

**P. Palaniappan Vs. the Co-operative Land Development Bank Limited D.B.L. (N), Through Its Sale Officer-cum-special Officer**

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**Court :** Chennai

**Decided On :** Nov-25-1994

**Reported in :** (1995)2MLJ108

**Appellant :** P. Palaniappan

**Respondent :** The Co-operative Land Development Bank Limited D.B.L. (N), Through Its Sale Officer-cum-special Offi

**Judgement :**

ORDER

**Thangamani, J.**

1. Revision petition under Article 227 of the Constitution of India against the order and decree passed by the Special Court of Co-operative Appellate Tribunal (District Judge) Madurai in C.M.A. (CS)No. 125 of 1993, dated 31.1.1994.

2. The petitioner was sanctioned a loan of Rs. 1,08,500 in the year 1985 for the purchase of a tractor. He was not prompt in paying the instalments. He fell into arrears. So the Special Officer cum Sub Registrar of Co-operative Societies by his order dated 29.6.1993 in H.R.A. No. 433/92-93 attached his movable and immovable properties and brought them for sale by invoking the provisions of Revenue Recovery Act as contemplated under Section 120 of the Co-operative

Societies Act. The five items of the movable properties attached include one easy chair, one Lakshmi Wet Grinder and 7 kuppams of paddy. The petitioner challenged the said attachment before the Special Tribunal for Co-operative cases, Madurai in C.M.A. (CS) No. 125/93. Holding that Section 152 of the Cooperative Societies Act is a bar to the maintainability of the appeal the tribunal dismissed the appeal. Hence this revision.

3. Section 120 of the Tamil Nadu Co-operative Societies Act states that without prejudice to any other mode of recovery which is being taken under that Act or any other Law for the time being in force, any money due to a primary land development bank may be recovered as if it were an arrear of land revenue. And Section 152 of the Co-operative Societies Act mentions that any person aggrieved by any decision or award passed under certain specified sections of the Cooperative Societies Act can appeal to the Tribunal. But Section 120 is not one among the provisions mentioned in Section 152. So the tribunal has held that no appeal lies against the order of the Sub Registrar in H.R.A. No.433/92-93, dated 29.6.1993.

4. Now there is no dispute that an appeal under Section 152 of Tamil Nadu Co-operative Societies Act before the Tribunal is not maintainable. It is the argument of Mr. Thiruvengadasamy learned Counsel for the revision petitioner that a revision before the Registrar also does not lie under Section 153(1) of the aforesaid Act. This section reads:

The Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under Sub-section (3) of Section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar in respect of any proceedings under this Act or the rules or the bye-laws not being a proceedings in respect of which appeal to the Tribunal is provided by Sub-section (1) of Section 152 to satisfy himself or themselves as to regularity of such proceedings, or the correctness, legally or propriety of any decision passed or order made therein; and, if, in any case, it appears to the Registrar, or the Government that any such decision or

order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly.

According to learned Counsel, provisions of Section 153 could be invoked by the Registrar only against the order of any officer subordinate to him in respect of any proceedings under the Co-operative Societies Act. The language of the section supports the said plea. Section 120(1) of the Act enables Registrar or any officer of a primary land development bank authorised by him in this behalf to exercise the powers of a Collector under Tamil Nadu Revenue Recovery Act for the purpose of recovery of money due to the said bank. In this case also the Deputy Registrar by his proceedings dated 28.3.1993 by virtue of the powers delegated to him under Section 120(1) of the Act has authorised the Special Officer of the Aranthangi Cooperative Land Development Bank to exercise such powers to execute the Revenue Recovery applications filed by the above said Bank in his office. So the Special Officer in his distraint proceedings against the revision petitioner has acted and exercised his power only under Revenue Recovery Act, whereas the revision contemplated under Section 153 of the Act is in respect of any proceedings under the Co-operative Societies Act. Since the Special Officer has exercised his powers in the impugned proceedings not under the Co-operative Societies Act, the provisions of Section 153 of the Act are not attracted. Besides, under Section 120(1), it is the Registrar or any officer of the land development bank authorised by the Registrar in this behalf who has to exercise the powers of a Collector under the Revenue Recovery Act for the purpose of the said recovery. And as per Rule 164(3) of the Tamil Nadu Co-operative Societies Rules the said officer of the land development bank shall be subject to such control or directions as the Registrar may give from time to time in the exercise of power and discharge of the functions under Section 120. So the quasi judicial function contemplated under Revenue Recovery Act is virtually exercised by the Registrar and evidently there cannot be any revision to the Registrar himself against the said exercise of powers.

