
(1995) 01 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 942 of 1995

Vinayaka Griha Nirmana Sahakara Sangha Ltd.

APPELLANT

Vs

Karnataka Appellate Tribunal

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (1995) ILR (Kar) 518 : (1995) 6 KarLJ 573

Hon'ble Judges : Eswara Prasad, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; A.N. Swamy, HCGP for R-1 and 2 and H.P. Mudlappa, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Eswara Prasad, J.—The petitioner assails the order of the 1st respondent Karnataka Appellate Tribunal in Annexure-H, holding that the 2nd respondent Deputy Registrar of Co-operative Societies has no jurisdiction to adjudicate the dispute relating to the title and possession of certain lands, which arise between the petitioner Society and the 3rd respondent Society.

2. The facts in brief are, certain lands were the subject matter of acquisition, which commenced on 21.1.85. After following the procedure laid down in the Land Acquisition Act, an award was passed and possession of the lands in Sy.Nos. 95 and 98 of Nagarbhavi Village, was taken by the Government and the lands were handed over to the petitioner Society on 13.10.92 as seen from Annexure-D. It appears that the 3rd respondent claimed title to the lands in question, by virtue of a Sale Deed dated 29.8.91. Complaining that the 3rd respondent is interfering with the possession of the petitioner, the petitioner approached the 2nd respondent u/s 70 of the Karnataka Co-operative Societies Act, 1959 (The "Act" for short) by raising a dispute. The said matter was enquired into by the 2nd respondent, wherein the learned Counsel for the 3rd respondent raised an objection as to the maintainability of the proceedings. The

2nd respondent over-ruled the objections of the 3rd respondent and allowed the dispute, holding that the petitioner Society is the absolute owner of the property in question. Thereupon, the 3rd respondent filed an Appeal in No. 604/94 before the 1st respondent. The Tribunal considered the question of maintainability of the dispute and allowed the appeal holding that the 2nd respondent had no jurisdiction to enquire into the title and possession of the property in dispute. The petitioner questions the said order.

3. The learned Counsel for the petitioner contends that the 2nd respondent had jurisdiction u/s 70 to adjudicate the dispute between the 1st and 3rd respondent touching upon the constitution, management or the business of the Society in as much as the business of the Society is to purchase the lands and to provide house sites for the members and therefore the Tribunal had no power to set aside the order of the 2nd respondent. He further contended that the order of the 2nd respondent is final and cannot be gone into by the Tribunal, in view of Sub-section (3) of Section 70, which bars the jurisdiction of Courts, Sub-section (3) of Section 70 of the Act reads as follows:

"If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court."

4. A reading of Sub-section (3) of Section 70 shows that the dispute which may be referred to the Registrar for decision should be a dispute touching upon the constitution, management or the business of a co-operative society. In the present case, the dispute between the parties relates to the title to the lands in question. The petitioner claims the land by virtue of the acquisition of the lands by the Government for the purpose of the petitioner Society, whereas the 3rd respondent claims title to the land by virtue of the Sale Deed executed in favour of the 3rd respondent on 29.8.91. The dispute relating to title and possession of the land cannot be a dispute within the meaning of Sub-section (1) of Section 70. The dispute does not relate to either to the constitution, management or the business of the Co-operative Societies,

5. The next submission of the learned Counsel for the petitioner is that the correctness of the decision of the Registrar cannot be questioned by virtue of Section 70. The bar under Sub-section (3) only relates to the issue being raised in a Civil Court and is not applicable to the Appellate Authority u/s 71 of the Act. Firstly, the dispute between the parties does not relate to the constitution, management or the business of the Co-operative Society and therefore Sub-section (3) is not attracted in the present case. Secondly, the finality attached to the order of the Registrar only bars agitation of the same question in any Court of Law and does not relate to the Appellate Authority.

6. The 1st respondent has jurisdiction u/s 105 of the Act, which provides for an appeal against an order made under Clause (a) of Sub-section (1) of Section 71.

Undoubtedly, the order of the 2nd respondent could be the subject matter of the Appeal before the 1st respondent. It is open to the Appellate Authority to go into all the questions which are raised before it, when the order of the original authority is under challenge. The Decision in *DIWAKAR HEGDE J. v. KARKALA TALUK AGRICULTURAL PRODUCE CO-OPERATIVE MARKETING SOCIETY LIMITED* 1975 (2) KarLJ 390, has no application to the facts of the case. In that case, there was an agreement between the petitioner and respondent Co-operative Society before the Registrar and when a dispute was raised in working out the agreement between the Societies, the matter was referred to the Registrar for arbitration or for adjudication u/s 70 of the Act. It was in that context that it was held to be a dispute touching upon the business of the Societies. The dispute in the present case relates to title and possession of the land, which dispute is purely of a civil nature and cannot be gone into by the Registrar.

7. For the aforesaid reasons, the impugned order of the Appellate Authority cannot be held to be incorrect. It is open to the petitioner to seek such remedies as are available before a Civil Court.

With the above observation, the Writ Petition is dismissed.