

(2009) 11 P&H CK 0192

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 17616 of 2008

Tej Kaur and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Nov. 5, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 406, 420, 467, 468
- Punjab Co-operative Societies Act, 1961 - Section 55, 65

Citation: (2011) 1 ILR (P&H) 665

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Permod Kohli, J.

Respondent No. 5 is a Cooperative Society engaged in the business of providing economic aid to its members in the form of cash, fertilizers, insecticides etc. The society is managed by the executive body elected/constituted in accordance with its bye laws. The executive body consists of 9 members. The society has various employees including Surjit Singh son of the petitioners, who was serving as salesman, Fertilizers. During the scrutiny of accounts in the month of April, 2006 one Gurnam Singh, Inspector of the Society discovered various illegalities/irregularities and misappropriation of the amount. On detection of various irregularities, a team was constituted for verification of the accounts. The said team found embezzlement, misappropriation and fraud in the accounts. On the basis of such report, respondent No. 4 issued show cause notices to the members of the Managing Committee as also some employees including. Surj it Singh, son of the petitioners. Surj it Singh filed his reply to the show cause notice and on consideration of reply, respondent No. 4,--vide his order dated 5th March, 2007 exonerated Surj it Singh as is evident from his order (Annexure P-1). In the meantime, an FIR No. 40, dated 13th April, 2007 under sections 406, 420, 467, 468, 471, 120-B, IPC was registered with Police

Station Machhiwara and the investigation was entrusted to special team constituting three LPS. Officer of Punjab Police.

2. Respondent No. 4 also found one Rajender Singh, Secretary of the society as guilty of embezzlement amounting to Rs. 1.19 crores. The said Rajender Singh is said to have admitted the embezzlement and deposited an amount of Rs. 1.40 crores with the society. On such deposit, he was reinstated by the Managing Committee,--vide resolution dated 16th October, 2006 and was also imposed penalty of reduction to lower time scale. Later at the instance of the Chief Minister of the State the matter was referred to the Vigilance Bureau, Ludhiana. The Vigilance Bureau conducted investigation, however, the presentation of challan has been stayed by this Court in another writ petition. In the meantime, the society passed resolution dated 13th November, 2006 and resolved to attach 1 acre land of Surjit Singh son of the petitioners and also to attach the property of the petitioners. Copy of the resolution is annexed as P-3. On the basis of the aforesaid resolution a communication was sent on the same date to the Assistant Registrar, Cooperative Societies to attach the land of the petitioners in favour of the society. The Assistant Registrar, Cooperative Societies-respondent No. 4 passed the order dated 14th November, 2006 ordering attachment of the property of petitioners comprising of various khasra numbers as detained in the aforesaid order. He also directed that entry of attachment be made in the revenue record (Annexure P-5). The petitioners preferred an appeal against the aforesaid order before the Addl. Registrar (G), Cooperative Societies. This appeal also came to be rejected by the Appellate Authority,--vide the impugned order dated 19th August, 2008 (Annexure P-6). The petitioners have challenged the resolution dated 13th November, 2006 (Annexure P-3) passed by the society, order dated 14th November, 2006 passed by respondent No. 4 and the order of rejection of appeal dated 19th August, 2008 passed by respondent No. 3 in the present petition, primarily on the ground that the petitioners have nothing to do with the embezzlement nor they are connected with the society in any manner and their property cannot be attached, even if, their son Surjit Singh is an accused in the FIR and may be ultimately found to be involved in such embezzlement.

3. The society and the official respondents have filed their separate replies. The only argument raised on behalf of the respondents is that the attachment order does not in any manner cause any prejudice to the petitioners as no sale of the property of the petitioners has been ordered till date. It is also argued by Mr. Saggu, appearing on behalf of respondent No. 5 society that crores of rupees have been embezzled and to safeguard the interests of the society, the attachment has been made.

4. From the order dated 14th November, 2006 passed by respondent No. 4, it appears that the property of the petitioners has been attached allegedly in exercise of the authority u/s 65 of the Punjab Cooperative Societies Act. Section 65 reads as under :-

65. Attachment before award.-Where the Registrar is satisfied that a party to any reference made to him u/s 55 intent to defeat or delay the execution of any decision that may be passed thereon is about to-

(a) dispose of the whole or any part of the property; or

(b) remove the whole or any part of the property from the local limits of the jurisdiction of the Registrar, the registrar may, unless adequate security is furnished, direct the conditional attachment of the said property or such part thereof as the thinks necessary. Such attachment shall be executed by a Civil court having jurisdiction in the same way as an attachment order passed by itself and shall have the same effect as such an order:

Provided that the powers of the Registrar under this Section shall not be delegated to any officer below such rank as maybe prescribed.