5. On the other hand learned Counsel for the respondent submitted that a revision lies to the Government under Section 153 of the Act and so the contention of the revision petitioner that no alternative remedy is available to him is unsustainable. A

Careful reading of Section 153 would indicate that the Government is empowered to call for and examine the record of the Registrar in respect of any proceedings under the Act or the Rules or the Bye-laws to satisfy themselves as to regularity of such proceedings or the correctness, legality or propriety of any decision passed or order made therein. So, normally there is no impediment to prefer a revision to the Government under this section against the orders of Registrar. However since the revision contemplated under Section 153 is only regarding the regularity, correctness, legality or propriety of any decisions or proceedings under the Cooperative Societies Act and the impugned order is one under Revenue Recovery Act, no revision lies under Section 153 to the Government in this case.

6. Learned Counsel for the respondent argued that in this civil revision petition the revision petitioner has not only challenged the order of the Special Tribunal for Co-operative Cases, Madurai in C.M.A. (CS) No. 125 of 1993 but also the order of the Special Officer dated 29.6.1993 in R.R.A. No. 433/92-93. According to him the petitioner cannot continue both the reliefs in the same civil revision petition. However, in substance what is sought to be assailed in this revision petition is the order of attachment of certain movable items passed by the Special Officer in R.R.A. No. 433/92-93. As we have already seen the appeal preferred by the revision petitioner against the said order has been held not maintainable by the Special tribunal and this view of the tribunal is not disputed at present. And in view of the absence of any alternate remedy provided for in the Co-operative Societies Act the revision petitioner is entitled to invoke Article 227 of the Constitution and seek redress.

7. Learned Counsel for the respondent resists this revision petition also on the ground that no writ can lie against a Co-operative Society. In *Nayagarh Cooperative Central Bank v. Narayan* : AIR 1977 SC112 , the High Court of Orissa set aside the order passed by the Registrar of Co-operative Societies regarding the termination of services of the Secretary of the Bank. The High Court allowed the writ petition. When the Central Bank took up the matter before the Apex Court it was contended on behalf of the appellants that the High Court was in error in taking the view that a writ application under Article 226 of the Constitution of India can lie against a Co-operative Society registered under the Co-operative Societies

Act. The Supreme Court was not inclined to accept the view of the High Court and observed that judgment of the High Court should not be treated as an authority for the proposition that a writ petition is maintainable against a co-operative society. In *Kannan Tamilarasan v. Director of Sugars* (1991)2 L.W. 409, it has been held that a writ petition under Article 226 against a co-operative society is not maintainable. However these two citations are of no assistance to us since we are now concerned only with the maintainability of a revision under Article 227 and not on the issuance of a writ under Article 226 of the Constitution.

8. Learned Counsel for the respondent placed reliance on the decision of Nainar Sundaram, J. (as he then was) in *Savarimuthu v. Special Director of Enforcement* : AIR1987 Mad11 . There the learned Judge has held that the power under Article 227 may be exercised in the following contingencies: (1) lack of jurisdiction, erroneous assumption of jurisdiction or excess of jurisdiction or refusal to exercise jurisdiction; (2) grave dereliction of duty or flagrant violation of law or error of law apparent on the face of the record as distinguished from a mere mistake of law or an erroneous decision of law: (3) violation of the principles of natural justice; (4) perverse finding founded on no material whatsoever, and (5) arbitrary or capricious exercise of authority or discretion. On the basis of this decision learned Counsel for the respondent argued that there is no error apparent on the face of the record in the order of the Special Officer and that an erroneous view taken on the question of law could not be challenged under Article 227. The order of attachment of the three movable items can at best be only an error of law committed by the tribunal.

9. In *Baijnath Kathal v. M.K. Qureishi* : AIR 1990 MP24 , cited by learned Counsel for respondent a Division Bench of the Madhya Pradesh High Court has held that under Article 227, Constitution of India, the High Court would interfere only under limited circumstances, such as, arbitrary or capricious exercise of jurisdiction, where there is violation of rules of natural justice, or where the findings are perverse, or based on no evidence at all. Even if there are mistakes of facts or law, they cannot be corrected under Article 227, Constitution of India. The High Court cannot convert itself into a court of appeal or court of revision sitting over the decisions of the inferior courts in exercise of powers under Article 227.

10. In *Mohd. Yunus v. Mohd. Mustaqim* : [1984]1SCR211 , the Apex Court has held that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited 'to seeing that an inferior court or tribunal functions within the limits of its authority', and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

11. In *Sigma Agencies v. Thomas* : AIR1991 Ker102 , a single Judge of the Kerala High Court has held that the jurisdiction exercised by this Court under Article 227 in quality is not in the nature of a second-first appeal. The contours of the jurisdiction are well defined and as observed by Sabyasachi Mukherji, J. (as his Lordship then was) in *Chandravarkar Sita Ratna Rao v. Ashalatha S. Guram* : (1987)ILLJ345SC are hearing on facts is not contemplated under Article 227. The High Court must guard itself against using the jurisdiction of superintendence, as an appellate power. A finding cannot be interfered with, unless it is perverse, and perverse, it is, if it is a finding which no person reasonably instructed in law or facts would have come to.. As stated in *India Pipe Fitting Co. v. Fakmdin* : [1978]1SCR797 , however erroneous a finding may be, it is not liable to be interfered with under Article 227. Indeterminate rounds of hearing on facts is not in the contemplation of law, much less in the contemplation of Article 227.

