
Des Raj Vs The Ladwa Cooperative Marketing-Cum-Processing Society Limited

Civil Revision No. 1832 of 1981

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 27, 1983

Acts Referred:

Punjab Co-operative Societies Act, 1961 – Section 63

Hon'ble Judges: Gokal Chand Mital, J

Bench: Single Bench

Advocate: S.S. Rathour, for the Appellant; C.B. Goel, for the Respondent

Final Decision: Dismissed

Judgement

Gokal Chand Mital, J.

This order will dispose of Civil Revision No. 1832 and 3100 of 1981 as common questions arise therein.

2. The Arbitrator appointed under the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the Act) gave an award in favour of The

Ladwa Cooperative Marketing-cum-Processing Society Ltd., Ladwa, (hereinafter referred to as the Society) against several persons including

Hukam Singh and Des Raj. These two persons were made liable to pay different amounts to the Society. The aforesaid two persons failed to pay

the amounts found due from them under the award. Consequently, the Society applied to the Registrar for the issue of a certificate u/s 63 of the

Act so that the award may be executed as a decree of the Civil Court. The Registrar granted the certificate and the Society applied to the Civil

Court for execution of the award. When notices were served on the aforesaid two persons, they filed objections. The main objection which now

survives for consideration is that there was no certificate issued by the Registrar u/s 63 of the Act and hence the award could not be executed as a

decree. The Executing Court came to the conclusion that the Registrar granted the certificate. Some other factual objections were also raised

which, on facts of the case, were decided against the plaintiff. By order dated 17.10.1981, the objections filed by Hukam Singh were dismissed

and he has come to this Court in C.R. No. 3100 of 1981. The objections of Des Raj were dismissed by order dated 5.6.1981 and Civil Revision

No. 1832 of 1981 has been filed by him in this Court against the aforesaid order.

3. Before me, it could not be seriously challenged that the Registrar did not issue certificate u/s 63 of the Act because the Court below has

recorded a categorical finding that a photostat copy was placed on the record and the original order was shown at the time of hearing.

4. The main argument which was raised before me, was that the certificate was illegal and ineffective because in as much as a certificate was issued

without issuing notice to the petitioners. Moreover, the date of award and the amounts due from the petitioners, have not been contained in the

order passed by the Registrar, and, therefore, it is hit by the principles of natural justice as also non-application of mind by the Registrar. In this

behalf, reliance has been placed on Ramchandra S/o Mahadevral Mahankal and another v. The Collector, Nagpur ILR (1970) Bom. 1115.

5. After hearing the learned counsel for the parties, I am of the view that there is no merit in the argument raised before me. The decision in

Ramchandra's case (supra) is distinguishable from the facts of the present case. That case arose u/s 137 of the Maharashtra Cooperative Societies

Act, 1960, which is in the following terms :--

137 (1) Notwithstanding anything contained in sections 91 and 98 of an application made by a Land Development Bank for the recovery of

arrears of any sum advanced by it to any of its members and on its furnishing a statement of accounts in respect of the arrears, the Registrar may,

after making such enquires as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) A certificate by the Registrar under sub-section (1) shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall

be recoverable according to the law for the time being in force for the recovery of arrears of land revenue.

(3) It shall be lawful to the Collector to take precautionary measures authorised by sections 140 to 144 of the Bombay Land Revenue Code, 1879

or any law or provision corresponding thereto for the time being in force until the arrears due to the Land Development Bank together with interest

and any incidental charges incurred in the recovery of such arrears are paid or security of such arrears is furnished to the satisfaction of the

Registrar.

(4) It shall be competent for Registrar or a person authorised by him to direct conditional attachment of the property of the mortgagor until the

arrears due to the Land Development Bank together with interest and any incidental charges incurred in recovery of such arrears, are paid or

security for payment of such arrears is furnished to the satisfaction of the Registrar and the provisions of section 95 shall apply mutatis mutandis to

conditional attachment of any property made or to be made under this section.

