

(2014) 12 AP CK 0052

Andhra Pradesh High Court

Case No: Writ Petition Nos. 31138 and 31974 of 2012

The Prudential Cooperative Bank
Ltd.

APPELLANT

Vs

The A.P. Cooperative Tribunal

RESPONDENT

Date of Decision: Dec. 31, 2014

Acts Referred:

- Andhra Pradesh Co-operative Societies Act, 1964 - Section 117, 12A, 13, 130, 16
- Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 - Section 36, 37
- Constitution of India, 1950 - Article 14, 226

Citation: (2015) 4 ALD 270 : (2015) 5 ALT 595

Hon'ble Judges: Ramesh Ranganathan, J; M. Satyanarayana Murthy, J

Bench: Division Bench

Advocate: Anand Kumar Kapoor, Advocate for the Appellant

Judgement

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Ramesh Ranganathan, J.

By his order dated 29.10.2012 the Learned Single Judge, before whom W.P. Nos. 31138 of 2012 and 31974 of 2012 were listed, observed that the earlier judgment, in [S. Varalakshmi Vs. District Co-operative Office and Others,](#), required reconsideration by a Division Bench for rendering an authoritative pronouncement on the aspect whether Section 36 of the A.P. Mutually Aided Co-operative Societies Act, 1995 (for short the 1995 Act) intended to extend the application of the provision of an appeal, under Section 76 of the A.P. Co-operative Societies Act, 1964 (for short the 1964 Act), to an order passed in execution proceedings under Section 36 of the 1995 Act. The Learned Single Judge was also of the opinion that the issue, whether Rule 52 of the Andhra Pradesh Cooperative Societies Rules, 1964 (for short the 1964 Rules), which was made in the exercise of the powers of delegated legislation conferred on the State Government under Section 130 of the 1964 Act and was not incorporated by

reference by any of the provisions of the 1995 Act, could be invoked for execution of the awards passed under the 1995 Act, also required consideration by the Division bench.

2. Elaborate submissions were put forth by Sri Anand Kumar Kapoor, Learned Counsel for the petitioner-Bank; the Learned Advocate General and the Learned Additional Advocate General for the State of Telangana and Sri R.N. Hemendranath Reddy, Learned Counsel for the petitioner in W.P. No. 31794 of 2012.

3. Facts, to the limited extent necessary to answer the reference, are that the Prudential Co-operative Bank Limited, (the petitioner in W.P. No. 31138 of 2012 and a Co-operative Society registered under the 1995 Act), advanced loans to the 5th respondent therein for which respondent Nos. 2, 6 and 7 stood as guarantors. As the 5th respondent defaulted in repayment of the loan amount, proceedings in O.P. No. 408 of 2001 were instituted before the Andhra Pradesh Co-operative Tribunal (for short the Tribunal) by the petitioner bank under Section 37 of the 1995 Act. An award was passed by the Tribunal on 06.01.2011 for Rs. 48,62,201.99 Ps with future interest at 22% per annum on the principal amount of Rs. 39,25,000/-. The petitioner-bank filed E.P. No. 64 of 2011, before the Tribunal, on 05.09.2011 to execute the award. The Tribunal transmitted the execution proceedings to the Divisional Co-operative Officer, Secunderabad who, in turn, delegated his powers to the Sales Officer, Prudential Co-operative Bank, Secunderabad (the 3rd respondent).

4. The 3rd respondent brought the immovable properties to sale and, pursuant thereto, they were put to sale on 31.08.2012. However, before the sale was confirmed, one of the guarantors preferred an appeal, in CTA No. 72 of 2012, before the Tribunal questioning the validity of the sale proceedings. Thereafter the appellant in CTA No. 72 of 2012 filed I.A. No. 188 of 2012 seeking stay of all further proceedings. By its order dated 28.09.2012, the Tribunal granted interim stay subject to the appellant depositing Rs. 50 lakhs by 19.10.2012. Aggrieved thereby both the petitioner bank, and the appellant in CTA No. 72 of 2012, filed W.P. Nos. 31138 and 31974 of 2012 respectively. Before the Learned Single Judge it was contended, on behalf of the petitioner-bank, that no appeal lay, much less to the Tribunal, against orders passed in execution proceedings instituted pursuant to an order passed under Section 37 of the 1995 Act. On the other hand it was contended, on behalf of the petitioner in W.P. No. 31974 of 2012, that, if this contention was accepted, it would mean that the 1964 Rules (more particularly Rule 52 thereof), which were made under Section 130 and did not form part of Chapter X of the 1964 Act, would also not apply to execution of an award passed under the 1995 Act.

