
(1967) 09 MAD CK 0018
In the Madras High Court

S. Seshachari

APPELLANT

Vs

The Srirangam Co-operative Building Society

RESPONDENT

Date of Decision : 27-09-1967

Acts Referred:

Madras Co-operative Societies Act, 1932 — Section 51(1)(b)

Citation : (1969) ILR (Mad) 773 : (1970) 83 LW 32 : (1969) 2 MLJ 418

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The appellant in the lower Court is the petitioner in this civil revision petition. The learned District Judge,

Tiruchirappalli, dismissed the appeal of the petitioner against an award of the Co-operative Sub-Registrar, Tiruchirappalli u/s 51 (1)(b) of the

Madras Co-operative Societies Act (VI of 1932), hereinafter referred to as the old Act. The respondent raised a preliminary objection regarding

the maintainability of the appeal under the new Act (LIII of 1961), when there was no provision for such appeal under the old Act. The learned

District Judge upheld the preliminary objection. As against the said order, the present civil revision petition is filed.

2. Sri R. Rangachari for the petitioner contends that under the new Act, a right of appeal is expressly provided to the Co-operative Tribunal,

namely, the District Judge, Tiruchirappalli, in this case, against the award of the officer of the Co-operative Department and the award having been

given after the passing of the new Act, he could avail of the right of appeal, even though the original proceedings were initiated under the old Act.

According to him, Section 121 (3) of the new Act, is applicable and hence his appeal u/s 96 of the new Act to the District Judge is competent.

Counsel for the respondent, however, stated that the appeal is incompetent as Section 121 (1) (ii) and (iv) of the new Act would apply to the instant case.

3. To weigh the pros and cons of the arguments on either side, the scheme of the new Act may be indicated in so far as it is necessary. Under the

old Act, there was no right of appeal, but a right of revision only appears to have been provided for u/s 51 (5) of the old Act, but under the new

Act, Co-operative Tribunals are constituted by the Government and the District Judge of Tiruchirappalli, in the instant case, is the Co-operative

Tribunal under the Act, to whom a right of appeal is expressly provided for against the orders made or decisions passed under subsection (1) of

Section 71, Sub-section (2), Sub-section (3) or Sub-section (4) of Section 73, Section 91 or Section 108 or any award of an arbitrator under

Sub-sections (2) or (3) of Section 73. Section 73 of the new Act corresponds to Section 51 of the old Act. Section 121 of the new Act, dealing

with repeals and savings, provides, in Sub-section (2) therein, as follows:

(2) The repeal by Sub-section (1) of the corresponding law shall not affect:

(i) ...

(ii) any right, privilege, obligation or liability acquired, secured or incurred under the corresponding law; or

(iii)

(iv) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as

aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or

punishment may be imposed as if this Act had not been passed.

4. Sub-section (3) of Section 121 of the new Act is subject to Sub-section (2) and provides that any action taken under the corresponding law

shall be deemed to have been taken under this Act....Mr. Rangachari states that Sub-section (3) of Section 121 of the new Act enables him to

present an appeal to the District Judge u/s 96 of the new Act, as the award was passed after the passing of the new Act. There is considerable

force in this contention.

5. No doubt a saving clause in a new enactment is intended to protect rights

acquired by persons under the old Act. The question is, has the respondent secured such a right which is justiciable. Learned Counsel for the respondent claims that the respondent's right is negative in scope, and he expands his contention by saying that the right or privilege secured by his client against the petitioner is that the petitioner has no right of appeal under the old Act, and the respondent has the present right to oppose any move on the part of the petitioner to file an appeal under the new Act. It is to be remembered that rights and duties are correlated; unless there is a corresponding duty on the part of the petitioner which injuncts him from filing : an appeal under the new Act, the so-called right claimed by the respondent would be one which is unknown in jurisprudence.

When an Act confers powers, rights or privileges, it also impliedly requires that they shall be exercised only for the purposes for which they were given and subject to the conditions which it prescribes, and also, with due skill and diligence and in a way to prevent a needless mischief or injury.