6. A reading of sections 131 onwards till section 137 of that Act shows that when loans are advanced by the Land Development Bank, for the

advance of which loans, the property of the loanee is taken under mortgage. Whenever the loanee fails to pay the instalment within a month of the

date on which it falls due, the bank in addition to any other remedies available, can apply to the Registrar or the Collector for the recovery of such

instalment by distraint and sale of the produce of the mortgaged land, including the standing crops thereon. On receipt of such an application, the

Registrar or the Collector may take action in the manner prescribed for the purpose of distraining the selling such produce. It further provides that

the mortgaged property can be put to public auction or this power can be exercised after hearing the objections if any, of the mortgagor or

mortgagors. Therefore, it was concluded on a reading of the relevant provisions that the power to sell or mortgage can be exercised only after

hearing the objections of the mortgagors. On those relevant provisions, it was concluded as follows :--

Held the provisions of section 137 cannot be interpreted as merely in the nature of execution proceedings. Unless a certificate showing the amount

recoverable is issued, no amount can be claimed to be recovered as an arrear of land revenue, and in order that an amount may be claimed and

recovered as an arrear of land revenue by coercive process, the authority, in this case Registrar, has to apply his mind to find out what is the

amount due. The very fact that a certificate is required to be issued shows that the officer empowered to issue a certificate has to certify that the

amount is due. The power of certification cannot be properly or effectively exercised unless the officer empowered to certify about the liability

being due satisfies himself by some sort of inquiry, as to the legality of the claim of the Land Development Bank. If an inquiry is thus implicit, it must

necessarily mean notice to the opposite side and an opportunity to be heard before the officer is able to certify as the quantum of the amount, if

any, due to the Bank.

7. In the present case, section 63 of the Act is in the following terms :

63. Every decision, award or order duly passed by the Registrar or arbitrator under sections 54, 56, 62 and 68 respectively, shall if not carried

out,--

(a) on a certificate signed by the Registrar or any person authorised by him in this behalf, be deemed to be a decree of a civil court and shall be

executed in the same manner as decree of such Court; or

(b) be executed by the Registrar or any other person sub-ordinate to him empowered by the Registrar in this behalf, by the attachment and sale or

by sale without attachment of any property of the person or a co-operative society against whom the order, decision or award has been obtained

or passed ;

(c) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue ;

Provided that, an application for the recovery in such manner of any such sum shall be made to the Collector and shall be accompanied by a

certificate signed by the Registrar or any person authorised by him in this behalf. Such application shall be made within twelve years from the date

fixed in the order and if no such date is fixed, from the date of the order.

8. Chapter VIII of the Act provides for settlement of disputes and the relevant sections in this Chapter are sections 55 and 56 which envisage that

a matter which touches the constitution, management or the business of a co-operative society, has to be referred to an Arbitrator and on receipt

of a reference in this behalf, the Registrar appoints the Arbitrator to adjudicate the dispute. The adjudication has to be done in a quasi-judicial manner

after issuing notice to the parties concerned after affording full opportunity of adducing evidence and then the award is given by the Arbitrator

which is subject matter of appeal u/s 68 and revision u/s 69 of the Act. If the award becomes final and remains unpaid, then one of the remedies is

provided to the person in whose favour the award is given, to apply for the execution of the award and the award can be executed only after

obtaining the certificate from the Registrar. In the context of sections 55 and 56 of the Act, no further adjudication or opportunity is needed before

granting certificate u/s 63 which is more or less a ministerial act. After certificate u/s 63 is issued by the Registrar, the award becomes executable

as a decree of civil Court and when execution is taken out, notice is issued to the judgment debtor and he can take all objections which may be

available to him under the law, but certainly in view of sections 55 and 56 of the Act, it cannot be said that before granting a certificate u/s 63 an

opportunity must be granted or that the Registrar must apply his mind to the facts of the case, i.e. whether the award was properly obtained or not.

The Registrar has no jurisdiction to go behind the award u/s 63 of the Act. Accordingly, I find that the provisions of the Maharashtra Act are very

much different from the provisions contained in the Act and, therefore, the decision in Ramchandra's case (supra) is not applicable to the facts of

the present case. Hence, the argument raised before me is rejected.

9. For the reasons recorded above, both the revision petitions are devoid of merit and are dismissed with costs.