Code, 1879, or any law or provisions corresponding thereto for the time being in force until the arrears due to the Land Development Bank together with interest and any incidental charges incurred in the recovery of such arrears, are paid or security of such arrears is furnished to the satisfaction of the Registrar.

(4) It shall be competent for the Registrar or a person authorised by him to direct conditional attachment of the property of the mortgagor until the arrears due to the Land Development Bank together with interest and any incidental charges incurred in recovery of such arrears, are paid or security for payment of such arrears is furnished to the satisfaction of the Registrar and the provisions of section 95 shall apply mutatis mutandis to conditional attachment of any property made or to be made under this section.

15. Before proceeding to consider the construction sought to be placed on this section, it will be useful to refer to Section 188 under which any amount due to a Land Development Bank is made recoverable by the Collector in the stated modes i. e. from the borrower as if they were arrears of land revenue due by him ; or out of the land for the benefit of which the loan has been granted as if

they were arrears of land revenue due in respect of land, or from the surety, if any.

16. We may now consider some other sections of the Act under which powers have been given to the Registrar for amalgamation, division and reorganisation of societies u/s 18 under which the power can be exercised after consulting the society concerned. Again, u/s 21, the power to cancel the registration of a society can be exercised by the Registrar after making such inquiry as he thinks fit. Then u/s 78, the Registrar is empowered to remove the committee of any society or any member thereof if there is persistent default or negligence in the performance of the duties imposed on it or him by the Act or the Rules or by the bye-laws, or is guilty of committing acts prejudicial to the interests of the society or wilfully disobeys directions issued by the Registrar. But this power can be exercised only after giving the committee or the member concerned an opportunity of stating its or his objections. Again, u/s 9G, when dispute is referred to arbitration, the Registrar or his nominee has to give a reasonable opportunity to the parties to the dispute to be heard before making an award. The power to recover arrears of any sum due to a resource society can be exercised after making such inquiry as the Registrar thinks fit before granting a certificate for recovery. Another power which is a special feature of this legislation that is created in the Registrar is the power u/s 156. Under this section, the Registrar, without prejudice to any other mode- of recovery, may recover any amount due under a decree or order of a civil Court obtained by the society or any amount due under a decision, award or order of the Registrar, arbitrator or Liquidator or Tribunal, or any sum awarded by way costs or any sum ordered to be paid as a contribution to the assets of the society, or any amount due under a certificate granted by the Registrar under Sub-section (7) or (2) of Section 101 or under Sub-section (1) of Section 137, together with interest and costs by the attachment and sale or by sole without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed. In other words, recovery by coercive process in the same manner as is done under the Land Revenue Code or by civil Court is permissible in exercise of this power which is vested in the Registrar u/s 156. In this connection, our attention was also invited to the rules framed under the Act. Clause (d) of rule 2 of the Maharashtra Co-operative Societies Rules, 1961, defines "decree" to mean any decree of a civil Court, and includes any order, decision or award referred to in Sub-section (1) of Section 150. Rule 107 in Chapter XII of these Rules makes elaborate provision how this decree or fictional decree can be executed by the Registrar or his subordinates in exercise of the powers u/s 156.

17. It will thus be seen that the Maharashtra Co-operative Societies Act, 1960, apparently for the first time grants very wide powers which include the powers both of a civil Court and of Revenue Officers under revenue laws for realization of the amounts due to the Land Development Banks, and in some cases, to societies established under the Act from their debtors and members. Thus, the

need to approach a civil Court which ordinarily would be the case is not only completely avoided but the provisions make some of the orders conclusive. One such order is the certificate given under Section 137 (1) of the Act. The question that falls for consideration, therefore, is whether the Registrar or a person authorised by him, exercising powers u/s 137 of the Act, is, in the first instance, required to act judicially, to hear both parties and then to decide whether a certificate for recovery should issue, and, if so, the amount for which the certificate shall issue, or whether it is not necessary for such Registrar or a person authorised by him to make any inquiry but to act only on the basis of the information given in the application of the Bank or the statement of accounts in respect of arrears that may be furnished by the Bank. In this connection, our attention was invited to a recent decision of the Supreme Court in respect of a somewhat analogous provision under the land revenue laws where a revenue recovery certificate can be granted, in *Parmanand v. Ganpatrao* [1963] Mh. L.J. 278.. The question arose under the provisions of the C. P. Land Revenue Act, and in particular under Sections 149 and 128 of that Act. In para. 7 at page 281, their Lordships observed that the question on which the parties were at issue before them was in regard to the interpretation of the clause "the arrear for which the property is sold". Thereafter, they observed that in considering the question whether this clause is attracted or not, one has to look at the proclamation of sale and enquire whether the amount shown as arrears due from the defaulter was in fact due or not. If the said amount was not due, the clause will apply notwithstanding the fact that a lesser amount may have been due from the said defaulter. Then follow the observations on which reliance is placed (p. 281) :

