



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JULY, 2024

BEFORE

R

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 29196 OF 2014 (SCST)

C/W

WRIT PETITION NO. 17857 OF 2015 (SCST)

WRIT PETITION NO. 17858 OF 2015(SCST)

IN W.P.NO.29196/2014

BETWEEN

THE BANGALORE, BANGALORE RURAL AND
RAMANAGARA DISTRICT CENTRAL
CO-OPERATIVE BANK LTD.,
P B NO.1813, LAKSHMI SADANA
5TH MAIN ROAD
CHAMARAJPET
BANGALORE 560 018
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
SRI B R LINGARAJU

...PETITIONER

(BY SRI. SOMASHEKAR., ADVOCATE)

AND

1. THE ASST. COMMISSIONER
BANGALORE NORTH DIVISION
BANGLAORE.
2. SRI M B ARUN KUMAR
PROP M/S M B ENTERPRISES
NO.5, 2ND CROSS
SRIRAMAPURAM
BANGALORE 560 021





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3. JAVAHAR HOUSE BUILDING CO-OPERATIVE LTD,
SESHADRIPURAM
BANGALORE 560 020
REPRESENTED BY SECRETARY
4. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
PAMPA MAHAAKAVI ROAD
CHAMARAJAPET
BANGALORE 560018
5. THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETY AND RECOVERY OFFICER
BANGALORE DISTRICT AND RURAL CO-OPERATIVE
CENTRAL BANK LTD.,
CHAMARAJAPET
BANGALORE 560018
6. SRI MUNIRAMA
S/O SRI DODDAIAH
NO.374, 65TH CROSS
5TH BLOCK
RAJAJINAGAR
BANGALORE 560010
7. THE SPECIAL DEPUTY COMMISSIONER
BANGALORE URBAN DISTRICT
BANGALORE.

...RESPONDENTS

(BY SMT. SAVITHRAMMA., AGA FOR R1 & R4, R5 & R7;
SRI. R. VIJAYAKUMAR., ADVOCATE FOR R2;
SRI. PRAVEEN S.L., ADVOCATE FOR
SRI. ANANDA K., ADVOCATE FOR R3;
SMT. ARCHANA K.M., ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED ORDER NO.K.SC.ST.170/2007-08 DATED 26.08.2010
PASSED BY THE 1ST RESPONDENT AT ANNEXURE-C AND ETC.

IN W.P.NO.17857/2015
BETWEEN

THE BANGALORE, BANGALORE RURAL AND



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RAMANAGARA DISTRICT CENTRAL
CO-OPERATIVE BANK LTD.,
LAKSHMI SADANA
NO.6, 5TH MAIN ROAD
CHAMARAJPET
BANGALORE 560 018
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
SRI B R LINGARAJU

...PETITIONER

(BY SRI. SOMASHEKAR., ADVOCATE)

AND

1. THE ASST. COMMISSIONER
BANGALORE NORTH DIVISION
BANGALORE-560001.
2. SRI M B ARUN KUMAR
PROP M/S M B ENTERPRISES
NO.5, 2ND CROSS
SRIRAMAPURAM
BANGALORE 560 021
3. JAVAHAR HOUSE BUILDING CO-OPERATIVE LTD,
SESHADRIPURAM
BANGALORE 560 020
REPRESENTED BY SECRETARY
4. SRI. D. RAJANNA
MAJOR,
S/O LATE SRI. DASAPPA
NO. 169, 2ND CROSS, 2ND MAIN ROAD,
KAMALANAGAR,
BENGALURU-560079.
5. SMT. PREMA
MAJOR
D/O LATE SRI. DASAPPA
NO. 169, 2ND CROSS, 2ND MAIN ROAD,
KAMALANAGAR,
BENGALURU
PIN -560079.



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6. SRI. D. VENKATESHA MURTHY
MAJOR
S/O LATE SRI, DASAPPA
NO. 169, 2ND CROSS, 2ND MAIN ROAD,
KAMALANAGAR,
BENGALURU
PIN – 560079

7. SRI. D. VASUDEV
MAJOR,
S/O LATE SRI. DASAPPA
NO. 169, 2ND CROSS, 2ND MAIN ROAD,
KAMALANAGAR,
BENGALURU
PIN – 560079

- 8 . SMT. M.D. RAJESHWARI
MAJOR
D/O LATE SRI. DASAPPA
NO. 169, 2ND CROSS, 2ND MAIN ROAD,
KAMALANAGAR,
BENGALURU
PIN – 560079

- 9 . SMT. SAVITHRAMMA
MAJOR
D/O LATE SRI. DASAPPA
NO. 169, 2ND CROSS, 2ND MAIN ROAD,
KAMALANAGAR,
BENGALURU
PIN – 560079

- 10 . SMT. LALITHA
MAJOR
D/O LATE SRI. DASAPPA
NO. 169, 2ND CROSS, 2ND MAIN ROAD,
KAMALANAGAR,
BENGALURU
PIN – 560079

- 11 . THE SPECIAL DEPUTY COMMISSIONER
BANGALORE URBAN DISTRICT
BANGALORE-560001.



