
(1947) 02 MAD CK 0019
In the Madras High Court

Velicheti Satyanarayana

APPELLANT

Vs

Koppaka Venkataramayya represented by Father and
Guardian Satyam and Others

RESPONDENT

Date of Decision : 07-02-1947

Acts Referred:

Citation : AIR 1947 Mad 401 : (1948) ILR (Mad) 91 : (1947) 60 LW 660 :
(1947) 1 MLJ 313

Hon'ble Judges : Frederick William Gentle, C.J.;Rajamannar, J

Bench : Full Bench

Judgement

Frederick William Gentle, C.J.—This is an appeal pursuant to the Letters Patent of this Court by the plaintiff in the suit from a judgment of

Somayya, J., sitting in second appeal, reversing the learned Subordinate Judge of Narasapur, who dismissed an appeal from the learned District

Munsif of Narasapur. The matter for determination is whether an order passed by the Provincial Government u/s 57 of the Madras Co-operative

Societies Act VI of 1932 (hereinafter called "" the Act"") is valid.

2. The facts are a little complicated, but, so far as they are relevant to this appeal, they can be shortly stated.

3. On 8th January, 1935, the plaintiff purchased an Immovable property at a sale in execution of a decree upon an award passed under the Act.

On 6th March 1935, the sale was confirmed and on 17th September of the same year a sale certificate was issued to the plaintiff and he was put in

possession of the property. Before the confirmation of the sale the first defendant in the suit, the respondent in this appeal, who is the nephew of

the deceased original debtor, applied to the Deputy Registrar of Co-operative Societies to set aside the sale. This application was dismissed on 6th

March, 1935, and on the same date the sale was confirmed. Later, the first defendant instituted a suit in the Court of the District Munsiff at

Narasapur claiming to have the sale set aside. That suit was dismissed on the 18th April, 1938, and the first defendant's appeal to the Subordinate

Judge against the decision of the District Munsiff was dismissed on 12th December, 1939. On 30th December, 1939, the first defendant applied to

the Registrar of Cooperative Societies u/s 57 of the Act to set aside the sale. On 8th May, 1941, this application suffered the same fate as other

proceedings initiated by the first defendant. On 19th August, 1941, he made a further application u/s 57, this time to the Provincial Government,

seeking the same relief. Notice of this application was not given to the plaintiff who was ignorant of it being made, and without him having been

given an opportunity to be heard and without him being apprised of what was taking place. On 18th December, 1941, the Provincial Government

passed an order setting aside the sale. The first defendant did not disclose, in his application to the Provincial Government, that he had previously

applied to the Registrar and his application had been dismissed. On 2nd May, 1942, the plaintiff instituted the suit, out of which this appeal arises,

in the Court of the District Munsiff of Narasapur claiming a declaration that the order of the Provincial Government was void, illegal and ultra vires

of its powers and did not affect his rights to the property. The District Munsiff decreed the suit in favour of the plaintiff. His decision was upheld on

appeal to the Subordinate Judge of Narasapur, but on second appeal to the High Court Somayya, J., reversed the lower Courts and held that the

order of the Provincial Government was valid. He also directed that each party should bear his own costs throughout. This is the plaintiff's appeal

from the learned Judge's reversal of the two lower Courts.

4. The position at the date when the order was passed by the Provincial Government is interesting. The plaintiff had purchased the property, paid

the price, the sale to him had been confirmed, he had been granted a sale certificate and, by 17th September, 1935, he had been put in possession

of the property. During the ensuing six years the first defendant unsuccessfully sought to have the sale set aside by the Deputy Registrar of Co-

operative Societies in 1935, by a suit which was dismissed in 1938, by an appeal there from which was dismissed in 1939 and by an application in

1939 to the Registrar which was dismissed in 1941.

5. The question which has now to be considered is whether Section 57 of the Act empowers the Provincial Government to allow an application

made to it and to make an order setting aside a sale without the purchaser being given notice of the application and without him having an

opportunity of presenting his case and of being heard. If there is no such power then, since the order made by the Provincial Government setting

aside the sale was passed without notice and opportunity to the purchaser, the order of the Provincial Government is invalid and it will follow that a

consideration of the other questions arising in the appeal will not be required.

