
(1977) 06 AP CK 0005
In the Andhra Pradesh High Court

Uppaluri Venugopalakrishna Rao

APPELLANT

Vs

Co-operative Sub Registrar and Another

RESPONDENT

Date of Decision : 20-06-1977

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 117

Citation : (1978) CriLJ 65

Hon'ble Judges : Sambasiva Rao, J

Bench : Single Bench

Judgement

Sambasiva Rao, J.—A question of some importance relating to the issue of notice by the Magistrate when he is approached u/s 117 of the Andhra Pradesh Co-operative Societies Act, 1964 arises in this case. The short question is can he direct delivery of possession of the records or properties of the Society immediately on the production of a certificate issued by the Registrar without issuing notice to the person or persons from whom possession is sought?

2. In this case, the Co-operative Sub-Registrar was appointed as the Liquidator of the Kanuru Sri Ramalingeswara Multipurpose Co-operative Credit Society, He obtained a certificate from the Registrar, in this case, the Deputy Registrar, and on that basis applied to the Sixth Additional Judicial Magistrate of First Class Vijayawada for an order for delivery of the records of the Society from the present petitioner. Following is the order passed by the Magistrate on 23rd of October, 1976.

Perused the application and the certificate issued by the Deputy Registrar of Co-operative Societies, Vijayawada dated 8-10-1975 as required u/s 117 of the Andhra Pradesh Co-operative Societies Act and other papers filed herein.

The certificate issued by the Registrar under Sub-section (1) of Section 117 of the said Act is conclusive evidence that the records and properties to which it relates belong to the Society.

I, therefore, direct the respondents herein to deliver all the books relating to the

Kanuru Sri Ramalingeswara Multipurpose Co-operative Credit Society c/o The Vijayawada Co-operative Central Bank Ltd. Vijayawada to the Liquidator of the said Credit Society forthwith.

From the order, it is patent that the direction given to the respondents to deliver all the books relating to the society was straightway issued without giving them any notice, solely on the basis of the certificate issued by the Deputy Registrar of the Co-operative Societies. The first respondent before the learned Magistrate is the petitioner before me. His case is that he was President of the Co-operative Society till 30th of September, 1970. The second respondent was elected President thereafter and on 1-10-1970 he handed over the entire record and cash to that respondent and also took a receipt therefor. An enquiry u/s 51 of the Andhra Pradesh Co-operative Societies Act was ordered by the Deputy Registrar and on 31-5-1974 the receipt of 1-10-1970 was handed over to the Enquiry Officer by the petitioner. Thereafter, there was an order that the Society should be liquidated. The liquidator gave notice to the petitioner that he would enquire on 5th of January, 1976. One day previous to the date fixed for the enquiry, the petitioner claims to have met the Liquidator and represented to him that all the records had been handed over to the second respondent and there were none with him. Further, he would be away on the 5th and so would not be available at the time of enquiry. The Liquidator filed C. C. No. 170 of 1976 in the Fifth Additional Judicial First Class Magistrate's Court, Vijayawada u/s 117. This was dismissed by the Magistrate on the ground that he had no territorial jurisdiction. Thereupon, the Liquidator filed C. C. 2066 of 1976 before the Sixth Additional Judicial 1st Class Magistrate. The petitioner maintains that no notice had been given to him of this criminal case filed before the Magistrate and he had no opportunity to represent his case. That there was no notice given to the petitioner is not denied by the other side. What is contended is that Section 117 does not contemplate issuance of any notice if the certificate issued by the Registrar is produced.

3. I am not inclined to accept this contention of the respondent who is represented before me by Sri Nadendla Bhaskara Rao. No doubt, Sub-section (1) of Section 117 does not in so many words provide for issuance of a notice to the respondents from whom possession of records and properties was sought. It provides that any Magistrate of the First Class in whose jurisdiction the office of the society or the records and properties of that society is or are situated shall on application by the new committee, person, special officer, managing committee, or liquidator and on production of a certificate from the Registrar in the prescribed form setting forth the reasons therefor, direct delivery to the new committee, person, special officer, managing committee or liquidator of the possession of the records and properties of the society. It should be remembered that a magistrate of the class who is conferred powers under this provision to direct delivery of possession of the records and property is a Judicial Officer and he is expected to follow the judicial procedure. No judicial proceeding can be said to be satisfactorily completed unless the respondent is given notice of the

proceeding and he is given an opportunity to state his case. The very judicial process in a democratic society postulates giving notice and opportunity to the person against whom some relief is asked. No such relief can be granted without a notice and without affording an opportunity to the respondent unless the statute specifically states that no such opportunity need be given. In this case, subsection (1) of Section 117 makes no such exclusion of giving notice to the person concerned.

