

(2006) 01 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No's. 17054 and 22453 of 2004

Vijay Dev S.V.

APPELLANT

Vs

Government of Karnataka and Others

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Karnataka Co-operative Societies Act, 1959 — Section 108, 70

Citation : (2006) 3 KarLJ 154 : (2006) 2 KCCR 744

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : C.B. Srinivasan, K.L. Srinivasan, in Writ Petition No. 22543 of 2004, A.V. Gangadharappa and Ravishankar, in Writ Petition No. 17054 of 2004, for the Appellant; Shashidhar S. Karmadi, A.G.A. for Respondent 1 and 5 to 7 in Writ Petition No. 22543 of 2004, Jayakumar S. Patil, for Respondents 2 and 4 and A.V. Gangadharappa, for Respondent 8 in Writ Petition No. 22543 of 2004 and Jayakumar S. Patil and Associates in Writ Petition No. 17054 of 2004, for the Respondent

Final Decision : Allowed

Judgement

V.G. Sabhahit, J.—These two writ petitions are filed under Article 227 of the Constitution of India being aggrieved by the order passed by the first respondent-Government of Karnataka, dated 9-2-2004 as per Annexure-F in Revision Petition No. CMW 33 CAP 98 allowing the revision petition and setting aside the proceedings including the auction sale in favour of the petitioner in Writ Petition No. 22453 of 2004 and directing the bank-the petitioner in Writ Petition No. 17054 of 2004 to consider the claim of the fifth respondent and settled dues to him as per law within two months from the date of the order.

2. I have heard the learned Senior Counsel appearing for the petitioner and the Counsels appearing for respondents 2 to 4 and respondent 8 and learned Additional Government Advocate appearing for respondents 1 and 5 to 7 and the learned Counsel appearing for the petitioner in Writ Petition No. 17054 of 2004

and the learned Counsel appearing for the respondents 1 to 4 in the said writ petition.

3. The learned Senior Counsel appearing for the petitioner submitted that the impugned order passed by the first respondent-Government as per Annexure-F is wholly without jurisdiction and is perverse and contrary to the decisions rendered by this Court as also the orders passed by the Competent Authority. The learned Senior Counsel submitted that respondents 2 to 5 have borrowed money from the eighth respondent-Primary Co-operative Land Development Bank and four lands were mortgaged by security for the said loan. The respondents 2 to 5 did not repay the amount and wherefore dispute was raised u/s 70 of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act") and award was passed on 31-5-1975 and in execution of the award auction was conducted by selling one of the properties mortgaged viz., Sy. No. 552/1 measuring 1 acre 7 guntas and the petitioner in Writ Petition No. 22453 of 2004 was the highest bidder and his bid was accepted and sale was confirmed on 10-12-1985. Respondents 2, 3 and 4 preferred appeal before the Karnataka Appellate Tribunal challenging the award passed against them. The father of respondents 2 to 4 also filed appeal and appeal filed by father of respondents 2 to 4 was dismissed and appeal filed by respondents 2 to 4 allowed and being aggrieved by the same, Writ Petition No. 6642 of 1984 was filed and the said writ petition was allowed and the order passed by the Appellate Tribunal was set aside on 29-11-1985 as per Annexure-A and the order has been confirmed in Writ Appeal No. 2774 of 1985, dated 1-3-1990. Thereafter an appeal was filed by respondents 2 to 4 challenging the confirmation of sale and the same was dismissed as per Annexure-D by respondent 2 and being aggrieved by the same, revision was filed on 17-8-1996 which was dismissed and thereafter another revision was filed before the Joint Registrar and the said revision was also dismissed as per Annexure-E on 22-3-1997 as not maintainable and thereafter an application was filed before the Government u/s 108 of the Act on 26-9-1998 which was beyond period of six months from the date of orders passed by the Competent Authorities and without considering the question of delay the first respondent has allowed the revision on the basis of the circular wherein benefit was given for waiver of interest in respect of certain defaulters as on 30-6-1982, if they remitted the principal amount before 31-3-1984 and all the proceedings have been set aside and fifth respondent the auction purchaser in the revision petition the petitioner in Writ Petition No. 22453 of 2004 has been ordered to receive the amount deposited with solacium by respondents 2 to 4 and first respondent-Bank has been ordered to settle the dues of respondents 2 to 4.

4. The learned Counsel appearing for respondents 2 to 4 submitted that the land comprised in Sy. No. 552 was a valuable land, the auction has not been conducted in accordance with law and since the amount due to the Bank has been deposited as per the Government order, the order passed by the Government in revision is justified.

5. The learned Additional Government Advocate appearing for respondents 1 and 5 to 7 submitted that the Government has power u/s 108 to revise the order and if the appeal had been filed beyond time, the State Government has got power to exercise power suo motu and the said power has been exercised in this case and in view of the Government circular dated 2-3-1984 the order passed in revision is justified. The learned Counsel appearing for the petitioner in Writ Petition No. 17054 of 2004 submitted that the order passed in revision by the first respondent setting aside the auction sale in execution of the award is perverse and arbitrary and wholly without jurisdiction and the Bank has conducted sale in accordance with law and the same has been confirmed and sale deed has been executed and the first respondent had no jurisdiction to revise the orders passed by the Competent Authorities beyond the period of limitation and order is perverse and arbitrary and is in abuse of revisional power conferred by the Government u/s 108 of the Co-operative Societies Act.