6. Section 57 of the Act provides as follows :

The Provincial Government or the Registrar may call for and examine the record of any enquiry or the proceedings of any officer subordinate to

them for" the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the

proceedings of such officer. If in any case it shall appear to the Provincial Government or the Registrar that any decision or order or proceedings

so called for should be modified, annulled, or reversed, the Provincial Government or the Registrar, as the case may be, may pass such order

thereon as to it or him may seem fit.

In regard to the phraseology of the above section Somayya, J., observed in his judgment as follows:

It looks as if the Legislature has deliberately given very wide powers so that they (the Provincial Government) may do justice according to the

needs of the situation untrammelled by any limitation or conditions.

The enquiry or proceedings mentioned in the section, in the present instance, was or were the subject of the record which the Provincial

Government called for and examined, namely, the application to the Deputy Registrar and his dismissal of it which took place in 1935, six years

prior to the application to, and the order by, the Provincial Government u/s 57. In his judgment Somayya, J., observed that he was:

inclined to hold that the action of the local Government cannot be said to be vitiated for the reason that no notice was given to the respondent (the

plaintiff in the suit and the appellant in the present appeal).

7. In argument it was contended for the first defendant-respondent that the power and the authority given by Section 57 to the Provincial

Government is to act in an administrative capacity, and the order setting aside the sale was an order made in the exercise of administrative

authority. It was also contended that, since the section is silent as to notice being given to the party who might be affected by an order, notice to

him is unnecessary and an order can be made without notice being given. It is to be observed that the action taken by the Provincial Government

and the order which it made, in effect, were to deprive the plaintiff of property which he had purchased and paid for and had occupied for some

six years prior to the order being made and to make him a trespasser upon land for which he had paid the full purchase price and been put in

possession.

8. In considering the meaning and effect of Section 57 of the Act reference to Section 115 of the CPC is instructive. It reads as follows:

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal

lies thereto, and if such Subordinate Court appears-(a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a

jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such

order in the cases as it thinks fit.

As in Section 57 of the Act, Section 115 of the CPC empowers the record to be called for in a case which has been decided, and also, it does not

mention that notice shall be given to the party who will be affected by an order which may be made by the High Court. The concluding words of

both Section 57 of the Act and Section 115 of the Code confer powers to make an order which the High Court or the Provincial Government, as

the case may be, thinks proper or fit. It is beyond doubt-and the contrary cannot be, and indeed has not been suggested-that the High Court

cannot make an order u/s 115 of the Code adverse to any party in the absence of a notice being given to him, so that he may have an opportunity

of being heard.

9. It is clear, and indeed it was not disputed, that when the Deputy Registrar dismissed the application by the first defendant to set aside the sale,

the Deputy Registrar acted in a judicial capacity and exercised judicial functions. Section 57 requires an examination of the record by the Provincial

Government which must be for the purpose of satisfying itself as to the legality or propriety of any decision or order and as to the regularity of the

proceedings of the officer. It is only after the Government is satisfied with regard to the matter that it can pass an order contemplated by Section

57. For the purpose of determining whether an order should be made for modification, annulment or reversal, the Provincial Government must first

make a decision as to the legality or the propriety of the decision at the enquiry or as to the regularity of the proceeding under review.

10. Assistance is given by reference to a few authorities which now I propose to quote. In *Board of Education v. Rice* (1911) A.C. 179 the action

of a local education authority was considered. It is observed by Lord Loreburn L.C., at page 182 of the report as follows:

In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will,

I suppose, usually be of an administrative kind but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of

law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either

they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything.