In construing section 149 {2) it is relevant to remember that the provision in question is made in relation to revenue sales and there is no doubt that the revenue sales are authorised to be held under the summary procedure prescribed by the relevant sections of the Act, and so, it would not be unreasonable to construe these provisions strictly. That is why we are not inclined to accept the view that in interpreting the relevant clause, we should assume that the Legislature did not expect the authorities to specify the arrear for which the property is sold with meticulous care. If the defaulter's property is being sold under revenue sale and the object of issuing the proclamation is to show (or what arrear it is being sold, it is, we think, fair to assume that the said arrear must be stated with absolute accuracy. It would not be enough to say that some arrear was due and so, the sale should be upheld though it was purported to be held for recovery of much larger arrear.

17. By parity of reasoning, it is contended that the requirement of the law is similar and must bear the same construction in construing Section 137. Even in the absence of the word "due," the section requires the Registrar to issue a certificate in respect of the recovery of the amount stated therein to be due as arrears. Thus, the question whether any amount, and if so, how much amount is due by way of arrears involves an adjudication of the claim of the Land

Development Bank, and if such an adjudication is to be made, it necessarily postulates an inquiry; and if it postulates an inquiry, it must necessarily mean that the opposite side i. e. the debtor from whom the arrears are due is to be noticed and heard. It is thus claimed that in spite of the use of the word "may" the power which is required to be exercised is coupled with a duty and that duty is of making inquiry which is necessary, the only discretion being as to the manner or the extent of the inquiry. In other words the contention is that the Registrar who is approached by the Land Development Bank for issue of a certificate for recovery is not relieved of an obligation to make an inquiry to find out whether any arrears, and if so, to what extent are due but has only been given discretion as to the nature and extent of the inquiry. In this connection, it is also urged that the consequences of issue of a certificate u/s 137 have to be kept in view in construing the section. Very serious consequences flow once the certificate is issued. The certificate is made final and conclusive as to the arrears due. Thus, no authority, barring of course the authorities which exercise the powers u/s 154 of the Act to which we will presently refer, can go behind the certificate to find out whether the amount stated to be due in the certificate was or was not in fact legally due. When such enquiry is barred by any other authority, it is contended that the legislative intent is clear and the Legislature intended that before issuing a certificate, the Registrar or the person authorised ought to hold an inquiry and satisfy himself as to the amount legally due, recoverable and payable by the defaulter. If we compare the provisions of Sections 133 and 138, it will be found that the matter is to be taken before the Collector and that must necessarily postulate an inquiry. The provisions of Section 137 cannot be interpreted as merely in the nature of execution proceedings. Unless a certificate showing the amount recoverable is issued, no amount can be claimed to be recovered as an arrear of land revenue, and in order that an amount may be claimed and recovered as an arrear of land revenue by coercive process, the authority, in this case, the Registrar, has to apply his mind to find out what is the amount due. The very fact that a certificate is required to be issued shows that the officer empowered to issue the certificate has to certify that the amount is due. The power of certification can not be properly or effectively exercised unless the officer empowered to certify about the liability being due satisfies himself by some sort of enquiry as to the legality of the claim of the Land Development Bank. If an inquiry is thus implicit, it must necessarily mean notice to the opposite side and an opportunity to be heard before the officer is able to certify as to the quantum of the amount, if any, being due to the Bank.

18. In this connection, the learned Counsel for the appellant brought to our notice several recent decisions in which the principle of natural justice is considered as a sine qua non in construing similar provisions. A very recent decision of the Supreme Court in *A.K. Kraipak v. Union of India* (1969) Writ Petitions Nos. 173 to 175 of 1967, decided on April 20, 1969 (Supreme Court) is heavily relied upon in this context on behalf of the petitioners. The question in

that case arose in the matter of selection of certain candidates from various services of the State for selection in the cadre of the Indian Forest Service under the Central Government and the proceedings before the Selection Committee were challenged before the Supreme Court. This Selection Committee has in its turn to make recommendations to the Public Service Commission in respect of the candidates to be considered for appointment. The Court observed as follows :

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the frame-work of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power...

