

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.28047 OF 2012

DATED:2.6.2015

Between:

Thota Tata Rao ... Petitioner

And

The District Collector

Krishna District at Machilipatnam

and others

... Respondents

COUNSEL FOR THE PETITIONER : Mr. C. Raghu

COUNSEL FOR THE RESPONDENT NOS.1, 2 and 4: Government Pleader
for Cooperation (AP)

COUNSEL FOR RESPONDENT NO.3 : None appeared

THE COURT MADE THE FOLLOWING:

ORDER:

This writ petition is filed for a Mandamus to set aside the Proceedings Rc. No.5744/2003/MTM/C-1, dt.28.12.2011 of respondent No.1 whereby he has authorized respondent No.2 to file a criminal complaint against the petitioner.

2. I have heard Mr. C. Raghu, learned counsel for the petitioner, and the learned Government Pleader for Co-operation (AP).

3. The petitioner was a President of Viswanathapalli Primary Agricultural Cooperative Society Limited. Proceedings under Section 60 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act') were initiated for the alleged misappropriation of a certain amount by the petitioner. Initially a surcharge order was passed on 15.11.2003 by the Joint Registrar/District Cooperative Officer, Krishna District at Machilipatnam. The said order was questioned by the petitioner by way of an appeal. The appeal was allowed and the case was remanded to the original authority. After remand, the Deputy Registrar of the Cooperative Societies, Machilipatnam, has passed a fresh order on 26.3.2011 wherein the petitioner was found guilty of misappropriating a part of the amount belonging to the cooperative society, along with the then Paid Secretary. The petitioner, it is stated by the learned counsel appearing for him, instead of questioning the said order has paid the entire amount of Rs.85,735/- payable under the surcharge order. Following the surcharge order passed against the petitioner, respondent No.2 has approached respondent No.1 for sanction of the petitioner's prosecution. Vide the impugned proceedings respondent No.1 has granted the sanction. It is this order which is questioned in this writ petition.

4. A counter affidavit is filed on behalf of respondent Nos.1, 2 and 4.

5. At the hearing, Mr. C. Raghu, learned counsel for the petitioner, strenuously contended that the impugned proceedings issued by respondent No.1 are without jurisdiction. He has elaborated his submission by stating that under Section 83(3) of the Act, no prosecution shall be instituted under the Act without the previous sanction of the Registrar and that respondent No.1 is only the Collector and not the Registrar and that therefore it is only the Registrar appointed under Section 3(1) of the Act who is entrusted with the power to sanction prosecution. The learned counsel further submitted that though Section 2(n) of the Act defines 'Registrar', as including any person other than the Registrar appointed under Section 3(1) of the Act, such persons should have been conferred with the power of the Registrar under the specific provisions of the Act and that as the Collectors have not been conferred with such power under Section 83(3) of the Act, they cannot be treated as Registrars within the meaning of the said provision. He has referred to Section 62(1)(b) of the

Act to fortify his submission.

6. Opposing the above submission, learned Government Pleader for Co-operation (AP) has relied upon the Notification 7.10.2009 published in the Andhra Pradesh Gazette dt.6.11.2009 and submitted that since the Collectors have been appointed as Registrars under Section 3(1) of the Act for the specific purpose under Section 83(3) of the Act, respondent No.1 has jurisdiction to sanction the prosecution of the petitioner.

7. Countering his submission, the learned counsel for the petitioner has submitted that if it is assumed that the Collectors are appointed as Registrars under Section 3(1) of the Act, they are bound to function under the superintendence of the Registrar of the Cooperative Societies appointed under Section 3(1) of the Act and that in the instant case there is no material on record to show that respondent No.1 has obtained appropriate instructions from the Registrar of Cooperative Societies before sanctioning the prosecution of the petitioner.

8. In order to resolve the dispute, the relevant provisions of the Act need to be noticed.

Section 2(n) of the Act defines 'Registrar' as under:

'Registrar' means the Registrar of Cooperative Societies appointed under Section 3(1) and includes any other person on whom all or any of the powers of the Registrar under this Act are conferred:

Section 3 of the Act reads as under:

3. Appointment of Registrar and other persons for the purpose of this Act: - (1) *There shall be appointed a Registrar of Cooperative Societies for the State and as many other persons as the Government think fit for the purposes of this Act.*

(2) *Every other person appointed under sub-section (1) shall exercise under the general superintendence of the Registrar, such powers of the Registrar, under this Act as the Government may from time to time confer on him.*

Section 83 of the Act, which deals with cognizance of offences, reads as follows.