5. Attachment u/s 65 is permissible where a reference u/s 55 of the Act is pending and the Registrar is satisfied that any party to such a reference with intent to defeat and delay in execution of the decision is likely to dispose of the whole or part of the property or remove the same from the local limits of the jurisdiction of the Registrar.

6. Section 55 of the Punjab Cooperative Societies Act deals with the reference of disputes etc. and reads as under :-

55. Disputes which may be referred to arbitration.-

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises-

(a) Among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past members or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and past committee, any officer, agent or employee, or any past officer, agent

or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society.

Such disputes shall be referred to the Registrar for the decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purpose of sub-section (1), the following be deemed to be disputes touching the constitution, management or the business of cooperative society, namely-

(a) a claim by the society for any debit or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a society against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any Officer of the society.

(3) if any question arises whether a dispute referred to the registrar under this section is or not 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.

7. Disputes u/s 55 are disputes between the Society, its members and employees, members present and past members, between society its agents or employees etc. Sub Section (2) of Section 55 further defines the disputes contemplated under sub-section (1) of Section 55.

8. At the first place, it is nobody's case that the petitioners are either members, agent, officers or employees of the society. It is also admitted position that no dispute u/s 55 of the aforesaid Act has been raised by the society or any other person against the petitioners nor any such dispute has been raised by the petitioner against the society as defined under sub section (2) of Section 55. As a matter of fact no dispute is contemplated or referred in terms Of Section 55 against the petitioners. Thus invoking jurisdiction u/s 65 of the Cooperative Societies Act for attachment of property is totally illegal, unwarranted and without jurisdiction.

9. It is also admitted position that there is no claim of the society against the petitioners. Mr. Saggu, Learned Counsel for respondent No. 5 society has tried to argue that the petitioners have purchased the property from the embezzled amount. This is an argument without any basis and the record. Neither in the resolution adopted by the society (Annexure P-3) nor in the impugned orders (Annexures P-5 & P-6) such an averment is contained. To the contrary it has been specifically pleaded by the petitioners in para 8 of the writ petition that some of the attached property is the ancestral property in the hands of the petitioner No. 1, whereas property in the name of respondent No. 2 is self acquired property,

acquired in May, 2004 from his own agricultural income. There is also a specific claim that Surjit Singh was employed in the society and has not contributed even a single penny towards the acquisition of the land by the petitioners. This fact has not been specifically denied in the reply. However, it is mentioned that the property purchased by the petitioner in the year 2004 was during the period when the embezzlement took place.

10. In any case no material has been placed on record to even remotely suggest that the consideration for purchase of the property has its origin or source from Surjit Singh. It has also come on record that about 500 arbitration disputes have been raised by the society, which are pending in various courts and in none of the disputes the petitioners are party.

11. From the facts on record and the provisions of Sections 55 and 65 of the Cooperative Societies Act, it is established that the attachment of the property of the petitioner is unwarranted. There is no material to substantiate any allegation against the petitioner, nor any specific allegation has been made. The contention of the respondents that no prejudice has been caused to the petitioners is also without any substance. The attachment of the property of the petitioners not only creates a charge over the property but also brings in disrepute the image of the petitioners, who have otherwise nothing to do with the acts of embezzlement etc. in the society. Merely because the son of the petitioners was employee in the society and there are allegations against him, does not make the petitioners liable for any action much less an action, where their rights are jeopardized. The petitioners are not even accused in the FIR by invoking Section 120-B of the IPC.

12. This petition accordingly succeeds. The impugned resolution dated 13th November, 2006 (Annexure P-3) passed by the society, order dated 14th November, 2006 passed by respondent No. 4 Assistant Registrar and order dated 19th August, 2008 passed by respondent No. 3 Addl. Registrar are hereby quashed. This order, however, shall not prevent the respondent-society from initiating any appropriate proceedings, if, at any later stage, it is established that any part of the property held by the petitioners has its origin or source to the money allegedly embezzled by Surjit Singh son of the petitioners.