

(1980) 10 AP CK 0006

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 505 of 1979

Y. Annapurnamma

APPELLANT

Vs

Co-operative Sub-registrar and Others

RESPONDENT

Date of Decision : 10-10-1980

Acts Referred:

Citation : (1981) CriLJ 1599

Hon'ble Judges : Jayachandra Reddy, J

Bench : Single Bench

Advocate : B. Bheemaraju and C. Susheeladevi, for the Appellant;

Judgement

1. This criminal revision case is directed against the order of the 6th Additional Judicial First Class Magistrate, Vijayawada, passed u/s 117 of the Andhra Pradesh Co-operative Societies Act, (Act VII of 1964), hereinafter referred to as "the Act."

2. The necessary facts are as follows :-

The Ramalingeswara Multipurpose Society, Kanuru, was ordered to be wound up u/s 64(2) of the Act and a liquidator was appointed to manage the affairs of the Society. The petitioner and respondents 2 and 3 in this revision case worked as Presidents of the Society prior of its winding up. The 2nd respondent worked from 1-10-1969 to 30-9-1970 as President. The petitioner Smt. Annapurnamma worked as President of the Society from 1-10-1970 to 1-7-1971 and the 3rd respondent herein worked from 2-7-1971 to 23-3-1975. The 1st respondent herein, who is the liquidator, issued, notice u/s 55 of the Act to these three ex-Presidents to produce and hand over the records. The petitioner stated that she has not taken charge of the records and they are with the 2nd respondent and that he did not hand over the records to her. Then the Liquidator obtained a certificate u/s 117 of the Act which declared that the records and the properties of the Society are in possession of the petitioner and respondent 2 and 3. Thereafter the Liquidator filed a petition u/s 117 of the Act in the lower Court. The 2nd respondent filed a counter alleging that no notice was issued by the

Liquidator and on the election of the petitioner he handed over all the records to her. He produced an acknowledgment issued by the petitioner. The petitioner and the 3rd respondent filed a counter alleging that the 2nd respondent alone is responsible for the entire thing and that they are not aware of the winding up proceedings of the Society. The petitioner further stated that she resides at Khammam district with her daughter and therefore the 2nd respondent virtually was continuing as the President. The Liquidator was examined as P.W. 1 and the Co-operative Sub-Registrar who was appointed as enquiry officer was examined ad R.W. 1. Certain documents also have been proved. The petitioner however denied having passed any acknowledgment to the 2nd respondent as having received the records. The learned First Class Magistrate, after considering the entire material on record, held that there is no evidence that the 2nd respondent did not hand over the records to the petitioner and the responsibility lies on the petitioner to explain for the properties of the Society. He accordingly held that the records are in possession of the petitioner and directed her to hand over the records and the properties of the Society to the Liquidator u/s 117 of the Act.

3. Challenging the said order in this revision, the learned counsel for the petitioner herein contends that the certificate issued by the Deputy Registrar declaring that all the three ex-Presidents are in custody of the records and properties of the Society, is null and void inasmuch as the procedure contemplated u/s 117 was not followed. Even otherwise, the learned counsel contends, the Magistrate has no power to go behind the order of the Registrar and direct the petitioner alone to produce the records and properties, while the certificate declares that all the three ex-Presidents are having the custody of the records and properties of the Society.

4. As mentioned above, the Society was wound up and the Liquidator sought a certificate u/s 117 of the Act. The Deputy Registrar, who is the competent authority to issue the certificate under S. 117, has stated in the certificate that all the records and properties of the Society are in possession of the Ex-Presidents and the names of the three ex.-Presidents are mentioned in the certificate. What the learned counsel contends is that before giving such a certificate the Deputy Registrar should have conducted an enquiry as per the provisions of Section 117(2) and since no such enquiry was conducted, the certificate is null and void as there has been violation of principles of natural justice. Section 117(2) of the Act reads thus :-

"117(2). No certificate shall be issued by the Registrar under sub-section (1) without making such inquiry as he deems necessary."

The words "as he deems necessary" are significant, and this provision of law does not lay down that there should be a regular enquiry, or such an enquiry is always mandatory. However, in this case we need not go into the question whether the issuance of such a certificate should always be preceded by an enquiry u/s 117(2) since the certificate in this case itself refers to the enquiry conducted u/s 51 of the Act. It is stated in the certificate that

"as per Section 51 enquiry the de facto custody of the records and properties of the society is still in the hands of the following persons who are no longer empowered to have the custody of the same and that the said persons shall be directed to deliver possession of the same to the C.S.R./Liquidator"

Because of the detailed enquiry conducted u/s 51 about the functioning of the Society the Deputy Registrar must have felt that further enquiry was not necessary and relying on Section 51 - enquiry report the Deputy Registrar reached the conclusion that the records and properties are in the custody of the three ex-Presidents. If there had been no enquiry u/s 51, then the question would have arisen whether an enquiry u/s 117(2) was necessary or not. Under these circumstances, it cannot be said that there is no compliance with Section 117(2) of the Act.

5. The learned counsel relies on a decision of this Court in Uppaluri Venugopalakrishna Rao Vs. Co-operative Sub Registrar and Another, wherein Sambasiva Rao, J. as he then was, held that though Section 117 does not provide for issuing notice, principles of natural justice require, such notice has to be given. I am unable to see as to how his decision is helpful to the petitioner. Sambasiva Rao, J. has clearly laid down that Section 117 does not provide for issuing a notice, but the principles of natural justice require issuance of such a notice. This observation of the learned Judge necessarily leads to the conclusion that where there is no violation of the principles of natural justice, then the certificate issued without again giving a notice to the parties does not suffer from any illegality. The above discussion shows that there is no violation of principles of natural justice in this case.

