(1986) 08 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No. 13483 of 1982

Venkatesha Gowda APPELLANT

Vs

P.L.D. Bank Ltd. RESPONDENT

Date of Decision : 22-08-1986

Acts Referred:
Karnataka Co-operative Societies Act, 1959 — Section 32, 33, 80, 88, 99

Citation : (1986) ILR (Kar) 3410

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : Ravivarma Kumar, for the Appellant; Chandrasekharaiah, for R-1 and B.J. Somayaji, HCGP for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Chandrakantaraj Urs, J.—Petitioner is an agriculturist. Accepting certain incentives offered by the first respondent-the Primary Co-operative Land Development Bank Ltd., of Heggadadevanakote he purchased a tractor by obtaining a loan from the first respondent-Bank. The tractor met with an accident sometime after it was purchased. The result was that it was unfit for being used for cultivation purposes. Petitioner had no resources to carry out repairs to the tractor. It was only in the year 1981, he was able to put the tractor on the road. The tractor was got attached by the first respondent-Bank. He has alleged that before attachment, prescribed procedure was not followed by the Bank. Therefore, he has approached this Court under Article 226 of the Constitution, inter alia, contending that Sections 32, 33, 80, 88, 99 and 101 of the Karnataka Co.-operative Societies Act, 1959 (hereinafter referred to as the Act) are ultra vires the Constitution and therefore attachment of the tractor must be held to be unlawful.

2. In this Court what has been pressed is the unconstitutionally of the Sections only. If the petitioner succeeds in getting the Sections struck down by this Court as unconstitutional, then, it automatically follows that the attachment made of

the tractor would also be unconstitutional and unlawful. It is also necessary to state that Mr. Ravivarma Kumar, learned Counsel for the petitioner has not pressed the relief in so far as it relates to Sections 33, 80 and 88 of the Act. He has confined his arguments to Sections 32, 99 and 101 only.

3. In so far as challenge to Section 99 of the Act is concerned, a Division Bench of this Court has upheld the validity of that Section (See: Kalappa Vs. State of Karnataka, Therefore, it is not necessary to deal with that Section once again notwithstanding that Mr. Ravivarma Kumar has contended that certain arguments were not canvassed before that Bench.

4. He has attacked Section 32 on the ground that it is arbitrary and violative of Articles 21 and 14 of the Constitution. Section 32 of the Act is as follows :

"32. First charge of co-operative society on certain assets :

(1) Notwithstanding anything contained in any law for the time being in force, but subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue, any debt or outstanding demand owing to a co-operative society by any member or past member or deceased member shall be a first charge upon the crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished products manufactured from such raw materials, belonging to such member, past member or forming part of the estate of the deceased member, as the case may be.

(2) No person shall transfer any property which is subject to a charge under Sub section (1) except with previous permission in writing of the co-operative society which holds the charge.

(3) Notwithstanding anything contained in any law for the time being in force, any transfer of property made in contravention of the provisions of Sub-section (2) shall be void.

(4) The charge created under Sub-section (2) shall be available as against any claim of the Government arising from a loan granted under the Land Improvement Loans Act, 1883 (Central Act XIX of 1883), or the Agriculturist''s Loans Act, 1884 (Central Act XII of 1884), after the grant of the loan by the society."

From the language employed, it is clear that the section is a declaratory section and in itself does not cause any injury to any person. It only declares the liability of the properties enumerated therein to be subjected to a first charge for the purpose of recovering a debt or outstanding demand due by a member to the concerned co-operative society. In other-words, charge becomes enforceable only if the member is held to be a debtor or defaulter in respect of the society. The prohibition contained in Sub-section (2) is not an unreasonable restriction. A member of a co-operative society has numerous advantages including the facility of borrowing large amounts by way of loans and repayment of the same spread over a long period at comparatively lower rate of ate rest than what any other ordinary money lender or an ordinary bank may charge. A person placed in an advantageous position as a member of the co-operative society cannot make a grievance that the properties owned by him are subjected to the charge in favour of the society for recovery of any debt that is due by him to the said co-operative society. I therefore do not see any arbitrariness or discrimination in the said provision. Similar provisions are made in almost ail the enactments dealing with advances to be made by financial institutions.

