

CASE NO.:
Appeal (civil) 5966 of 2001

PETITIONER:
HARIJAN DEVABHAI JIVABHAI

Vs.

RESPONDENT:
BECHARBHAI VALABHAI VANIYA & ORS.

DATE OF JUDGMENT: 28/08/2001

BENCH:
M.B. Shah & Brijesh Kumar

JUDGMENT:

Shah, J.

Leave granted.

The appellant has filed the present appeal against the judgment and order dated 23rd April, 2001 passed by the High Court of Gujarat at Ahmedabad in Civil Application No.680 of 2001 in Letters Patent Appeal No.25 of 2001.

Learned Single Judge in Special Civil Application No. 11161/2000 passed the order to the effect that if the Liquidator had taken over the charge of the society, then he was directed to proceed further in the matter and protect the interest of the society and submit his report on or before 10.1.2000. That order was challenged by the respondent by filing the aforesaid LPA.

By the impugned order, without deciding the Letters Patent Appeal the High Court has allowed the same and has ignored various orders passed by the concerned authorities in number of petitions filed by the parties. The Court held that if the Liquidator is allowed to take charge of the agricultural land, its yield is bound to suffer because he will not be in a position to till the land with the same zeal as that of the members of the Co-operative society who have been cultivating the land since last 25 years. The Court, therefore, stayed the operation of the interim relief which was granted by the learned Single Judge with a clarification that the society should continue to remain in possession of the land in question for cultivation purposes, subject to the outcome of the petition and any orders that might be made during the pendency by the learned Single Judge. Effect is after the aforesaid order, the Letters Patent Appeal which was filed against the interim order passed by the learned Single Judge would not survive.

Chequered facts of the case are that Dr. Ambedkar Samudaik Kheti Sahakari Mandali of village Pipali, District Surendranagar is a registered society, registered on 29.3.1975, allegedly having aim and object of upliftment of the schedule tribes through agricultural activities, providing employment and financial assistance to the members of the lower strata of the society. Appellant is a member

and respondent no.1 is Chairman of the Mandali. On 7.7.1977, 184 acres of government land was allotted to the Society on collective basis by the Deputy Collector, Dhangadhra. At the time of inception of the society, there were 24 members as against 27 of the present. It is contended that out of the 27 members, 23 belong to one and the same family. The Chairman of the society, respondent no.1, is alleged to have been running the society since last more than 25 years. The District Registrar, Cooperative Societies, Surendranagar, passed an interim order under Section 107 of the Gujarat Cooperative Society Act, 1961 (hereinafter referred to as the Act) and appointed Co-operative Officer as Liquidator and gave opportunity of making representation against the said order to respondent no.1.

Thereafter, on 29.5.2000 the District Registrar, Cooperative Societies, Surendranagar passed a final order under Section 107(3) of the Act, with the direction that the Liquidator should complete the procedure of liquidation within prescribed time.

It appears that the order passed by the District Registrar was challenged by filing appeal before the Additional Registrar, Co-operative Societies (Appeals), Ahmedabad. The authority admitted the appeal but no interim order was passed. Hence, the Society preferred a revision application before the Deputy Secretary, Co-operative Societies (Appeals), Ahmedabad. In that revision application, the interim relief claimed by respondent no.1 was refused. That order was challenged by filing Special Civil Application No.4021 of 1999 before the High Court of Gujarat at Ahmedabad. In that petition it was contended that the Liquidator has taken charge of the Society on 2.6.1999. The learned Single Judge by order dated 21.1.2000 rejected the said petition by observing that against the interim order petition was not required to be entertained and directed the Additional Registrar to decide the appeal within 15 days and in the meantime, parties were directed to maintain status quo.

Thereafter, by order dated 25.9.2000 the Additional Registrar, Co-operative Societies (Appeals), Ahmedabad set aside the final order dated 29.5.1999 passed by the District Registrar, Surendranagar and directed him to decide the matter afresh after hearing the parties.