5. In [A. Vemanaidu Vs. Erracheruvupalle Primary Co-operative Society, Chittoor District and Others,](#) the petitioner had obtained agricultural loans from the respondent, a society registered under the A.P. Cooperative Societies Act, 1964. A public auction notice was issued proposing to bring the immovable properties of the petitioner to sale in a public auction in execution of the recovery certificate issued by

the competent authority under Section 71(1) of the A.P. Cooperative Societies Act, 1964. Aggrieved thereby, the petitioner invoked the jurisdiction of this Court. It is in this context, that this Court held:-

...A reading of Sub-section (2) of Section 70 as well as Rule 52 of the Rules, it becomes clear that the amount covered by a certificate for recovery of the debt granted by the Registrar of Co-operative Societies under Section 71(1) of the Act can be executed in accordance with Sub-section (2) of Section 70 of the Act duly following the procedure under Rule 52 of the Rules. The Act is a self-contained Code.

It provides for constitution of Cooperative Tribunal and Section 76 of the Act provides that any person aggrieved by any decision passed or order made under various provisions of the Act, inter alia, may file appeal to the Tribunal. An order for execution of a certificate of recovery under Section 71 of the Act and auction notice consequent thereto can only be under Section 70(2) of the Act read with Sub-rule (11) of Rule 52 of the Rules. Therefore, the impugned action is clearly appealable under Section 76 of the Act....

"...The learned Counsel for the petitioners, however, lastly submits that auction in one case is scheduled to be held on 22-6-2002 and in another case on 24-6-2002. Pending the appeal before the Co-operative Tribunal that may be filed by the petitioners the Court may stay the auction. Having regard to the provisions of Section 76(6) of the Act read with Rule 11 of the Co-operative Tribunal Appeal Provision Rules, 1994 the request of the petitioners cannot be accepted. There are adequate powers conferred. It is well-settled that when an enactment creates a Statutory Tribunal and entrusts certain matters to be agitated by way of appeal at the first instance and also confers adequate incidental and supplemental powers to stay and suspend the orders, it is not for this Court to interdict the process of the law, in accordance to which, the properties of the petitioners are brought to sale....

(emphasis supplied)

6. Relying on [A. Vemanaidu Vs. Erracheruvupalle Primary Co-operative Society, Chittoor District and Others](#), wherein it was held that an order for execution of a certificate of recovery under Section 71 of the A.P. Cooperative Societies Act, 1964, and the auction notice issued consequent thereto, could only have been made under Section 70(2) read with sub-rule (11) of Rule 52 and, therefore, the impugned action was clearly appealable under Section 76 of the Act, the Learned Single Judge, in [S. Varalakshmi Vs. District Co-operative Office and Others](#), held that, in view of the above decision, it must be held that the petitioner has an effective alternative remedy and the two issues raised in the Writ Petition could not be gone into at this stage by the Court. Having so held, the Learned Single Judge further observed:-

"...The submission of the learned Counsel for the petitioner that the procedure contemplated under Section 37 of the AP MAC Act is altogether different and, therefore, the procedure for execution of awards/recovery certificates passed under

the 1964 Act under Section 71 and Rule 52 of the Rules cannot be followed is without any basis. The learned Counsel submitted that though the provisions of the 1964 Act have been made part of the AP MAC Act by incorporation, when an award is passed under Section 37 by the Tribunal, the same cannot be executed under the 1964 Act. This submission is devoid of any merit...."

...A plain reading of the above provisions would show that the provisions of the 1964 Act shall mutatis mutandis apply to the mutually aided Co-operative Societies as well, with regard to execution of decisions, decrees and orders. It is a case of legislation by reference and, therefore, all the provisions of the A.P. Co-operative Societies Act before dealing with execution will apply mutatis mutandis in execution of awards/orders passed under the AP MAC Act....