4. It is true that Sub-section (2) specifically lays down that no certificate shall be issued by the Registrar under subsection (1) without making such inquiry as he deems necessary. That necessarily implies that the Registrar must hold an enquiry before he issues a certificate. That does not mean that the Magistrate before whom an order is sought to direct a particular person to hand over the records and properties of the Society need not give any opportunity. It is worthy of note that Sub-section (3) says that for the purpose of the proceedings under Sub-section (1) the certificate is conclusive evidence that the records and properties to which it relates belong to the Society. Once a certificate is given by the Registrar, there cannot be any further dispute before the concerned Magistrate that the records or the properties do not belong to the Society, Supposing the case of the person concerned, as it is in this case, is that he had already handed over the records to a later office-bearer then Sub-section (3) does not stand in the way of his contending that the records were no more in his custody. Reference may be usefully made to Sub-section (4) in this connection. It empowers the Magistrate to appoint a Receiver to take possession of the records and properties as the Magistrate thinks necessary pending disposal of an application for directing delivery of records and properties. This, in my opinion, indicates the intention of the legislature that an enquiry by the Magistrate is postulated, Reading Sub-section (1) of Section 117 as a whole, I am convinced that a notice and opportunity should be given to the person or persons from whom the records or properties are sought to be handed over.

5. I am supported in this view by the decisions of the Madras High Court and this Court on the analogous provisions of Section 87 of the Madras Hindu Religious and Charitable Endowments Act, 1951. In so far as the Magistrate giving a direction to deliver possession of the records and properties is concerned, the provisions of clause (c) of Section 87 of that Act are analogous to the provisions of Sub-section 1) of Section 117 of the Co-operative Societies Act. As provided in Sub-section (2) of Section 117, it is also required under the proviso to Section 87 (c) that the Commissioner shall give notice to the person concerned before issuing any such certificate, and hear his objections. As is stated in subsection (3) of Section 117, the second proviso to Section 87 (c) says that the certificate is conclusive evidence that the properties to which it relates belong to the religious institution, Thus, the two provisions in so far as this aspect is concerned are substantially analogous. Construing this provision in Section 87, Subba Rao, J. (as he then was) and Ramaswami J, in *Prattipati Dandaiah and Another Vs. Nori Venkatrama Dikshitulu, Managing Trustee of Sri Brahmeswaraswami Temple*

at Vathcharukur and Others, held (at p. 508 of AIR):

A Magistrate is a judicial officer and the legislature must be presumed to know that he follows the rules of judicial procedure. Before a Magistrate can direct delivery, the conditions laid down in Section 87 should be complied with. Unless a notice is given to a party affected, the Magistrate may be misled or the necessary facts may not be brought before him. It may be that the certificate is a forgery, it may be that the petitioner is not a person who has been appointed by the Commissioner as a trustee. Many circumstances can be visualised where it would be necessary for the aggrieved party to appear and put forward his case before the Magistrate.

6. The learned Judge said that they had no hesitation to hold that an order made by a Magistrate without issuing a notice to the person concerned is bad because it offends the fundamental principles of natural justice. The issuance of such a notice and granting an opportunity is held to be necessary in *Seetha-ramaiah v. Bhaskaranarayana* (1954) 2 Mad LJ (Andh) 227, *Bathula Krishna Brahmam and Others Vs. Daram Chenchi Reddy and Others*, and *Danamurthy v. Balayya* 1959 1 Andh WR 398. For the view I have taken in regard to the construction of Section 117 of the Co-operative Societies Act, I draw support from the above decisions

7. I am therefore of the opinion that a notice must be given to the person from whom the records or properties are sought to be delivered and an opportunity must be given to him to state his case. Without that, the proceedings will be agitated by violation of legal principles and all canons of judicial procedure and would be consequently bad. Since such an opportunity has not been given to the petitioner in this case, I set aside the order of the Sixth Additional Judicial 1st Class Magistrate in C. C. 2066 of 1976 and remit the matter back to that Court, That Court shall dispose of the application made by the respondent after giving notice to the petitioner and other concerned parties in accordance with law. The Criminal Revision case is accordingly allowed.