"(1) No court inferior to that of a Magistrate of the first class or a Metropolitan Magistrate shall try any offence under this Act.

(2) Every offence under this Act shall, for the purpose of the Code of Criminal Procedure, 1973, be deemed to be cognizable.

(3) No prosecution shall be instituted under this Act without the previous sanction of the Registrar.”

9. On a careful reading of the above mentioned provisions, it is clear that the Act envisages not only the appointment of a Registrar of the Cooperative Societies for the State, but also any other person as a Registrar, besides conferring the powers on such persons all or any of the powers of the Registrar under the Act. Before proceeding further, it needs to be noted that the validity of the Notification dt.7.10.2009 appointing the Collectors as Registrars for the purpose of exercise of powers under Section 83(3) of the Act, is not questioned. A careful perusal of the said notification reveals that the District Collectors have been appointed for sanctioning prosecution against the personnel connected with the primary level and District level cooperative societies only. This appointment is made under Section 3(1) of the Act. It is a moot question as to whether it was appropriate for the State Government to invoke Section 3(1) of the Act for appointing Collectors as Registrars, for the limited purpose of exercise of power under Section 83(3) of the Act, instead of conferring such powers on them without such appointment. This question need not be addressed as the validity of the notification is not under challenge. The fact, however, remains that the State Government has exercised the power conferred on it under Section 3(1) of the Act by appointing all the Collectors as Registrars for exercising the powers under Section 83(3) of the Act. On the strength of such appointment, respondent No.1 very well answers the description of the ‘Registrar’ referred to under Section 83(3) of the Act. Once an appointment is made under Section 3(1), the appointee is entitled to exercise all the powers of the regular Registrar which are specifically conferred on him by proceeding under which he is appointed. The words “All or any other powers under this Act are conferred” are referable to the powers conferred on the regular Registrar. Such powers can as well be conferred on others appointed as Registrar. Reliance on Section 62(1)(b) of the Act by the counsel is wholly misplaced. This is only an enabling provision whereunder the regular Registrar can make over his functions to another person specifically appointed by the Government to discharge his functions as arbitrator under Section 61 of the Act. Mere absence of such a provision under Section 83(3), does not denude an appointee under Section 3(1) of the Act of the exercise of the

specific power conferred on him by the Government. Therefore, it is not correct to contend that the persons other than the Registrar appointed under Section 3(1) of the Act can exercise powers only if a particular statutory provision under the Act permits such exercise. Hence, the submission of the learned counsel for the petitioner that respondent No.1 has no jurisdiction to sanction prosecution of the petitioner is without any merit.

10. The submission of the learned counsel for the petitioner that if respondent No.1 was appointed under Section 3(1) of the Act, he has to necessarily take instructions from and act under the directions of the Registrar of the Cooperative Societies under Section 3(2) of the Act, can be referred only to be rejected. Under sub-section (2) of Section 3 of the Act, the same persons, other than the Registrar of Cooperative Societies, appointed as Registrars under sub-section (1) shall exercise the powers under the general superintendence of the Registrar. The phrase 'general superintendence' shall not be understood casting obligation on the other appointees to obtain permission from the Registrar of Cooperative Societies before exercising the power conferred on them. At best it could be said that where in respect of any power that is exercisable by persons appointed under sub-section (1) of Section 3 of the Act as Registrars, the Registrar of Cooperative Societies may issue general directions and in such a case such Registrars shall not act in violation of such directions. In the instant case, it is not the pleaded case of the petitioner that the impugned sanction of prosecution granted by respondent No.1 against the petitioner is contrary to any of such general directions issued in exercise of his powers of general superintendence by the Registrar of Cooperative Societies.

11. On the analysis as above, I do not find any illegality or jurisdictional error in the order passed by respondent No.1.

12. The writ petition is therefore dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. No.35730 of 2012 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

02.06.2015

L.R. copy to be marked.

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