This takes us to the question whether the principles of natural justice apply to administrative proceedings similar to that with which we are concerned in these cases. According to the learned Attorney-General those principles have no bearing in determining the validity of the impugned selections. In support of his contention he read to us several decisions. It is not necessary to examine those decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding. The question how far the principles of natural justice govern administrative enquiries came up for consideration before the Queens Bench Division, in *H. K. (An Infant) In re.* [1967] 2 Q.B. 617. Therein the validity of the action taken by an Immigration Officer came up for consideration. In the course of his judgment Lord Parker, C. J. observed thus (p. 630) :

...But at the same time, I myself think that even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the sub-section, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly. Good administration

and an honest or bona fide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly ; and to the limited extent that the circumstances of any particular case allow, and within the legislative framework under which the administrator is working, only to that limited extent do the so called rules of natural justice apply, which in a case such as this is merely a duty to act fairly ...

In the same case Blain J. observed thus (p. 636) :

...I would only say that an immigration officer having assumed the jurisdiction granted by those provisions is in a position where it is his duty to exercise that assumed jurisdiction, whether it be administrative, executive or quasi-judicial, fairly, by which I mean applying his mind dispassionately to a fair analysis of the particular problem and the information available to him in analysing it. If in any hypothetical case, and in any real case, this court was satisfied that an immigration officer was not so doing, then in my view mandamus would be.

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse iudex propriae causae*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry."

19. According to the learned Counsel for the petitioners it is not merely implicit in the provisions of Section 137 of the Act itself that the rules of natural justice should be observed before a certificate is issued but it is contended that the provision that "the Registrar may, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount" shows that in most of the cases, unless there is an admission of the claim beyond doubt, inquiry has to be

held before a certificate is issued.

20. Reference was made to another decision of the Supreme Court reported in *Sardar Govindrao v. State of M.P.* [1965] Mh. L.J. 502. That was a case arising under the C.P. and Berar Revocation of Land Revenue Exemptions Act (No. 87 of 1948). Referring to the provisions of Section 5 of that Act under which the Government is enabled to pass an order, their Lordships observed as follows (p. 506) :

Power has been conferred on Government to make some other lands free from land revenue so that sometimes a grant of money or pension and sometimes exemption from land revenue may be resorted. It could hardly have been intended that Sub-section (8) of section 5 was to be rendered nugatory in its purpose by the operation of the discretion conferred by Sub-section (2). The two sub-sections have to be read separately because though the word "may" appears in both of them that word in Sub-section (3) takes its meaning from an obligation which is laid upon Government in respect of certain institutions and persons if the stated conditions are fulfilled. It is impossible to think that in the case of a religious, charitable or public institution which must be continued or in the case of descendants of former ruling Chiefs Government possessed an absolute discretion to refuse to make a grant of money or pension for their maintenance or upkeep even though they satisfied all the conditions for such a grant and were deserving of a grant of money or pension. The word "may" in section 5(8) must be interpreted as mandatory when the condition precedent, namely, the existence of a religious, charitable or public institution which ought to be continued or of the descendants of the ruling Chief, is established. The words "may pass such orders as it deems fit" in Sub-section (2) mean no more than that Government must make its orders to fit the occasion, the kind of order to make being determined by the necessity of the occasion.

21. Our attention was also invited to a decision of the Punjab High Court in *B.M. Stores v. L. Bhagirath Mal* A.I.R.[1955] P&h 5. In that case, one of the issues was whether an inquiry is postulated u/s 7-A read with Schedule IV of the Delhi Rent Control Act. In holding that such an inquiry is implicit, the Court observed that all recognised principles governing tribunals which exercise quasi-judicial powers in accordance with principles of natural justice or procedure subserving the orderly administration have been disregarded because no inquiry was held. According to the Court, if the Rent Controller does not make any inquiry, he will be exercising nothing but arbitrary power under Schedule IV. The words in Section 7-A were more or less similar, namely, that the Rent Controller, on a written complaint or otherwise, if he has reason to believe that the rent of a newly constructed premises is excessive, may, after making such inquiry as he thinks fit, proceed to fix the standard rent. The question was whether an inquiry is necessary and postulated in all cases after hearing the opposite side.

