
Before N.K. Sodhi & N.K. Sud, JJ

NAURATA,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. 2986 of 1998

28th March, 2000

Constitution of India, 1950—Art. 226—Punjab Co-operative Societies Act, 1961—Ss. 55 & 56—Punjab Co-operative Societies Rules, 1963—Rl. 51—Code of Civil Procedure, 1908—S.9—Dispute regarding possession of land between the petitioner & respondent No. 3, both members of the society—Petitioner filing civil suit—Trial court decreeing the suit which was affirmed upto High Court—Respondent raising dispute under section 55 of the Act—Registrar referring the matter to the Arbitrator—Arbitrator allowing the petition of the respondent—S. 55 prescribes that disputes which touch the constitution, management or the business of the Society can only be referred to the Registrar—Dispute regarding forcible dispossession is outside the provisions of S.55 of the Act—Award passed by the Arbitrator is without jurisdiction.

Held that, no doubt, the petitioner and respondent No. 3 are members of the society but every dispute between the members is not covered by section 55 of the Act. Only those disputes between the members which touch the Constitution, management or the business of the Society can be referred to the Registrar for decision. The dispute regarding forcible dispossession, if any, as alleged by respondent No. 3 cannot be said to touch the Constitution, management or the business of the society and, therefore, it was clearly outside the provisions of section 55 of the Act and could not be referred by the Registrar to the Arbitrator for decision. Thus, the impugned award is without jurisdiction and cannot be sustained.

(Para 5)

Viney Mittal, Senior Advocate with Arvind Bansal, Advocate *for the petitioner.*

Gurminder Singh, DAG, Punjab, *for respondents No. 1 & 2.*

D.V. Sharma, Advocate *for respondent No. 3*

JUDGMENT

N.K. Sodhi, J.

(1) Petitioner and respondent No. 3 are members of the Scheduled Caste Agricultural Land Owning Cooperative Society, Kami Kalan Tehsil Rajpura District Patiala (for short the society) which is registered under the Punjab Cooperative Societies Act, 1961 (hereinafter called the Act). The primary object of the society is to advance economic interest of its members by encouraging them to pool their land so as to form blocks for joint cultivation and allied purposes, to purchase or take the land on lease in the name of the society for cultivation and to take various steps to increase agricultural production. A total of 724 Bighas of land in village Kami Kalan was pooled by the thirty original members of the society and the same was distributed amongst them for cultivation. Respondent No. 3 claims that six killas of land (for short the land in dispute) was in his cultivating possession on which he had built a house and that the petitioner played a fraud on him and demolished the house and took forcible possession of the land. He raised a dispute under sections 55/56 of the Act read with Rule 51 of the Punjab Cooperative Societies Rules, 1963 and filed a petition before the Assistant Registrar, Cooperative Societies, Punjab who was appointed the Arbitrator. Notice of the petition was issued to the petitioner and the society. The petitioner controverted the allegations made by respondent No. 3 in his petition and claimed that land measuring 16 Bighas 8 Biswas including the land in dispute was in his possession and that respondent No. 3 wanted to occupy the same. It was further pleaded that the petitioner had filed a civil suit for injunction to restrain respondent No. 3 from interfering with his possession and the same was decreed by Sub Judge Ist Class, Rajpura on 31st July, 1986. It is also pleaded that an appeal filed against the order of the trial court was dismissed by the District Judge and that order was affirmed by this court in Regular Second Appeal on 5th February, 1988. It was also averred by the petitioner that after the decree of the civil court respondent No. 3 and one Gurcharan Singh illegally occupied the land in dispute which was contrary to the judgment of the Civil court and that on an application filed by him the possession was restored to him by the court of Sub Judge Ist Class and that he is in possession of the land in dispute since 4th February, 1994. The Arbitrator examined the record of the society which was produced before him and after going through the written statement filed by the petitioner came to the conclusion that the land in dispute was being cultivated by respondent No. 3 and that he was

the only rightful holder of the land. The petition under section 55 of the Act was accordingly allowed and respondent No. 3 was held to be the owner of the land in dispute which, according to the Arbitrator, had been allotted to him by the society. It is against this award of the Arbitrator that the present petition has been filed under Article 226 of the Constitution.