12. In *Poosarilar Ekambaram Pillai v. Visalakshi* : AIR1991 Mad203 . Bakthavatsalam, J., has pointed out that under Article 227 of the Constitution of India, this Court should not interfere with the decisions of the tribunal even if there is an error of law or on facts. It is also well settled that simply because this Court can come to another conclusion, it will not be a ground for interfering with Article 227 of the Constitution.

13. In *Chandrasekhar Singh v. Siya Singh* : 1979 CriLJ13 , the Supreme Court ordains that the power under Article 227 is to be exercised most sparingly and only

in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

14. Whereas learned Counsel for the revision petitioner has placed reliance on *State of Gujarat v. Vakhat Singhji* : [1968]3SCR692 , where a Constitution Bench of the Supreme Court has held that the power of superintendence over all courts and tribunals which the High Court has under Article 227 of the Constitution extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. In case, the revenue tribunal decides an issue on a misreading of the provisions of the tenancy law the High Court cannot only set aside the decision but also direct it to make further enquiries after taking evidence.

15. In *Lonand Gram Panchayat v. Ramgiri* : (1967)11LLJ870SC , lays down that the High Court will not review the discretion of the Authority judicially exercised, but it may interfere if the exercise of the discretion is capricious or perverse or ultra vires.

16. In *Trimbak Gangadhar Telang v. R.G. Bhide* : AIR 1977 SC1222 , the Apex Court has held:'

It is only when an order of a tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept in or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution.

17. In *re. Annamalai* , : AIR1953 Mad362 , Ramaswami, J. had held that Article 227 confers upon the High Court a power of supervision over all judicial matters decided by any court or tribunal within the State. All agencies whether courts or not, performing the duty of deciding disputed questions of right between parties on behalf of and under the sanction of the State and in accordance with State made laws are placed under the administrative and judicial control of the High Court. Thus the High Court has got revisional jurisdiction under Article 227 by way of superintendence over the judicial work of a duly constituted tribunal, like the Deputy Registrar under the Co-operative Societies Act. Superintendence includes power to guide, and encourage Judges of the subordinate courts, to direct

subordinate courts and tribunals to carry out orders of the High Court; and to direct enquiry with a view to take disciplinary action for flagrant maladministration of justice.

18. A tribunal or a court cannot override the express provision of law. In such a case the general power of superintendence under Article 227 of the Constitution enables the High Court to remedy the mischief. It is now settled that the power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law. This power involve a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see ' that they do what their duty requires and that they do it in a legal manner. The High Court can interfere under Article 227 in case of error of law apparent on the face of the record as distinguished from a mere mistake of law or error of law relating to jurisdiction and in case of an order resulting in manifest injustice. The real object of superintendence is that the power may be exercised with reference to the circumstances of each particular case in such a way as to secure the furtherance of justice. In order to achieve its end, the power of superintendence under Article 227 Constitution must remain fluid. Grave miscarriage of justice and flagrant violation of law are the two paramount considerations by which a petition under Article 227 is to be determined.

19. In this case the Special Officer has ignored the provisions of Section 14-A of the Revenue Recovery Act in ordering attachment of the three items of movable properties referred to above. An easy chair is an item of bedding used for relaxation and so it is certainly an item of bedding exempted under Section 14-A(a) of the Revenue Recovery Act. Similarly, a wet-grinder has to be construed as a cooking vessel in the modern method of cooking. The paddy attached is also exempted under Section 14-A(b) of the Revenue Recovery Act as foodgrain. The Special Officer below has exceeded his jurisdiction and committed a flagrant violation of law in ordering attachment of these items which are exempted under Section 14-A of the Revenue Recovery Act. And it is not as if a citizen in helpless without any remedy in case the Special Officer chooses to order attachment of

items exempted from attachment under a statute. To prevent the miscarriage of justice in the instant case this Court has to act under Article 227 of the Constitution.

20. In the result, the civil revision petition is allowed and the proceedings dated 29.6.1993 of the Special Officer, Co-operative Land Development Bank, Aranthangi in R.R.A. No. 433/92-93 regarding attachment of item 2 wooden easy-chair item 4 wetgrinder and item 5 paddy seeds are set aside. Since it is represented that these items have already been sold, the sale proceeds are directed to be adjusted towards amount due by the revision petitioner to the Bank, without prejudice to the other rights of the revision petitioner. No cost.

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