22. Yet, another decision which is brought to our notice is the judgment of the Supreme Court in *State of Assam v. Hari Singh* (1960) Civil Appeal No. 1066 of

1066, decided on July 16, 1969, (Supreme Court). That case related to acceptance of tenders. It was observed that though the Divisional Forest Officer was not bound to accept the highest or any tender and his action was purely administrative, when an appeal lay against the action of the Divisional Forest Officer, a duty was super-imposed by the clearest implication that the appellate officer must act fairly and in consonance with the rules of natural justice, and the Conservator of Forests who was invested with power to hear an appeal against an order which is administrative in character, was bound to give a hearing and approach his duty in a judicial manner. In this connection, the learned Counsel appearing for the State, we must observe, has very fairly laid before us the provisions of the Act and supported the contention that in majority of cases it is fair and proper that the debtor must be heard before a certificate is issued. In view of the recent decision of the Supreme Court in Everest Apartments v. State [1966] Mh. L.J. 643, 68 Bom. L.R. 664,, it is clear that the provisions of Section 154 of the Maharashtra Co-operative Societies Act, 1960, enables the Government to exercise the power in all cases except in a case where the power has been similarly exercised by the Tribunal u/s 149 of the Act. Government can exercise its powers u/s 154 in all cases with that one exception only and the finality of the order u/s 23(3) does not restrict the exercise of the power. In that case, the order for consideration was one u/s 23(3) of the Act which provides that the decision of the Registrar in appeal by a person aggrieved by the decision of society refusing him admission to its membership was final. Thus, even though the section made the appellate order of the Registrar final, it did not preclude the State Government from exercising its powers u/s 154 to examine the propriety or correctness of the appellate order of the Registrar. By parity of reasoning, it is contended that the grant of a certificate u/s 137(2) by the Registrar can similarly be examined by the State Government u/s 154. If such power is exercised by the State Government, it is further pointed out by the learned Counsel for the State that the State Government, as a revising or superintending authority u/s 154 must have before it a speaking order or an order or decision for arriving at which reasons have been given. If the Registrar, u/s 137, does nothing except to issue a certificate without an inquiry and even without hearing the party, the debtor in this case, who may be affected by the certificate, the exercise of the supervisory power of the State Government u/s 154 will become ineffective in the absence of a speaking order. We are considerably impressed with this argument, which shows that though the power given is merely to issue a certificate, the exercise of the power to issue a certificate postulates the application of the mind to the facts of the case by the authority-in this case the Registrar or his subordinates-and adjudication of the correctness and legality of the claim of the Land Development Bank.

23. It was urged on behalf of the Bank that they are required to make applications in a large number of cases and if this interpretation of the provisions of Section 137 is accepted, it will make the working not only difficult but procrastinate the proceedings, especially when the tendency to be in default is

noticed on a large scale. We are not impressed with this argument of expediency at all. If the law requires the exercise of the power in a particular manner and the principles of natural justice require that a hearing should be given to the debtor against whom a certificate with very serious consequences is being obtained, it is no answer to say that such inquiry will involve delay and to that extent frustrate the effectiveness of the provisions like Section 137. In this connection, the learned Counsel for the State has also brought to our notice the provisions of Section 137(4). Under Sub-section (4) of Section 137, it is competent for the Registrar or a person authorised by him to direct conditional attachment of the property of the mortgagor until the arrears due to the Land Development Bank together with interest and any incidental charges incurred in recovery of such arrears are paid or security for payment of such arrears is furnished to the satisfaction of the Registrar. Assuming, therefore, that there is urgency and a legitimate apprehension of the assets being frittered away by the defaulting member, this provision adequately arms the Registrar with power to protect the interests of the Bank to see that any time that may be spent in holding the inquiry does not enable the defaulting party to deal with his property or assets in a manner prejudicial to the interests of the Bank. Moreover, the actual time that may be taken in such an enquiry must depend on the facts of each case. We do not, anticipate that in majority of cases intricate questions would arise which would be time-consuming and thus delay the decision as to the issue of certificate. The necessity of making an inquiry in order to ensure that the power should be justly exercised is demonstrated in this very case. According to the petitioners, there is a dispute as to the repayment of Rs. 1,100. It is stated that the repayment of Rs. 1,100 was made on March 17, 1964 when the payment was received by the Manager of the Bank and yet the Bank is not accepting that as good payment. Whether payment was in fact made and was made to a person who had authority to receive that payment on behalf of the Bank would undoubtedly determine the validity of this claim. But we do not see how by not making any inquiry or giving an opportunity to the debtors to put forth their objections if any, the exercise of the power can be said to have been justly made. It is true that institutions like Land Development Banks whose accounts are subject to periodical check and auditing are not likely to make false or exaggerated claims; but even so the validity of a claim, if an objection is raised either by reason of the interpretation of the provisions or for any other purpose, ought to be examined by the authority which has power to issue the certificate for recovery. It is also pointed out-and in our opinion, there is considerable force in this contention-that the certificate for recovery has to be for a specific amount. The specific amount may be stated either in figures or by reference to any other item when a claim for interest is made. In the instant case, it does not appear that the certificate as per exh. 15 has been issued after due advertence to the requirements of law. The certificate states that "it is certified that the total amount of Rs. 5,791.26 mentioned in the statement of accounts furnished by the Bank is due from the defaulters as arrears and are to be recovered according to the law for time being in force for recovery of arrears

