
(2010) 07 OHC CK 0028
In the Orissa High Court
Case No : Writ Petition (C) No. 8542 of 2010

Ratikanta Giri

APPELLANT

Vs

Baripada Sub-Divisional House Building Co-operative Society
and Another

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 110 CLT 305

Hon'ble Judges : L. Mohapatra, J;C.R. Dash, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C.R. Dash, J.—This Writ Petition arises out of the Judgment dated 03.03.2010 (Annexure-10) passed by the Member, Co-operative Tribunal, Orissa, Bhubaneswar, confirming the Order Dated 02.09.2009 (Annexure-9) passed by the Assistant Registrar, Co-operative Societies, Baripada Circle, Mayurbhanj (Opp. Party No. 2).

2. Petitioner is admittedly a lonee under Opp. Party No. 1. He had availed housing lone of Rs. 1,50,000 (one lakh fifty thousand) in the year 1996, but defaulted in payment of the loan amount. Opp. Party No. 1 initiated Dispute Case No. 1.71 of 1999-2000 u/s 68 of the Orissa Co-operative Societies Act, 1962 alleging non-payment by the Petitioner. The Arbitrator, vide Annexure-2, disposed of the Dispute Case on 28.01.2000 & directed repayment of Rs. 1,80,912 (one lakh eighty thousand nine hundred & twelve) by the Petitioner along with further interest @ 1.5.3% on the principal & P.1. as applicable on O.D. interest till full realization of the dues. It is found from the order vide Annexure-2 that in the said Dispute Case the adult son of the Petitioner had appeared & stated that due to financial stringency the instalment dues of the loan could not be cleared in time. The order of the Arbitrator, vide Annexure-2, attained finality, as the same was not challenged by the Petitioner at any point of time. While

matter stood thus, revitalization of the Co-operative Housing Sector By One-Time Interest Relief/Concession Scheme - 2001 (Annexure-1 series) came into operation. Opp. Party No. 1, vide Special Demand Notice dated 26.12.2001, Annexure-5, invited the Petitioner to take the benefit of the aforesaid Interest Relief Scheme by 31.03.2002. There is nothing on record as to what was the response of the Petitioner to the said Notice, vide Annexure-5. Thereafter, on the basis of the decree passed by the Arbitrator in Dispute Case No. 171 of 1999-2000 E.D. Case No. 1 080 of 2002-03 was initiated against the Petitioner & Auction Sale Notice of the mortgaged property of the Petitioner was published in the locality in 2006.

3. Petitioner approached this Court vide W.P. (C) No. 4588 of 2006 with a prayer to direct the Opp. Parties to make determination of the dues payable by him under the scheme, vide present Annexure-1 (Annexure-3 of the earlier writ application) & to further direct the Opp. Parties not to take any coercive action against the Petitioner until determination of the value payable by him.

4. This Court, vide Order Dated 08.08.2006 passed in Misc. Case No. 8760 of 2006 (arising out of W.P. (C) No. 4588 of 2006) stayed sale of the mortgaged property of the Petitioner subject to his depositing Rs. 15,000 (fifteen thousand) within seven days. Finally, on 14.07.2009 this Court vide order in Annexure-6 dismissed the aforesaid W.P. (C) No. 4588 of 2006 with the observation thus-

Learned Counsel for the Petitioner submits that he shall approach the Opp. Parties in this regard. It is open to the Petitioner to do so within a period of two weeks hence. If the One Time Settlement Scheme is still in operation & the Petitioner satisfies the guidelines to avail the scheme, Opp. Parties I & 3 shall consider the same & pass necessary orders within a period of three weeks thereafter.

5. After disposal of the aforesaid Writ Petition, the Petitioner approached the Assistant Registrar, Co-operative Societies, Baripada Circle, Mayurbhanj (Opp. Party No. 2), praying to extend him the benefits under the Interest Relief/Concession Scheme, 2001 (Annexure-1) Opp. Party No. 2, vide Order Dated 02.09.2009 (Annexure-9) dismissed the petition of the Petitioner on the ground that the scheme, under which the Petitioner is claiming benefit, was in force till 31.03.2009 & no benefit can be extended to the Petitioner under the scheme after its closure. Impugning the order vide Annexure-9, the Petitioner approached the Co-operative Tribunal. Learned Co-operative Tribunal, vide Order Dated 03.03.2010 in Annexure 10, dismissed the appeal on the same ground holding that the scheme in question having been closed since 31.03.2009, no benefit under the scheme can be extended to the Petitioner. After dismissal of the appeal of the Petitioner vide Annexure-10, the sale notice vide Annexure-11 in respect of the mortgaged property of the Petitioner has been issued.