(Maxwell on The Interpretation of Statutes, eleventh edition, page 353). Even so, it is obvious that where an Act which creates a new jurisdiction

gives any person dissatisfied with its decision a right of appeal to another judicial authority which is empowered to confirm or annul the decision as

it shall appear just and proper, the right of being heard in support of his appeal is impliedly given to the appellant (Maxwell on The Interpretation of

Statutes, eleventh edition, page 360). I may also usefully refer to the principle recognised in Craies on Statute Law, sixth edition, page 398,,

following the observations of Evershed, M.R., in *Hutchinson v. Jaunty L.R.* (1950) K.B. 574, which is to the following effect ::

...if the necessary intendment of the Act is to affect pending causes of action, then this Court will give effect to the intention of the Legislature, even

though there is no express reference to pending actions.

6. In this case, by the saving and repealing section the rights acquired under the old Act are saved. I have said that no right known to law or

jurisprudence has been acquired in the instant case by the respondent. The saving section also provides, for the continuance of any legal

proceeding instituted under the old Act as if the new Act had not been passed. These are the reservations in Sub-section (2) of Section 121 of the

new Act. But Sub-section (3) of the same section provides that anything done, or

any order issued under the old Act, shall be deemed to have been taken under the new Act and shall continue to have effect accordingly. Therefore, the award passed by the Co-operative Sub-Registrar of Tiruchirappalli, dated 31st May, 1965, long after the coming into force of the new Act, but purporting to be u/s 51 of the old Act, shall be deemed to be one passed under the new Act u/s 73 thereof. Such being the incidence attached to that order by virtue of Sub-section (3) of Section 121, the order in question is, therefore, automatically appealable to the Co-operative Tribunal u/s 96 of the new Act.

7. At this stage I shall consider some of the decisions cited before me from the Bar. In *Hoosein Kasam Dada (India) Ltd. Vs. The State of*

Madhya Pradesh and Others, their Lordships observed that the right of appeal is a matter of substantive right and not matter of procedure and this

right becomes vested in a party when the proceedings are first initiated in and such a right cannot be taken away except by express enactment or

necessary intendment. This decision would not help the respondent as the right of appeal is conferred by the deeming provision under Sub-section

(3) of Section 121 of the new Act. The result that flows from this sub-section is, therefore, inescapable. In *Garikapatti Veeraya Vs. N. Subbiah*

Choudhury, , their Lordships once again reiterated the principle that a vested right of appeal on the date of institution of the *Us* cannot be divested

by supervening legislation. This has no application to the facts of this case. In *Thankayyan v. Trowell* (1965) 2 M.L.J. 123 : ILR (1965) Mad.

453, *Anantanarayanan, O.C.J.*, (as he then was) and *Natesan J.*, held that the rights which would accrue to the Plaintiffs in an action would be the

rights governing the *lis* at its commencement, and that such rights would be available to both parties for the entire career of the litigation, regarded

as an intrinsic unity, unaffected by any enactment which supervenes. This again reiterates the principle laid down by the Supreme Court in the

earlier decisions referred to by me. This decision, therefore, cannot help the respondent. As pointed out in *Ramanathan v. Lakshmanan* (1963) 1

M.L.J. 46 : ILR (1963) Mad. 183, a right of appeal is a creature of statute and the right of appeal, to a particular Court is a vested right. In the

instant case, the right has been for the first time created by the new Act and such a right of appeal can be availed of by the petitioner by virtue of

the saving provision in Sub-section (3) of Section 121. It cannot, therefore, be contended that as the original proceedings were initiated u/s 51 of

the old Act and as there was no right of appeal, then, the petitioner has lost for ever his right to prefer an appeal against an order passed after the

commencement of the new Act, though such a privilege or a right is given to him under the saving provision referred to above.

8. In my opinion, the learned District Judge was in error in not having applied Sub-section (3) of Section 121 to the facts of this case and ought not

to have upheld the preliminary objection on the only ground that the proceedings were initiated under the old Act and no appeal was provided

therein against orders passed by the Tribunals hearing such actions. If the petitioner were to be prevented from prosecuting the appeal, an injury

would be caused to him and a statutory right created by the new Act cannot be availed of by him. In this view, the lower Court failed to exercise

its jurisdiction in upholding the preliminary objection that no appeal would lie. I, therefore, set aside the order of the lower Court and allow the civil

revision petition but there will, however, be no order as to costs.