6. The learned counsel, however, contends that the enquiry contemplated u/s 51 of the Act is for a different purpose and such an enquiry cannot satisfy the requirements of Section 117(2). I see no force in this submission. Section 51 of the Act lays down that the Registrar may, of his own motion or on an application shall hold enquiry or direct some authorised person to enquire into the constitution, working and financial condition of a society. Therefore, the enquiry u/s 51 of the Act is comprehensive enough and during such enquiry the question of custody of the properties and records also can be gone into and a finding given in that regard is sufficient for the authority to rely upon and to issue a certificate without going through the formality of conducting another enquiry. As mentioned above, u/s 117(2) the authority can conduct an enquiry if he thinks it necessary. It is not the case of the petitioner that no opportunity was given while conducting the enquiry u/s 51.

7. The learned counsel further contends that the enquiry contemplated u/s 117 is a special enquiry and the enquiry conducted u/s 51 is only for the purpose of winding up of the society and rather different in scope, I see no substance in this submission also. Section 117 lays down that where a committee is elected or a society is superseded and a liquidator is appointed u/s 65 and where they are prevented from obtaining possession of books, etc., the Registrar can issue a

certificate in the prescribed form and the Magistrate of the First Class, in whose jurisdiction the Society is situate, shall, on application by a new committee, or person, or special officer, or liquidator on production of the certificate, direct the delivery of possession of the records or properties to the new committee, person, special officer, etc. Section 64 in its turn deals with winding up of societies and lays down that if the Registrar, after an inquiry u/s 51 is of opinion that the society ought to be wound up, he may after giving the society an opportunity of making its representation, direct the winding up of the society, and u/s 65 a liquidator can be appointed. It can, therefore, be seen that the enquiry u/s 51 is comprehensive enough and though the enquiry is held for the purpose of winding up of the Society, the report in such an enquiry can be relied upon for issuing a certificate u/s 117 and the same is clear from the language of Section 117(1). However, in the instant case there was no necessity to hold another enquiry u/s 117(2).

8. The learned counsel placed reliance on a decision of a Division Bench of the Madras High Court in *V. Sundaram Iyer Vs. Deputy Registrar of Co-operative Societies, Ramanathapuram and Others*, in which the scope of Sections 49 and 51 of the Madras Co-operative Societies Act has been considered. Section 49 of the Madras Act empowers the Registrar to require a person who was found to be guilty of breach of trust in relation to the society to repay or restore the money or contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, etc. Section 51 empowers the Registrar to decide any dispute. The Division Bench while considering the scope of enquiries under these two provisions held that the enquiry u/s 51 is a general one and the enquiry u/s 49 is a special one. The learned counsel submits that the ratio in this decision in principle applies to the enquiries contemplated under Sections 51 and 117 of the Act and, therefore, the enquiry u/s 117(2) is a special enquiry and should necessarily be conducted. I am unable to agree. I have carefully perused the judgment of the Madras High Court and the two enquiries contemplated under Sections 49 and 51 of the Madras Co-operative Societies Act are different in nature and are meant for different purpose. As already discussed, the issuance of a certificate u/s 117 is a necessary consequence of the winding up of the society. That is why u/s 117(2) the Registrar may conduct an enquiry before issuing a certificate if he thinks it necessary. Where sufficient opportunity has been given to the parties and where there is no violation of the principles of natural justice, nothing prevents the Registrar from issuing the certificate u/s 117(1) relying on the material on record during the enquiry u/s 51. The enquiry contemplated u/s 117 is not a special one as compared to the enquiry u/s 51. As held by Sumbasiva Rao, J. in *Uppaluri Venugopalakrishna Rao Vs. Co-operative Sub Registrar and Another*, even a notice is unnecessary u/s 117 and it is only in the interests of principles of natural justice an enquiry may be held. Therefore, it is abundantly clear that the so-called enquiry u/s 117(2) is not a special and compulsory one as is being contended by the learned counsel.

9. The second contention of the learned counsel for the petitioner is that the

Magistrate cannot go behind the certificate. As mentioned above, in the certificate issued u/s 117 it is stated that the records and properties are in the custody of all the three ex-Presidents including the petitioner. While that being so, the learned counsel contends that the Magistrate cannot direct the petitioner alone to deliver the records and properties. The learned counsel relies on a decision of this Court in *Nopuru Pattabhirami Reedi v. Co-operative Sub-Registrar*, (1974) 1 A WR 24 wherein Ramachandra Raju, J. has held that the Magistrate is not entitled to go into the matter afresh and come to his own conclusion, and like an executing Court the Magistrate cannot go behind the certificate. In that case it was contended before the learned Judge that the Magistrate should have enquired into the validity of the certificate and the same was rightly rejected. In the instant case, it is mentioned in the certificate that the records are in the possession of the three persons. Therefore, the Magistrate while giving a direction u/s 117(1) on the basis of the certificate, can definitely direct one of them, who, in his opinion, is in actual possession, to produce the records. Admittedly, the petitioner also was mentioned in the certificate as one of the persons being in possession of the records. It is also not in dispute that she succeeded the 2nd respondent and the Magistrate after due consideration of the evidence, both documentary and oral, directed the petitioner to hand over the records and properties. Therefore, it cannot be said that the Magistrate has made any fresh enquiry, or has given any direction contra to what has been mentioned in the certificate.

10. It is lastly contended that the evidence adduced does not necessarily lead to the conclusion that the records are with the petitioner. In this revision I cannot reappraise the evidence. The Registrar in his certificate has mentioned that the petitioner is one of the persons in possession of the records and the Magistrate after an elaborate discussion of the entire evidence directed the petitioner to deliver possession of the records and properties; and I cannot interfere with the finding. The revision case is, therefore, dismissed.

11. Revision dismissed.