The appellant has also produced on record number of other orders passed by the High Court in different matters between the parties. One such order is dated 12th March 2001 passed in Special Criminal Application No. 78 of 2000 filed by respondent No.2, wherein after considering the various contentions, the Court finally observed that dispute has to be finally resolved by the District Registrar of the Co-operative Societies and not by the process adopted by the Society. The Court also observed that there was interim order to maintain status quo as it existed.

From the aforesaid narration of facts, it is apparent that the interim order dated 06.3.1999 passed by the District Registrar, Co-operative Societies, Surendranagar under Section 107 (1) of the Act remains in force. By the said order, Co-operative Officer is appointed as the Liquidator of the Society. Whether that order should be made final or not is still required to be decided by the District Registrar as the matter has been remitted back by the Additional Registrar Co-operative Societies (Appeals) by order dated 25th September 2000. Previous orders passed by the High Court directing the parties to maintain status quo are in operation. The Liquidator has taken charge of the Society on 2nd June, 1999. On 29th December 2000, the Liquidator appointed a Watchman to look after the land of the Society. In such a situation, there was no reason for the High Court to set at naught previous orders passed in different proceedings without deciding the Letters Patent Appeal on merits.

Further, the reason given by the High Court for setting aside the status quo order is, on the face of it, unjustifiable. The Court held that if Liquidator is allowed to take charge of agricultural land, its yield is bound to suffer because he will not be in a position to till the land with the same zeal as that of the members of the Co-operative Society who have been cultivating the land since last 25 years. This reasoning is based on the assumption that the Liquidator who is an official of the Government will not be in a position to manage the affairs of the Co-operative Society including getting the land cultivated. The appointment of Liquidator or receiver, as the case may be, is known method for protecting the property in dispute. Unauthorised cultivation of land with zeal does not confer a right to continue cultivation of the land in violation of the law. Allegation against the Society was that it was formed by one family and 23 members of the said society belonged to the same family. Because of the said fraud being noticed, the District Registrar exercised his powers. The Gujarat Co-operative Societies Act empowers the District Registrar to pass such appropriate orders. Further if reasoning of the High Court is accepted, in no set of circumstances, Liquidator could be appointed for the Co-operative Societies or for Companies registered under the Companies Act under different enactments. Appointment of Liquidator is accepted form of winding up of a Society or a Company. Further, in case where Liquidator is appointed of a Society or a company having agricultural land, he is not required to cultivate the same personally and he can certainly take steps for its cultivation either by giving licence or by agency agreement. Therefore, there is no question of agricultural yield suffering because of appointment of a Liquidator. Similarly, in appropriate cases, Court may appoint receiver to protect and preserve the property. In some cases, the receiver may permit the person who is holding the property to act as an agent of the receiver with a direction to deposit the royalty amount fixed by the receiver or on such other conditions which may meet the interests of justice. This may prevent further injury to the rights of the parties and protect the property. If the allegation against the respondent that Society was established by committing fraud is found to be true then such person should not be permitted to take undue advantage of his fraud.

In the present case, at present the dispute is pending with the District Registrar. Interim order passed by the District Registrar is in force. Liquidator has taken possession of the land. Therefore, till the disposal of the matter by the District Registrar, it is directed that Liquidator would continue in possession of the property. To avoid any dispute and also to see that the agricultural yield does not suffer, the Liquidator would grant licence to cultivate the land on the terms and conditions which may be fixed by him or on the basis of agency agreement by recovering a stipulated amount, to the Society or its members. In any case, sale of the agricultural produce from the land in question should be done under his supervision and control.

With the above directions, the impugned order passed by the High Court is set aside. We make it clear that the authorities shall decide the matter on merits without being influenced by any observations made in this order.

The appeal stands allowed with no order as to costs.

.J.
(M.B. SHAH)

.....J.
(BRIJESH KUMAR)

August 28, 2001.

JUDIS