

(1972) 10 MP CK 0005

Madhya Pradesh High Court

Case No: M.P. No. 1 of 1968

Abdul Hamid

APPELLANT

Vs

Tamba Pital Sahakari Sanstha
and others

RESPONDENT

Date of Decision: Oct. 9, 1972

Acts Referred:

- Madhya Pradesh Co-operative Societies Act, 1960 - Section 63, 63(3)

Citation: (1973) JLJ 920

Hon'ble Judges: G.L. Oza, J; A.P. Sen, J

Bench: Division Bench

Advocate: V.R. Mazumdar, for the Appellant; S.L. Dubey, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.L Oza, J.

This petition has been filed by the petitioner in surcharge proceedings where in the petitioner and some others were surcharged and liabilities were fixed against them by the Assistant Registrar of Co-operative Societies, Dewas. The petitioner along with two others preferred an appeal before the Board of Revenue, and the learned member of the Board of Revenue by his order dated the 21st February 1967, dismissed the appeal on the preliminary ground that a joint appeal could not be filed. It is against this decision that the present petition has been filed.

2. The only question that has been raised in this petition is whether an appeal by more than one appellant could jointly be filed before the Board of Revenue. In the M.P. Co-operative Societies Act, 1960 the provision providing for appeal is section 63 (3), which is as under--

(3) Any person aggrieved by an order made under sub-section (2) may within sixty days from the date of the communication of the order to him appeal to the State Government and subject to such order as the State Government may pass, the order of the Registrar shall be final and conclusive.

3. It was contended on behalf of the petitioner that any "person" or "persons" aggrieved by an order made under sub-section (2). It was also contended that the proceeding launched for surcharge was one and the Assistant Registrar in his award found all the members of the Managing Committee responsible, and held them responsible jointly and severally. He also ultimately determined the liability against each one, and in these circumstances, according to the Learned Counsel for the petitioner, the appellants being co-defendants could prefer an appeal jointly. It was also contended that there is no provision in the Act which prevents the filing of a joint appeal by more than one appellants.

4. Looking to the award passed by the Assistant Registrar, it is clear that he found all the members of the Managing Committee responsible jointly and severally, although in the latter part of the award he went on to determine the respective liability of each of the members. It was contended on behalf of the respondents that separate notices were issued against all the members of the Managing Committee, and consequently the proceedings could be treated as separate proceedings. But looking to the award it is clear that the Assistant Registrar first went into the question as to whether the members of the Managing Committee could be found responsible, and ultimately he found all the members responsible jointly and severally. In this view of the matter, it cannot be said that separate proceedings u/s 63 could have gone on against each of the members. Having found all the members of the Managing Committee responsible, the Assistant Registrar proceeded further to determine the individual liability of each of the members and on that basis, therefore, it cannot be said that proceedings for surcharge could have been separately launched against each of the individual members.

5. It is also clear from the provisions contained in section 63 (3), as quoted above, that there is no prohibition against the filing of an appeal jointly by more than one person aggrieved by one judgment. Admittedly all the three appellants before the Board of Revenue were aggrieved by the award passed by the Assistant Registrar in one case wherein all of them have been held responsible. There is no other provision in the M.P. Co-operative Societies Act indicating that a joint appeal by co-defendants against one award cannot be preferred. In this view of the matter, the order passed by the Board of Revenue does not appear to be based on any provision of law. The learned member of the Board has thus failed to exercise the jurisdiction vested in him when he chose to throw out the appeal on this short ground without going into the merits of the matter.

6. Consequently, the petition is allowed, the order dated the 21st February 1967 passed by the Board of Revenue is set aside, and it is directed that the appeal may

be placed before the Board of Revenue for its hearing and disposal on merits in accordance with law. The petitioner shall be entitled costs of this petition from respondent No. 1. Counsel's fee Rs. 100/- (one hundred) only, it certified. The outstanding amount of security deposit shall be refunded to the petitioner.