Particular emphasis should be placed upon the concluding words of the quotation in *Local Government Board v. Arlidge* (1915) A.C. 120

Viscount Haldane L.G., at page 133 referred with approval to the above quotation in *Rice*'s case (1911) A.C. 179. In *Wood v. Wood* (1874)

L.R. 9 Exch. 190 the action of a committee of a mutual insurance society was reviewed. At page 196 of the report Kelly, G.B., made the following

observations:

It is contended for the plaintiff that the language of the rules gives an unconditional and absolute power to the committee to expel a member of the

society, and I agree that if the committee in fact exercised their power under the rules, their decision could not be questioned ; however unfounded

the reasons for it may have been, it would have been final and could not be reviewed by any Court. But they are bound in the exercise of their

functions by the rule expressed in the maxim audi alteram partem, that no man shall be condemned to consequences resulting from alleged

misconduct unheard and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but

is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals.

In the present instance the civil consequence to the plaintiff of the order ""passed by the Provincial Government in his absence is to deprive him of

the right to property which he had acquired six years before the order of deprivation was passed.

11. To enable a decision to be made regarding the correctness or otherwise of the decision which the Local Government calls for and examines

pursuant to Section 57, it must properly consider all the facts, circumstances and legal principles involved. I can see no provision in Section 57

which empowers the Provincial Government autocratically, and at its own whim and pleasure, to interfere with the decision made by an authorised

officer when exercising judicial functions. When reviewing such a decision the Provincial Government, in my view, must act in the same way and to

the same extent as the officer whose decision is under review. When exercising its powers given by the section the Provincial Government is in the

same position as the officer, in that it exercises judicial and not administrative functions. In my opinion it is beyond doubt that a decision which has

to be made u/s 57 can only be judicially arrived at. When a judicial decision has to be made, opportunity must be afforded to parties interested or

concerned so as to give them an opportunity to be heard before the decision is given. The section not only empowers action by the Provincial

Government but it confers similar powers upon the Registrar. I cannot think that there was ever an intention, and, in my opinion, the section does

not go to the extent, of enabling interference by a Registrar with a judicial decision of an officer, behind the backs of interested parties in the

absence of an opportunity to them of being heard so as to deprive those parties of rights which they had obtained by virtue of an order made by an

officer duly appointed for the purpose. The Provincial Government is in exactly the same position as the Registrar with regard to the powers and

the exercise of them given u/s 57. So far as material, the wording of Section 57 corresponds to that of Section 115 of the Code. There is nothing in

Section 57 from which it can ever be inferred that action under the section can be exercised differently to that u/s 115 of the Code or to the

corresponding Section 435 of the Code of Criminal Procedure in regard to action by the High Court in criminal matters. Under the sections of both

Codes, the person who may be affected by the exercise of the powers given by the sections must be given notice of the proceedings so as to

enable him to have an opportunity to be heard before an order can be made. In the eighth edition of Maxwell on the Interpretation of Statutes, for

which I am indebted to my learned brother, the position is succinctly summarised at page 316 where it is stated as follows:

Again in giving judicial powers to affect prejudicially, the rights of person or property, a statute is understood as silently implying, when it does not

expressly provide, the condition or qualification that the power is to be exercised in accordance with the fundamental rules of judicial procedure,

such, for instance as that which requires that, before its exercise, the person sought to be prejudicially affected shall have an opportunity of

defending himself.

In my view Section 57 requires notice to be given to the party likely to be affected before an order can be made and if the powers given by the

section are exercised without a potentially affected party being given an opportunity of being heard, the order is one which is ultra vires the powers

of the authority exercising it.

12. I have no doubt that, in making the order setting aside the sale to the plaintiff, without notice being given to him of the first defendant's

application to the Provincial Government and at a time when he was in ignorance of the course which was then being taken, the Provincial

Government acted without due and proper exercise of its powers and jurisdiction u/s 57 and the order which it made is a nullity and is invalid.

13. In my opinion the decisions of the District Munsiff and the learned Subordinate Judge of Narasapur were correct and that of Somayya, J., was

wrong in setting them aside. This appeal must be allowed and the decree of the Subordinate Judge restored. The plaintiff-appellant is entitled to his

costs both in this appeal and before Somayya, J., as well as the costs of the proceedings before the Subordinate Judge and the District Munsiff.

Rajamannar, J.

14. I agree.