... Whether the relevant rules dealing with execution of awards/recovery certificates/decisions/orders as contained in the A.P. Cooperative Societies Rules, 1964 made under Section 130 of the 1964 Act are also applicable for execution of orders/decrees under Section 36 of the AP MAC Act. It is well settled principle of law that when in exercise of powers conferred on them to make delegated legislation, the Government makes statutory rules, they form part of the main statute. Those rules have to be read along with the provisions in the main statute.

Therefore, though Section 36 of the AP MAC Act does not specifically refer to the A.P. Co-operative Societies Rules, by reason of settled principles of law, as the said Rules become part of the 1964 Act, those Rules also are applicable to the proceedings taken up for execution of decisions/orders passed by the Tribunal under the AP MAC Act.

The procedure for execution of decree in the 1964 Act is laid down in Section 70. The said provision empowers the Registrar or any person authorized by him to recover any amount due under a decision or order of the Registrar. The method of recovery under Section 70 of the 1964 Act is "without prejudice to any other mode of recovery provided by or under the 1964 Act". Sub-section (2) of Section 70 specifically provides that if an order or decision made either under Section 60 or Section 71 or Sections 76, 77 or 78 may be recovery by execution by the Civil Court, by the Collector, or by the Registrar in the manner provided under Section 71. Section 130 empowers the Government to make Rules for carrying out of purpose under the 1964 Act. In furtherance thereof, 1964 Rules were made. Rule 52 is a self contained code in itself for execution of decrees, decisions or orders. Necessarily, when the Registrar undertakes to execute a decision or decree under the 1964 Act, he has to follow the procedure under Rule 52. Rule 52 is intended to avoid arbitrary or highhanded execution. This procedure is applicable even to execution of decisions or decrees passed by the Tribunal under Section 37 of the AP MAC Act. Therefore, it must be held that the first respondent has ample power and jurisdiction to execute the decrees/decisions and orders passed by the Tribunal under Section 37 of the AP MAC Act in accordance with Section 71(1) or 71(2)(c) of the A.P. Co-operative

Societies Act, 1964 read with Rule 52 of the A.P. Co-operative Societies Rules, 1964...."

(emphasis supplied)

7. Section 36 of the 1995 Act relates to execution of decisions, decrees and orders. It stipulates that, in regard to execution of decisions, decrees and orders, all the provisions of Chapter X of the A.P. Co-operative Societies Act, 1964 shall, mutatis mutandis, apply to Co-operative Societies registered under the 1995 Act such, however, that all references to the Registrar in the 1964 Act shall be construed to be a reference to the Co-operative Tribunal in their application to Co-operative Societies registered under the 1995 Act. Chapter X of the 1964 Act relates to execution of decisions, decrees and orders. Sections 70 to 74 fall under Chapter X. Section 70 confers power on the Registrar to recover certain amounts by attachment and sale of property, and execution of orders. Section 70-A relates to execution of non-monetary orders. Section 71 relates to recovery of debts, and Section 72 provides that the Registrar, or the person authorised by him, shall be a Civil Court for certain purposes. Section 73 relates to attachment of property before decision or order, and Section 74 relates to recovery of amounts due to the Government. Chapter XI of the 1964 Act relates to appeal, revision and review. Section 75, thereunder, relates to the constitution of a Co-operative Tribunal. Section 76, which also forms part of Chapter XI of the 1964 Act, relates to appeals and, under sub-section (1) thereof, any person or society aggrieved by any decision passed or order made under Sections 6, 9A, 9B, 9C, 12A, 13, 16, 17, 19, 21, 21A, 21AA, 23, 32(3), 34, 34A, 60, 62, 64, 66, 70, 71, 73 and 117 of the 1964 Act may appeal to the Tribunal. While Section 76 does not fall under Chapter X of the 1964 Act, an appeal is provided thereunder against an order passed under Sections 70, 71 and 73 of the 1964 Act all of which fall under Chapter X thereof.