6. I have considered the contention of the learned Counsels appearing for the parties with reference to the material on record.

7. It is clear from the perusal of the material on record that having regard to the documents produced as Annexures to the writ petition the fact that respondents 2 to 4 had borrowed money from the Primary Land Development Bank, the petitioner in Writ Petition No. 17054 of 2004 and they became defaulters and they did not repay the amount and a dispute was raised and award has been passed u/s 70 of the Act and the fact that in execution of the said award one of the lands mortgaged by security comprised in Sy. No. 552 measuring 1 acre 7 guntas out of the four lands which have been mortgaged in favour of the Bank was put to auction and the petitioner in Writ Petition No. 22453 of 2004 was the highest bidder in the auction held on 10-12-1985 and the said deed was accepted and the sale was accepted on 10-12-1985 cannot be disputed. It is further clear from the material on record that respondents 2 to 4 have challenged the award passed by the Arbitrator u/s 70 of the Act on 31-5-1975 and the father of respondents 2 to 4 have also filed the appeal before the Appellate Tribunal and the appeal filed by respondents 2 to 4 was allowed. Being aggrieved by the said order, the Bank preferred Writ Petition No. 6642 of 1984 and the said writ petition was allowed on 29-11-1985 by quashing the order passed by the Appellate Tribunal and thereby confirming the award passed by respondents 2 to 4 as per Annexure-A in Writ Petition No. 22453 of 2004. Being aggrieved by the said judgment passed in the writ petition, writ appeal was filed and the said writ appeal was also dismissed anon 1-3-1990. Both in the writ petition and the writ appeal the contention that respondents 2 to 4 have deposited the amount was contended and the same was held to be not a ground for setting aside the award and it was observed in the writ petition that the respondents 2 to 4 can claim refund of the amount deposited and in the writ appeal it was observed that it is open to respondents 2 to 4 to work out their remedy before the appropriate authority. Pursuant to the said observation, the appeal was filed before respondent 2 challenging the confirmation of sale and the

same was dismissed as per Annexure-D, dated 9-5-1986. Being aggrieved by the said order revision was filed and the said revision was dismissed as per Annexure-D, dated 17-8-1996. Being aggrieved by the said order passed in revision, another revision was filed before the Joint Registrar of Co-operative Societies and the said revision was dismissed as not maintainable by order dated 22-3-1997 as per Annexure-E and thereafter the revision was filed before the Government on 26-9-1998. It is clear from the provisions of Section 108 of the Act that Section 108 of the Act enables the Government to exercise revision power suo motu or within six months on the application filed by the parties and it is clear from the perusal of the order passed by the first respondent that no suo motu power has been exercised and order has been passed on the basis of the revision filed by respondents 2 to 4 and the said revision has not been filed within six months even if the order passed in revision dated 22-3-1997 as per Annexure-E taken into account and earlier orders are passed on 10-12-1985, 9-5-1986 and 17-8-1996 referred to above and the material on record shows that no application was filed for condonation of delay or for excluding the time has been in the wrong forum u/s 14 though they are made applicable under the provisions of Section 119 of the Act. Further, it is clear from the perusal of the order impugned in the writ petition dated 19-2-2004 that the reasons assigned by the first respondent-Government in passing the order is in allowing the revision petition is perverse and arbitrary. The only reason assigned is that in the Writ Appeal No. 2774 of 1985 there is an observation that the appeals are entitled to avail the benefit of Government circular dated 2-3-1984 was applicable to the revision petitioners-respondents 2 to 4 in the writ petition. Having regard to the above said facts, it is clear that once the sale was confirmed on 10-12-1985 and the sale certificate was issued and katha has been entered in the name of the actual purchaser and possession has been handed over, respondents 2 to 4 cease to be the owners of the said land and question of they become defaulters on 30-6-1982 and continuing to be the defaulters on 30-6-1982 would not arise at all and when they are not defaulters merely because they deposited the amount would not make them defaulters and only if the defaulters are covered by the circular are entitled to repay the amount and if the amount is repaid, they are entitled to waiver of interest and that would not enable the Government to set aside the auction which was conducted and confirmed in December 1985 as the benefit of the circular is only to waive the payment of portion of interest and it is also clear from the said circular that said circular is not at all applicable when the property is transferred to the third parties and admittedly in the present case having regard to the auction sale conducted and conferment of the same on 10-12-1985 the properties transferred to the auction purchaser and wherefore the circular is not applicable to the respondents 2 to 4 and at the most respondents 2 to 4 may be entitled to refund of the amount deposited as observed in the Writ Petition No. 6642 of 1984, dated 29-11-1985 and mere deposit of the amount by respondents 2 to 4 who are not entitled to the benefit of the circular dated 2-3-1985 would not enable the first respondent to set aside the sale and conferment of the same which has taken place on 10-12-1985 and

wherefore the order passed by the first respondent is perverse and arbitrary and cannot at all be said to be sustained and the same is liable to be quashed. Accordingly, I pass the following order:

The petitions are allowed. Rule made absolute in both the writ petitions. The order dated 9-2-2004 passed by the first respondent-the Government of Karnataka in Revision Petition No. CMW 33 CAP 98 is quashed. There shall be no order as to costs.