6. Petitioner has filed the present Writ Petition with the prayer to quash the impugned orders in Annexure 9 & 10 & further to quash the Sale Notice, vide

Annexure-11 Grievance of the Petitioner is that without properly interpreting the order passed by this Hon''ble Court in W.P. (C) No. 4588 of 2006, the orders in Annexure 9 & 10 have come to be passed. In order to substantiate his contention, Mr. M.K. Mallik, Learned Counsel for the Petitioner relies on paragraph-6 of the Revitalization of Co-operative Housing Sector By One-Time Interest Relief/Concession Scheme - 2001 (Annexure-1 series), which reads as follows -

6. All decrees/award originating from all legal proceeding under the OCS Act will be re-looked in the light of the Scheme, provided decree holder society & the Judgment debtor agrees to close the loan account.

7. It is contended by Mr. M.K. Mallick, Learned Counsel for., the Petitioner that during the currency of the Scheme vide Annexure 1 series, the Petitioner having approached this Court claiming the relief of determination of the dues payable by him, Opp. Party No. 2 is duty bound to consider the proposal of the Petitioner in the light of paragraph-6 of the scheme quoted supra. Further it is contended that Opp. Party No. 1 being the lender having not approached the Petitioner at any point of time for settlement of the dues payable by the Petitioner, it (Opp. Party No. 1) cannot now take the plea of closure of the scheme when the present Petitioner approached this Court for the relief during currency of the scheme.

8. Mr. A.K. Mishra, Learned Counsel appearing for Opp. Party No. 1, on the other hand, taking us through the counter affidavit by Opp. Party No. 1 & Annexure-5, submits that after introduction of the scheme the Petitioner was issued with Special Demand Notice vide Annexure-5 for settlement of his dues, but in vain, in as much as the Petitioner did not respond to the said notice. Petitioner being disadvantaged on issue of Sale Notice of the mortgaged property in 2006, approached this Court with a view to delay the matter, though he had no locus standi to approach this Court under Article 226 of the Constitution of India after passing of decree by the Arbitrator, vide Annexure-2. This Court, after hearing the parties at length, dismissed the Writ Petition with the observation of extending benefit of the scheme, vide Annexure-1 series, to the Petitioner, if it is still in operation. It is further submitted by Mr. Mishra that the scheme in question having already been closed, no benefit can be extended to the Petitioner under paragraph-6 of the scheme.

9. Having heard the parties at length & having considered the materials placed by Learned Counsels for the parties, we are constrained to hold that paragraph-6 of the scheme cannot be read in isolation & it is to be read in consonance with the objects of the scheme & other provisions contained in the scheme. Paragraph-6 is indicative of a situation where decree/award has been passed against lonees for repayment & irrespective of such awards/decrees, benefit of the scheme can be extended to the Judgment-debtors if both decree-holders & Judgment-debtors agree to close the loan account. Paragraph-6 of the scheme cannot be extended to include any decree or award passed after closure of the scheme nor it survives the scheme to take care of the decree/award passed after

closure of the scheme. Only because the Petitioner had approached this Court vide W.P. (C) No. 4588 of 2006 during currency of the scheme in question, it cannot be held that the scheme under Annexure-1 series survives for the benefit of the Petitioner till disposal of the Writ Petition. Being conscious of the duration of the scheme, this Court, while dismissing W.P. (C) No. 4588 of 2006, has clearly mentioned that the benefit under the scheme may be extended to the Petitioner, if the scheme is still in operation. The Scheme in question having already been closed since 31.03.2009, much prior to passing of the order in W.P. (C) No. 4588 of 2006, we do not find any justification to interfere with the impugned orders, vide Annexure 9 & 10.

10. Coming to question of non-initiation of any action by the Opp. Party No. 1 for settlement of the dues payable by the Petitioner under the scheme after its introduction, it is found from perusal of Annexure-5 that after introduction of the scheme in the year 2001, special demand notice was issued by Opp. Party No. 1 to the Petitioner for settlement of his dues under the scheme. There is nothing on record to show how & when the Petitioner responded to such notice vide Annexure-5. Per contra it is submitted by Mr. A.K. Mishra, leaned Counsel for the Petitioner that the Petitioner never responded to the notice vide Annexure-5.

11. The scheme in question vide Annexure-1 series was in operation from 2001 to 31.03.2009. Despite existence of a decree against the Petitioner (passed in Dispute Case No. 171/1999-2000), Opp. Party No. 1 invited the Petitioner vide Annexure-5 for settlement of the dues. If the matter would have been settled on response by the Petitioner to the notice vide Annexure-5, such settlement would have been one under Paragraph-6 of the scheme, which Mr. M.K. Mallik, leaned Counsel for the Petitioner is stretching too far even to include award/decreed passed after closure of the scheme. We are constrained, however, to hold that the Petitioner did not respond to the notice vide Annexure-5 as there is nothing on record to show that Petitioner responded to the said notice. Opp. Party No. 1, therefore, cannot be blamed for non-action as alleged by the Petitioner.

12. In view of the discussion as aforesaid, we do not find any merit in the Writ Petition & the same is accordingly dismissed.

L. Mohapatra, J.

13. I agree.