8. The 1995 Act does not explicitly provide for an appeal against the decision of the Tribunal on a dispute referred to it under Section 37 of the said Act. The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. [A.R. Antulay Vs. R.S. Nayak and Another, ; Shri M.L. Sethi Vs. Shri R.P. Kapur, ; Anisminic Ltd. v. Foreign Compensation Commission \(1969\) 2 AC 147; Halsburys Laws of England, 4th Edn., Vol. 10, page 327 at para 720; Amnon Rubinstein-Jurisdiction and Illegality \(1965 Edn., pages 16-50\); Raja Soap Factory and Others Vs. S.P. Shantharaj and Others, . A right of appeal is always statutory. The Court cannot confer or infer it. What is legislatively not permitted cannot be read by implication, in any event not in respect of a right of appeal as it "is a creature of Statute. A right of appeal is conferred by statute or equivalent legislative authority. It is not a mere matter of practice or procedure. U.P Awas Evam Vikas Parishad Vs. Gyan Devi \(Dead\) by L.Rs. and another, etc. etc., ; Shankar Kerba Jadhav and Others Vs. The State of Maharashtra, ; Halsbury's Laws of England Vol. 37 Para 677\).](#) The creation of a right to an appeal is

an act which requires legislative authority, neither an inferior court nor the superior court nor both combined can create such a right or take away such a right, it being one of limitation and extension of jurisdiction. (Attorney General v. Herman James Sillem (1864) 10 HLC 704 (HL); [A.R. Antulay Vs. R.S. Nayak and Another, .](#) While the absence of a specific provision in the 1995 Act, conferring a right of appeal against the decision of the Tribunal on the dispute referred to it under Section 37 thereof, would mean that there is no statutory remedy of an appeal against such decisions or orders, the Learned Single Judge, in [S. Varalakshmi Vs. District Co-operative Office and Others, ,](#) read into Section 36 of the 1995 Act, such a remedy. By the order under reference, another Learned Single Judge has doubted the correctness of the Judgment in [S. Varalakshmi Vs. District Co-operative Office and Others, .](#) It is necessary for us, therefore, to examine the scope of Section 36 of the 1995 Act.

9. Section 36 of the 1995 Act provides that all the provisions of Chapter X of the 1964 Act shall, mutatis mutandis, apply to cooperative societies registered under the 1995 Act. It is a well established legislative practice to borrow the provisions of an earlier Act on a particular subject by making a broad reference to the earlier Act or some or most of its provisions therein so as to make them applicable to the relevant subject matter dealt with by the later statute. This is done, primarily, as a matter of convenience in order to avoid verbatim repetition of the provisions of the earlier Act. When such a legislative device is adopted, the relevant provisions of the earlier Act will apply mutatis mutandis to matters governed by the later Act. [Maharashtra State Road Transport Corporation Vs. State of Maharashtra and Others, .](#) When an earlier Act, or certain of its provisions, are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it. [Ashok Service center and Others Vs. State of Orissa, .](#) The legal incidents of legislation by incorporation is that it becomes part of the existing law which implies bodily lifting provisions of one enactment and making them part of another. [Girnar Traders Vs. State of Maharashtra and Others, .](#) If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it. (Wood's Estate, Ex parte, Works and Buildings Commrs.. Re. (1886) 31 Ch D 607). Consequently all the provisions of Chapter X of the 1964 Act, i.e., Sections 70 to 74 thereof, must be read as part and parcel of Section 36 of the 1995 Act.

10. The next question which necessitates examination is what do the words mutatis mutandis in Section 36 of the 1995 Act mean? Earl Jowitt's "The Dictionary of English Law (1959)" defines "mutatis mutandis" as "with the necessary changes in points of detail". In Bouvier's Law Dictionary (3rd Revision, Vol. II), and in Black's Law Dictionary (Revised 4th Edn. 1968) "mutatis mutandis" is defined to mean "with the necessary changes in point of detail, meaning that matters or things are generally the same, but to be altered when necessary. (Houseman v. Waterhouse 191 App. Div. 850, 112 N.Y.S 249, 251). The phrase mutatis mutandis implies that a provision

contained in another part of the statute or other statutes would have application as it is, with certain changes in points of detail. [The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another](#), ; [Prahlad Sharma Vs. State of U.P. and Others](#), ; [Mariyappa and Others Vs. State of Karnataka and Others](#), ; [Janba \(Dead\) Through Lrs. Vs. Smt. Gopikabai](#), ; [Ashok Service center and Others Vs. State of Orissa](#), . Extension of an "earlier Act, mutatis mutandis, to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act. [Ashok Service center and Others Vs. State of Orissa](#), . Chapter X of the 1964 Act has been made applicable mutatis mutandis to cooperative societies registered under the 1995 Act with the limited change that wherever there is a reference to the Registrar in Chapter X of the 1964 Act, such provisions shall be construed as referring to the Tribunal in the application of such provisions to co-operative societies registered under the 1995 Act. In effect the word Registrar, as used in the different provisions of Chapter X of the 1964 Act, must be substituted with the word co-operative Tribunal, when the provisions of Chapter X of the 1964 Act are applied to co-operative societies registered under the 1995 Act.

