

A-03
Ct No.09
05.02.2024
TN

WPA No. 21285 of 2023

Sri Kartik Chandra Das
Vs.
State of West Bengal and others

Mr. Sukumar Bhattacharya,
Mr. Ashit Kr. Chakraborty,
Ms. Puja Sonkar

.... for the petitioner

Mr. Suman Ghosh,
Mr. Suman Singh

.... for the State

Mr. Srijan Nayak,
Mr. Ankit Sureka,
Mr. Biplob Das

.... for the respondent no.2

Mr. Subhajit Panja

.... for the respondent nos.5 & 6

1. The petitioner has preferred a three-fold challenge to the impugned order passed by the Deputy Registrar of Co-operative Societies, Hooghly Range on August 03, 2023. The petitioner admittedly suffered an award under the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as “the 2006 Act”) from the Registrar. No appeal was preferred against the same.
2. Subsequently a proceeding was initiated under the Bengal Public Demands Recovery Act, 1913

(hereinafter referred to as “the 1913 Act”) for recovery of the amount due. The same was registered as Certificate Case No. 04 of 2022-23. In the said proceeding, the Deputy Registrar proceeded to pass the impugned order of attachment. However, it is contended that under the 1913 Act, Section 11 specifically enumerates who may execute the certificate, limiting the said persons to the Certificate Officer in whose office the original certificate is filed or the Certificate Officer to whom a copy of the certificate is sent for execution under Section 12(1).

3. In the present case, however, it is not the Certificate Officer but the Deputy Registrar who passed the order. Hence, the impugned order is palpably devoid of jurisdiction.
4. Secondly, it is argued that no prior notice was given to the petitioner, thereby flouting the law and the inherent tenet of natural justice, *audi alteram partem*.
5. Thirdly, it is argued that under Rule 23 of the Rules formulated under the said Act, where the property is immovable, no attachment need be made before sale.
6. Learned counsel for the Co-operative Societies submits that the petitioner, in violation of the

attachment order, has already sold one of the attached properties.

- 7.** Learned counsel for the Deputy Registrar, Co-operative Societies submits that under Section 138 of the West Bengal Co-operative Societies Act, 2006 the Registrar or the Deputy Registrar on his behalf, has the power to direct conditional attachment.
- 8.** Learned counsel for the State also points out that under Section 138, the expression “may” has been used, which can be extended to confer power on the Deputy Registrar or the Registrar.
- 9.** There are several palpable illegalities in the impugned order.
- 10.** First, as rightly pointed out by learned counsel for the petitioner, the order was passed in connection with a certificate case initiated specifically under the 1913 Act and not in an independent proceeding under Section 138 within the compass of the 2006 Act. Hence, Section 11 of the 1913 Act is squarely attracted, which confers power only on the Certificate Officer and none else to pass such an order.
- 11.** In the present case, the Deputy Registrar of Co-operative Societies did not have any jurisdiction to pass any order in connection with the

certificate proceeding initiated under the 1913 Act.

- 12.** Thus, the attempt of the Deputy Registrar to act at cross purposes by mixing up between the operations of the 2006 Act and the 1913 Act is palpably *de hors* the law. Hence, being without jurisdiction, the impugned order is a nullity.
- 13.** In any event, the petitioner is also justified in arguing that apart from the petitioner's property, there is substantial doubt whether the properties of the petitioner's wife and father could also be attached, since they do not have any connection with the award-in-question.
- 14.** The petitioner is also justified in contending that under Rule 23, in case of immovable properties, there is no scope of prior attachment before sale. In any event, even if it were to be assumed that the order could have been passed by the Deputy Registrar under Section 138 of the 2006 Act, the same is devoid of any reason and/or application of any of the yardsticks as stipulated in the sub-clauses under Section 138, to the extent that the Registrar or the Deputy Registrar had to be satisfied before passing the order that the petitioner was about to dispose of the whole or any part of his property or about to remove the

whole or any part of its property from the local limits of the jurisdiction of the Registrar. Such satisfaction is not recorded in the impugned order.

- 15.** Hence, in view of the above discussions, the impugned order is palpably without jurisdiction and has to be set aside.
- 16.** Insofar as the argument made by the Co-operative Societies that in terms of Section 51 of the 1913 Act, that an appeal is maintainable from an original order made under the Act, it is well-settled that availability of even an equally efficacious alternative remedy is not an absolute bar to the exercise of judicial review under Article 226 of the Constitution of India where there has been a palpable jurisdictional error and/or jurisdiction has been assumed by an authority which does not have any power under the concerned statute to do so.
- 17.** The said principle applies squarely to the present case, since, strictly speaking, the order impugned herein was not a proper order passed under the 1913 Act.
- 18.** In any event, since the order has been held to be *non-est*, being a nullity in the eye of law in view of utter lack of jurisdiction of the author of the

same, the same cannot stand a moment's scrutiny under judicial review and the availability of an appeal under Section 51 of the 1913 Act, with its limited constraints, is not at all an impediment in the writ court passing the present order.

- 19.** Seen from such perspective, WPA No. 21285 of 2023 deserves to succeed. Accordingly, the said writ petition is allowed, thereby setting aside the impugned order dated August 03, 2023 annexed at page-26 of the writ petition.
- 20.** However, nothing in this order shall prevent the appropriate authority under the 1913 Act to initiate a fresh certificate case and to take the same to its logical culmination in accordance with law in the light of the above observations.
- 21.** It is further made clear that since the petitioner is willing to approach the Co-operative Society for a compromise by making payments, nothing in this order shall prevent the parties from reaching a settlement out of court, if they so choose to.
- 22.** Any steps, if intended to be taken or have been taken pursuant to the order which has been hereby quashed, stands automatically set aside as well.
- 23.** There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)