5. The second limb of the argument is that attaching agricultural produce, cattle, fodder for cattle, agricultural implements or machinery etc as liable to the charge amounts to depriving an agriculturist his means of livelihood and therefore his right to life offends the personal liberty enshrined in Article 21 of the Constitution. A number of decisions were cited to support the proposition that denial of means to livelihood is denial of right to life. I do not think that to accept the proposition one should necessarily depend upon the authorities cited. Therefore, the citations are not noticed. The question is whether on the facts admitted, implicitly or explicitly by the petitioner in the averments made in the Petition, it can be stated that the attachment of the tractor, which is undoubtedly an agricultural implement in the context of the facts of this case has resulted in the deprivation of the means for Ms livelihood. An agriculturist can plough the land not only with the help of the tractor and any implements which are attachable to the tractor but also by ordinary ploughs drawn by bullocks Therefore, no material is placed before this Court by the petitioner to support the contention that his means for livelihood has been deprived of by the charge created on the tractor by virtue of which the same has been attached and probably sold by now.

6. In any event, in this connection, this Court should not fail to notice that under Rules 36 and 37 of the Karnataka Co-operative Societies Rules, 1960 (hereinafter referred to as the Rules) provisions are made in regard to attachment and sale of specific movable properties including crops and lands. One of those provisions is under Clause (n) of Rule 36 under which protection is given to the agriculturist against attachment of properties enumerated in the provision to Section 60 of the Code of Civil Procedure. Therefore, that protection adequately safeguards the livelihood of the agriculturists. He is not entitled to ask for anything more. Therefore, this argument of the learned Counsel for the petitioner is without force and ill-conceived.

7. Section 32 of the Act is valid and constitutional and no right of the petitioner, constitutional or otherwise, has been affected by the said Section.

8. It was next contended that Section 101 of the Act is arbitrary and violative of Article 14 of the Constitution in as much as the modes of recovery provided thereunder are to be resorted by the society or the registrar or any other authority, as the case may be, without any guidelines as to which one should be adopted first before the next mode is resorted to. Reliance in this behalf was

placed on the decision of the Supreme Court in the case of Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, . The specific passage on which reliance has been placed by the learned Counsel is to be found at paragraph-15 and it is as follows :

"15. Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in The State of West Bengal Vs. Anwar Ali Sarkar, without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14".

Mr. Ravivarma Kumar contended that similar to the enunciations made as above where no guidelines are given to the society or the Registrar or other authorities under the Act to effect recovery by any one of the modes, at least some of which are harsher than the ordinary procedure, then, it should be struck down as violative of Article 14 of the Constitution. I do not think that this is the meaning of the passage extracted above. One should not fail to notice that reference is made to Anwar Ali Sarkar''s case wherein a special mode of criminal trial was prescribed by the impugned legislation without classifying particular offences which were required to be tried by the special procedure. In other words, the prosecution could pick and choose the offenders to subject them for special procedure. In that context that statute came to be struck down as arbitrary and violative of Article 14 of the Constitution as the whole field of offences covered by the ordinary procedure was also subjected to the special procedure. In the instance case, the procedure prescribed u/s 101 of the Act for recovery, does not cover the entire field of recovery proceeding. The recovery spoken of u/s 101 of the Act is relatable to recovery resorted to by the Co-operative Society from a person who has suffered an award or other order made under the Act. Therefore different procedures at the discretion of the society or other authority are prescribed to recover the debts arising under and out of the provisions of the Act. Therefore, the decision relied upon is not of any assistance to the petitioner. Somewhat similar question arose for consideration by this Court in the case of Kamath M. A. v. Karnataka State Financial Corporation & Ors. 1981 (2) KLJ 129. Under the Karnataka Public Moneys Recovery of Dues Act, 19/9, Section 3 thereof provided for a special mode of recovery. That special mode was upheld by this Court as constitutional. The similarity noticed is, it was only the ''public money'' that was recovered by the special mode.

9. However as pointed out by Mr. Somayaji, Learned Government Pleader, identical provision under the Gujarat Co-operative Societies Act, 1961 fell for consideration by the High Court of Gujarat in the case of Chhotalal Vanravan Kakkad Vs. The State of Gujarat and Others, . In upholding the similar provision as constitutionally valid, that Court observed that the co-operative movement had become a vital living movement and in order to encourage this if such dues are given some priority as other public dues in the interest of social justice, there could be no challenge under Article 14 of the Constitution on the ground that it

violates equality guarantee.

10. I am in full and respectful agreement with that enunciation. As earlier pointed out by me, a member of the Cooperative society who is in an advantageous position as com. pared to any other person who is not a member of the cooperative society cannot make a grievance that he has to face different procedure of recovery when he falls due to the co-operative society.

11. Therefore, the arguments pressed into service in respect of challenge to the Sections must fail and the Petition is therefore rejected for the reasons given above.