11. In [S. Varalakshmi Vs. District Co-operative Office and Others](#),, the Leaned Single Judge failed to notice that it is only Chapter X of the 1964 Act which has been made applicable, mutatis mutandis, to co-operative societies registered under the 1995 Act, and not Chapter XI of the 1964 Act or Section 76 thereof. As it is only the provisions of Chapter X of the 1964 Act which have, mutatis mutandis, been made applicable to cooperative Societies registered under the 1995 Act, the remedy of an appeal under Section 76 of the 1964 Act, which is in Chapter XI thereof, has not been incorporated by reference in Section 36 of the 1995 Act. Consequently no statutory remedy of appeal is available to co-operative societies registered under the 1995 Act, against the decision or order passed by the Tribunal in the exercise of its jurisdiction under Section 37 of the 1995 Act.

12. This question can be examined from yet another angle. The appeal provided to the co-operative Tribunal under Section 76 of the 1964 Act is, among others, against orders passed by the Registrar under Chapter X of the 1964 Act which include Sections 70, 71 and 73 thereof. As Chapter X of the 1964 Act has been made applicable to co-operative Societies registered under the 1995 Act, with the limited change that the Registrar, in Chapter X of the 1964 Act, stands substituted by the co-operative Tribunal in its application to co-operative societies registered under the 1995 Act, extending the remedy of an appeal under Section 76 of the 1964 Act, to orders passed under Section 37 of the 1995 Act, would mean that a remedy of an appeal is provided to the Cooperative Tribunal against its own orders. An appeal is an application by a party to an appellate court asking it to set aside or revise a decision of a subordinate court. [Tirupati Balaji Developers Pvt. Ltd. and Others Vs.](#)

[State of Bihar and Others,](#); and (1933) ILR 60 1 (Privy Council). Appeal implies, in its natural and ordinary meaning, the removal of a cause from any inferior court or tribunal to a superior judge or court for re-examination or review, more so for the purpose of testing the soundness of the decision and proceedings of the inferior court or tribunal. [Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others,](#); [Chakkara Chappan Vs. Moidin Kutti,](#) . The removal of a cause is for the purpose of testing the soundness of the decision of the inferior court. The words appellate jurisdiction mean the power of a superior court to review the decision of an inferior court. [Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others,](#); Whartons Law Lexicon).

13. An appeal gives the right of entering the superior court and invoking its aid and interposition to redress the error of the court below. There are two important postulates of constituting the appellate jurisdiction: (i) the existence of the relationship of a superior and an inferior court; and (ii) the power in the former to review decisions of the latter. An appeal removes a cause, entirely subjecting the facts as well as the law, to a review and a retrial. Its purpose is to test the soundness of the decision and proceedings of the inferior court or tribunal. The essential criterion of the appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted, and does not create that cause. In reference to judicial tribunals, an appellate jurisdiction necessarily implies that the subject-matter has already been instituted and acted upon, by some other court/tribunal, whose judgment or proceedings are sought to be revised. The superior forum has the jurisdiction to reverse, confirm, annul or modify the order of the forum appealed against and, in the event of a remand, the lower forum is required to rehear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below. [Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others,](#); [Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat,](#) . As an appeal lies from an inferior body or an authority or Tribunal to a superior forum or Court or Tribunal, an appeal lay, under Section 76 of the 1964 Act, to the Co-operative Tribunal against the order of the Registrar. As the Co-operative Tribunal stands substituted for the Registrar, in the application of Chapter X of the 1964 Act to co-operative societies registered under the 1995 Act, there cannot be an appeal from the order of the Tribunal to itself. The judgment in [S. Varalakshmi Vs. District Co-operative Office and Others,](#) , to the extent it held to the contrary, cannot be treated as laying down the correct law.