of land revenue as provided u/s 137(2) of the said Act, together with interest @ 9% till the date of repayment of amount." Now, it is not clear from this direction in the certificate which amount should carry 9 per cent. per annum interest, whether the whole amount of Rs. 5,791.26 P., or the amount of defaulted installments only. Thus, a vague statement like this creates a fatal defect in the certificate being given validity or being enforceable u/s 137.

24. We have already pointed out that the consequences of a certificate for recovery being issued are far-reaching and serious. Sub-section (2) of Section 187 not only makes the certificate final and conclusive as to the arrears due but the arrears so certified can be recovered from any property of the mortgagors or the defaulters. Normally in case it is necessary to realise a secured debt, the property which secures the debt is in the first instance proceeded against. It is only in case there is an express contract for personal liability that other property of the debtor becomes liable for repayment of the debt. By reason of the provisions of Section 137, however, any property of the debtor can be proceeded against by coercive process for recovery of arrears of land revenue and one further consequence of such mode of recovery is that the property is liable to be sold free of any encumbrance. Thus not only the defaulter but other encumbrance-holders are affected because they lose their charge once the property is capable of being brought to sale on the basis of the certificate for recovery u/s 137. Before an act giving rise to such serious consequences can be performed by reason of the provisions of the statute, it is implicit in the exercise of such a power that the authority approached for such a certificate must hear both sides. On a consideration of the various provisions of the Act and the nature of the power that is being exercised and its consequences, we have come to the conclusion that an officer or the Registrar exercising the powers u/s 187 must hold an inquiry after issuing a notice to the opposite side, i.e. the debtor or the defaulter, against whom a certificate for recovery is claimed. What should be the nature of the inquiry and its extent will naturally depend on the circumstances of each case, and it is only in determining its nature and extent that a discretion seems to have been given to the officer concerned to regulate the inquiry in that manner. But we have no doubt that both the principles of natural justice as well as the legislative scheme requires that the officer exercising the powers should hold an inquiry before issuing a certificate for recovery. When an inquiry is provided by the Legislature in various other sections of the Act, where penal consequences flow as a result of the decision of the officer like Section 18, 21, 73, 96 or 101 and also in exercising the powers u/s 133 or 138, we are unable to hold that the Legislature did not intend that the exercise of the power u/s 137 should also be made subject to holding an inquiry and giving an opportunity to the person likely to be affected by the certificate of the authority empowered to issue it.

25. We may now consider one more argument urged on behalf of the auction-purchaser that this is not a case where the petitioner should be allowed to invoke the extraordinary jurisdiction of this Court because of alleged want of bona fides

on their part in resisting the claim of the Bank. We are unable to see how that question is relevant at this stage. We are not here adjudicating as to what amount, if any, is due from the defaulter to the Bank. We are concerned with the more fundamental question whether the Bank was entitled to obtain a certificate u/s 137 without giving a proper opportunity to the petitioners to show that the certificate could not be issued in respect of the amount for which it has been given or that the certificate should not be issued at all. It may be quite possible that in certain circumstances the defaulter may be able to persuade the Registrar or the person authorised by him that his was not a case where a certificate for recovery u/s 137 should issue at all. By not issuing a notice and by depriving him of giving an opportunity to be heard, the officer issuing the certificate has thus exercised the power which the law does not allow him to do without having observed this elementary rule. We must therefore hold that the certificate issued in this case on February 2, 1967 by respondent No. 4 was issued without jurisdiction and is vitiated on account of the failure to observe the rules of natural justice. As the certificate itself which is the foundation for a claim for the amount for recovery is liable to be quashed, the further proceedings putting the property to sale on May 20, 1967 are also liable to be set aside.

26. Accordingly, the petition is allowed, the certificate issued by respondent No. 4 is quashed and the sale held on May 20, 1967 in respect of khasra No. 78/1, area 20.25 acres of mouza Narayanpur is also set aside. The costs will be costs as incurred. As a consequence, the petitioners will be entitled to restoration of the field in question sold in auction.