(2) The argument of the learned counsel for the petitioner is that the dispute between the parties before the Arbitrator was not covered by the provisions of Section 55 of the Act and that it was a dispute of a civil nature of which a civil court alone could take cognizance. It was further argued that the award of the Arbitrator is without jurisdiction and the same deserves to be quashed. Respondents, on the other hand, raised a preliminary objection that against the impugned award of the Arbitrator an appeal is competent under the Act which remedy the petitioner has not availed of and, therefore, the writ petition deserves to be dismissed. It was further contended on behalf of respondent No. 3 that parties to the dispute before the Arbitrator were members of the society and, therefore, the dispute was squarely covered by the provisions of Section 55 of the Act.

(3) We have heard counsel for the parties at length. Before dealing with the contentions advanced by the parties, it is necessary to dispose of the preliminary objection raised by the respondents. It is true that the impugned award given by the Arbitrator is appealable under section 68 clause (h) of the Act and that the petitioner has not availed of that remedy. In the normal course, we would have relegated the petitioner to pursue the alternative remedy of appeal but since we are of the view that the award of the Arbitrator is wholly without jurisdiction and this court did entertain the petition by issuing notice of motion to the respondents and that the petition having remained pending for almost a year and half, it will not be fair and proper to dismiss the petition at this stage and direct the petitioner to pursue the remedy of appeal which by now has become barred by time. Moreover, existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction by this court under Article 226 of the Constitution and it is only a self imposed restriction to be exercised judiciously on the facts and circumstances of each case. We, therefore, reject the preliminary objection raised by the respondents.

(4) In order to examine the contention of the petitioner that the dispute raised by respondent No. 3 is not covered by the provisions of Section 55 of the Act, it is necessary to refer to those provisions. Section 55 which deals with the disputes which could be referred to arbitration

reads thus :

“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 member and persons claiming through members, past members and deceased member ;
- (b) between a member, past member or person claiming through a member, past member 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 any past committee, any officer, agent or employee ; or any past officer, past 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 cooperative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society ;

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

(2) For the purpose of sub section (1), the following shall be deemed to be dispute touching the constitution, management or the business of a cooperative society, namely—

- (a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representative of a deceased member, whether such debt or demand be admitted or not ;
- (b) a claim by a surety 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 is not a dispute touching the constitution, management or the business of a cooperative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.”

(5) No doubt; the petitioner and respondent No. 3 are members of the society but every dispute between the members is not covered by Section 55 of the Act. Only those disputes between the members which touch the Constitution, management or the business of the society can be referred to the Registrar for decision. The dispute raised in the instant case by respondent No. 3 is that he was in possession of the land in dispute and that the petitioner forcibly dispossessed him. The petitioner, on the other hand, in his written statement before the Arbitrator took the stand that he was in possession of the land in dispute on the basis of a warrant of possession issued by the civil court in pursuance of a court decree. The allotment of the land in dispute was not in question and the only issue was whether respondent No. 3 had been forcibly dispossessed or not. This dispute had arisen between the petitioner and respondent No. 3 not as members of the society and the same was purely of a civil nature and, therefore it was the civil court alone which could take cognizance of the same in view of the provisions of Section 9 of the Code of Civil Procedure. The dispute regarding forcible dispossession, if any, as alleged by respondent No. 3 cannot be said to touch the Constitution, management or the business of the society and, therefore, it was clearly outside the provisions of Section 55 of the Act, and could not be referred by the Registrar to the Arbitrator for decision. In this view of the matter, we have no hesitation in holding that the impugned award is without jurisdiction and cannot be sustained.

(6) In the result, the Writ petition succeeds and the impugned award dated 15th April 1996 passed by the Assistant Registrar, Cooperative Societies, Rajpura quashed. There is no order as to costs.

R.N.R