14. It is well settled that interim relief is granted during the pendency of proceeding so that, while granting final relief, the court is not faced with a situation that the relief becomes infructuous or that, during the pendency of the proceeding, an unfair advantage is not taken by the party in default or against whom interim relief is sought. The object behind granting interim relief is to maintain status quo so that the final relief can be appropriately moulded without the party's position being

altered during the pendency of the proceedings. [Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others,](#) . An interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a proceedings. If this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for, because the statute bars the granting of such a relief, ipso facto the temporary relief of the same nature can be granted. [The State of Orissa Vs. Madan Gopal Rungta,](#) ; [Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others,](#) . As no appeal lies to the Tribunal against its own orders, the necessary corollary thereto is that the Tribunal can neither entertain an appeal against its own decision, decree or order passed under Section 37 of the 1995 Act, nor can it pass any interim orders in such an appeal filed before it. Sri R.N. Hemendranath Reddy, Learned Counsel, would submit that the order now passed by us, holding that there is no right of appeal against the orders passed by the Tribunal in execution proceedings, would open the floodgates, result in dismissal of several hundreds of appeals now pending before the Tribunal, and all the appellants therein being forced to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. As the remedy of an appeal can only be statutorily prescribed, the problem, as presented by Sri R.N. Hemendranath Reddy, can only be addressed by the Legislature. Suffice it to record the submission of the Learned Advocate General for the State of Telangana that he would request the Government to take steps to resolve this issue.

15. The second question referred for our opinion is whether the 1964 Rules, more particularly Rule 52 thereof, can be invoked for execution of awards passed under the 1995 Act. The 1995 Act does not confer any rule making power on the Government. However, Section 130 of the 1964 Act relates to the power to make rules and, under sub-section (1) thereof, the Government may, by notification published in the Andhra Pradesh Gazette, make rules for carrying out all or any of the purposes of the 1964 Act for the whole or any part of the State, and for any class of societies. In the exercise of the powers conferred by Section 130, the Government of A.P. made the 1964 Rules which were published in the A.P. Gazette on 30.07.1964.

16. Rule 52 of the 1964 Rules prescribes the procedure in execution of decrees, decisions or orders. Rule 52(14)(v) thereof provides that, after confirmation of the sale, the Registrar shall grant a certificate of sale, bearing his seal and signature, to the purchaser; such certificate shall state the property sold and the name of the purchaser; it shall be conclusive evidence of the fact of purchase, in all courts and tribunals where it may be necessary to prove it; and no proof of the seal or signature of the Registrar of the district shall be necessary unless the authority, before whom it is produced, shall have reason to doubt its genuineness. Rule 52(14)(vi), which was inserted by G.O. Ms. No. 37 dated 28.01.2002, provides that any order made under clause (v) of Rule 52(14) shall, subject to an appeal under Section

76 of the A.P. Co-operative Societies Act within ninety days from the date of the order, be final and shall not be liable to be questioned in any suit or other legal proceedings.

17. As noted hereinabove, Section 76 of the 1964 Act provides the remedy of an appeal only against orders passed under the provisions specifically referred to therein. Rule 52(14)(vi) merely provides that, unless and until set aside in an appeal filed within 90 days, the order passed under Rule 52(14)(v) is final. Like Rule 52(14)(vi) of the 1964 Rules, Section 153 of the Patna Municipal Corporation Act, 1951 provided that "every valuation made by the Chief Executive Officer----shall, subject to the provisions of Sections 151 and 152, be final". In [Rai Vimal Krishna and Others Vs. State of Bihar and Others,](#) , the Supreme Court held that the phrase "subject to" in Section 153 meant that, until and unless the assessment list was revised or amended under Section 151 or 152, the assessment list would continue to be final. Rule 52(14)(vi) merely gives finality to the order passed under Rule 52(14)(v) subject to an appeal under Section 76 of 1964 Act, and cannot be understood as conferring a right of appeal.

18. It is no doubt true that the Rule making power of the Government in Section 130 of the 1964 Act is in Chapter XIV thereof, and not in Chapter X which alone is incorporated in Section 36 of the 1995 Act. The 1995 Act does not also confer any power on the Government to make rules. Does that mean that the statutory provisions in Chapter X of the 1964, relating to execution of decisions, decree or orders, cannot be enforced in the absence of Rules? In understanding the scope and purport of Chapter X of the 1964 Act, which has been incorporated by reference in Section 36 of the 1995 Act, it is permissible to refer to the other provisions of the 1964 Act. Even though only particular sections of an earlier Act are incorporated into the latter Act, in construing the incorporated sections it may, at times, be necessary and permissible to refer to other parts of the earlier statute which are not incorporated. [M/s. Surana Steels Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax and Ors,](#) . Where a single Section/Chapter of an Act is introduced into another Act, it must be read in the sense which it bore in the original Act from which it is taken, and, consequently, it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section/chapter meant, though those other sections are not incorporated in the new Act. (The Mayor, Aldermen, And Burgesses of the Borough of Portsmouth (acting as the Urban Sanitary Authority of the said Borough v. Charles Bovill Smith, James Goldsmith, (the Younger) and John Baker Goldsmith) (1885) Vol.X AC 364).

19. A reference to the other provisions of the 1964 Act, and the Rules made thereunder, is necessary to give a meaning to the machinery provisions in Chapter X of the 1964 Act, and to interpret them in such a manner as to ensure that such provisions are not rendered futile. A court of construction dealing with the language of a statute, in order to ascertain from and accord to the statute the meaning and

purpose which the legislature intended for it, strongly leans against any construction which tends to reduce a statute to futility. The provisions of a statute must be so construed as to make it effective and operative, on the principle "ut res magis valeat quam pereat". [Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and Others](#), ; [H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another](#), , [Union of India \(UOI\) Vs. B.S. Agarwal and Others](#), ; [Paradise Printers and Others Vs. Union Territory of Chandigarh and Others](#), . The court will presume that the Legislature did not intend a statute to have consequences which are objectionable or undesirable, or absurd or unworkable, or impracticable or inconvenient, or anomalous or illogical, or futile or pointless. (R. v. Central Valuation Officer (2003) 4 ALL ER 209).

20. The provisions of Chapter X of the 1964 Act, which are machinery provisions, must be construed in such a manner as to make it workable having regard to the doctrine "ut res magis valeat quam pereat". [Andhra Bank Vs. B. Satyanarayana and Others](#), ; [H.S. Vankani and Others Vs. State of Gujarat and Others](#), . They must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim ut res magis valeat quam pereat (it is better for a thing to have effect than to be made void). If the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. The Rule making authority also expects the rule framed by it to be made workable and never visualises absurd results. [H.S. Vankani and Others Vs. State of Gujarat and Others](#), . It would not be improper for this Court to refer to the scope of the Rule making power under Section 130 of the Act and the Rules made thereunder i.e., the 1964 Rules, more particularly to Rule 52 thereof which prescribes the procedure in execution of decrees, decisions or orders, in understanding the scope of Chapter X of the 1964 Act which has been incorporated by reference in Section 36 of the 1995 Act.

21. For the purpose of interpreting Chapter X of the 1964 Act, it is permissible to read Rule 52 of the 1964 Rules as if it was in Chapter X of the 1964 Act. The complex demands on modern legislation necessitates the plenary legislating body to discharge its legislative function by laying down broad guidelines and standards, to lead and guide as it were, leaving it to the subordinate legislating body to fill up the details by making necessary rules and to amend the rules from time to time to meet unforeseen and unpredictable situations, and within the framework of the power entrusted to it by the plenary legislating body. [State of Tamil Nadu Vs. Hind Stone and Others](#), . Rules framed, under the provisions of a statute, form part of the statute. But before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. [General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another](#), .

22. The rule making power conferred on the Government, for carrying out all or any of the purposes of the Act, must be confined to such of the purposes as are indicated in any of the provisions of the Act. [Board of Directors of Andhra Pradesh Co-operative Central Land Mortgage Bank Ltd. and Others Vs. Chittor Primary Co-operative Land Mortgage Bank Ltd. and Others,](#) . A statutory rule, while ever subordinate to the parent statute, is, otherwise, to be treated as a part of the statute, and as effective. "Rules made under the Statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation. [The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya,](#) ; Maxwell; Interpretation of Statutes, 11th Edn. pp. 49-50; [State of Tamil Nadu Vs. Hind Stone and Others,](#) .

23. As Rule 52 of the 1964 Rules prescribes the procedure for execution of decisions, decrees or orders as stipulated in Chapter X of the 1964 Act, it is not impermissible to read Rule 52 of the 1964 Rules as a part of Chapter X of the 1964 Act, in which event the procedure prescribed in Rule 52 of the 1964 Rules, along with Chapter X of the 1964 Act, can be treated as having been incorporated by reference in Section 36 of the 1995 Act. The 1995 Act was notified on 27.05.1995 and came into force on 01.06.1995. Both the 1964 Act and the 1964 Rules were in existence when the 1995 Act was made. As the State Legislature cannot be said to be unaware of the 1964 Act and the 1964 Rules when it incorporated Chapter X of the 1964 Act by reference in Section 36 of the 1995 Act, and as the Rules made under the 1964 Act must be construed as part of the Act itself, the legislature can be presumed to have intended to incorporate the 1964 Rules, to the extent they relate to Chapter X of the 1964 Act (i.e., Rule 52 of the 1964 Rules), also in Section 36 of the 1995 Act. On such a construction, it is permissible for the Tribunal to invoke Rule 52 of the 1964 Rules in the execution of the awards passed under the 1995 Act.

24. Even, in the absence of Rules prescribing the procedure for executing decrees, decisions or orders, the provisions of Chapter X of the 1964 Act, which have been incorporated by reference in Section 36 of the 1995 Act, must be given effect to. The whole working and functioning of Chapter X of the 1964 Act, as incorporated in Section 36 of the 1995 Act, cannot be withheld and rendered nugatory only for the reason of absence of the rules prescribing the procedure. Absence of Rules will not render the Act inoperative, and would not curtail the power conferred under the Act. The power vested under the Act would still be exercisable as provided under the provision. [Orissa State \(Prevention and Control of Pollution\) Board Vs. Orient Paper Mills and Another,](#) . While the power conferred by the Act can be exercised even in the absence of rules, such power should be exercised on well settled principles and norms which would satisfy the test of Article 14 of the Constitution. [Delhi Science Forum and others Vs. Union of India and another,](#) . It is not even urged before us that the procedure prescribed for execution of decisions, decrees and orders in Rule 52 of the 1964 Rules is in violation of Article 14 of the Constitution of India.

25. Even in the absence of Rules, the Tribunal, while executing awards under Section 36 of the 1995 Act, can follow any reasonable procedure. As Rule 52 of the 1964 Rules is also a reasonable procedure for execution of awards, it is not impermissible for the Tribunal to follow the procedure prescribed therein. It must be borne in mind that the onus, to demonstrate that a decision of the Tribunal is vitiated for adopting a procedure not sanctioned by the 1995 Act, is on the person who questions the validity thereof. This onus is discharged only by satisfying the court that the authority has adopted a procedure which does not satisfy the test of Article 14 of the Constitution or which is against the provisions of the statute in question. [Delhi Science Forum and others Vs. Union of India and another](#), . It has not even contended before us that the procedure, prescribed under Rule 52 of the 1964 Rules, does not satisfy the test of Article 14 of the Constitution or is against the provisions of the 1964 Act. The Tribunal is, therefore, not disabled from following the procedure prescribed in Rule 52 of the 1964 Rules in executing awards under the 1995 Act.

26. In the result, we answer the reference holding that a person aggrieved by a decision of the Tribunal under Section 37 of the 1995 Act, has no statutory remedy of an appeal there against , much less to the Tribunal itself, and the judgment in [S. Varalakshmi Vs. District Co-operative Office and Others](#), , to the extent it held that an appeal lies to the Tribunal, does not lay down the correct law. The Tribunal is also entitled to invoke Rule 52 of the 1964 Rules, and to follow the procedure prescribed therein, in executing awards under the 1995 Act.

27. In the normal course, we would have directed placing the matter before the Learned Single Judge but, as the result of both the Writ Petitions, are solely based on the questions referred to us, W.P. No. 31138 of 2012 is allowed. As C.T.A. No. 72 of 2012, filed before the Tribunal by the petitioner in W.P. No. 31974 of 2012, is itself not maintainable, both W.P. No. 31974 of 2012 filed before this Court, and C.T.A. No. 72 of 2012 filed before the Tribunal, are dismissed. As C.T.A. No. 72 of 2012 is dismissed as not maintainable, I.A. No. 188 of 2012 filed in C.T.A. No. 72 of 2012 shall also stand dismissed. The proceedings in E.P. No. 64 of 2011 shall continue, and the Tribunal shall adjudicate the same in accordance with law. The Miscellaneous Petitions pending, if any, in both the Writ Petitions shall stand disposed of. No costs.