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...RESPONDENTS

(BY SMT. SAVITHRAMMA., AGA FOR R1 & R11;
SRI. R. VIJAYAKUMAR., ADVOCATE FOR R2;
SRI. PRAVEEN S.L., ADVOCATE FOR
SRI. ANANDA K., ADVOCATE FOR R3;
SRI C. RAJANNA., ADVOCATE FOR R4 TO R10)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER NO.K.SC.ST.170/2007-08 DATED 26.08.2010 PASSED BY THE 1ST RESPONDENT AT ANNEXURE-C AND ETC.

IN W.P.NO.17858/2015
BETWEEN

THE BANGALORE, BANGALORE RURAL AND
RAMANAGARA DISTRICT CENTRAL
CO-OPERATIVE BANK LTD.,
LAKSHMI SADANA
NO.6, 5TH MAIN ROAD
CHAMARAJPET
BANGALORE 560 018
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
SRI B R LINGARAJU

...PETITIONER

(BY SRI. SOMASHEKAR., ADVOCATE)

AND

1. THE ASST. COMMISSIONER
BANGALORE NORTH DIVISION
BANGALORE-560001.
2. SRI M B ARUN KUMAR
PROP M/S M B ENTERPRISES
NO.5, 2ND CROSS
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3. JAVAHAR HOUSE BUILDING CO-OPERATIVE LTD,
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REPRESENTED BY SECRETARY

- 4 . THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
PAMPA MAHAKAVI ROAD,
CHAMARAJPET,
BANGALORE 560018
- 5 . THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETY AND RECOVERY OFFICER,
BANGALORE DISTRICT AND RURAL CO-OPERATIVE
CENTRAL BANK LTD,
CHAMARAJAPET,
BANGALORE 560018
- 6 . SMT. MUNIYAMMA
MAJOR,
W/O.LATE SRI. MUNIYAPPA,
128, 1ST MAIN ROAD,
"A" BLOCK, HEBBAL,
BENGALURU 560024
- 7 . SMT. BHARATHI
MAJOR,
D/O LATE SRI. MUNIYAPPA,
NO.128, 1ST MAIN ROAD,
"A" BLOCK, HEBBAL,
BENGALURU 560024
- 8 . THE SEPCIAL DEPUTY COMMISSIONER
BANGALORE URBAN DISTRICT,
BANGALORE-560001.

...RESPONDENTS

(BY SMT. SAVITHRAMMA., AGA FOR R1, R4, R5 & R8;
SRI. R. VIJAYAKUMAR., ADVOCATE FOR R2;
SRI. PRAVEEN S.L., ADVOCATE FOR
SRI. ANANDA K., ADVOCATE FOR R3;
SRI M.B. CHANDRA CHOODA., ADVOCATE FOR R6 & R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED ORDER NO.K.SC.ST.170/2007-08 DATED 26.08.2010
PASSED BY THE 1ST RESPONDENT AT ANNEXURE-C AND ETC.



THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 21.06.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The petitioner in all the above writ petitions is Bangalore, Bangalore Rural and Ramanagara District Central Co-operative Bank Ltd.(hereinafter referred to as the **Bank** or **BBRRDCCB**), seeking the following reliefs in each of the petitions. Which reads as hereunder:

In W.P. No.29196/2014:

- a) *Quash the impugned order No.K.SC.ST.170/2007-08 dated 26.08.2010 passed by the 1st respondent at ANNEXURE-C;*
- b) *Set aside the order dated 25.10.2013 passed in Appeal No.SC.ST.(A)120/2010-11 by the 7th respondent; at ANNEXURE-E; and*
- c) *Pass such other orders as deemed fit to grant in the facts and circumstances of the case; and-*



- d) *In the alternative the 6th respondent may please be directed to refund to the petitioner an amount of Rs.25,000/- along with interest at 18% in the interest of justice.*

In W.P. No.17857/2015:

- a) *Quash the impugned order No.K.SC.ST.30/2007-08 dated 26.8.2010 passed by the 1st respondent at ANNEXURE-C;*
- b) *Set aside the order dated 06.03.2014 passed in Appeal No.SC.ST.(A)122/2010-11 by the 11th respondent; at ANNEXURE-E; and*
- c) *Pass such other orders as deemed fit to grant in the facts and circumstances of the case; OR*
- d) *In the alternative the 4th and 10th respondents may please be directed to refund to the petitioners an amount of Rs.1,05,000/- along with interest at 18% from 3.4.1993 the date of agreement till the date of payment in the interest of justice.*

In W.P. No.17858/2015:

- a) *Quash the impugned order No.K.SC.ST.172/2007-08 dated 26.8.2010 passed by the 1st respondent at ANNEXURE-C;*
- b) *Set aside the order dated 01.07.2013 passed in Appeal No.SC.ST.(A)117/2010-11 by the 1st respondent; at ANNEXURE-E; and*



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c) Pass such other orders as deemed fit to grant in the facts and circumstances of the case; OR

d) In the alternative the 6th and 7th respondents may please be directed to refund to the petitioners an amount of Rs.75,000/- along with interest at 18% from 3.4.1993 the date of agreement till the date of payment in the interest of justice.

2. The factual background in all the above petitions more or less similar in that the petitioner-Bank claims to be a financial institution registered under the provisions of the Karnataka Co-operatives Act, 1959. The main sources of finance to the said Bank are deposits from members and the public, loans from Apex Bank, NABARD as also loan/share capital from the Government of Karnataka. It is claimed that the said Bank operates in Bangalore District, Bangalore Rural and Ramanagara District.
3. It is further claimed that respondent No.3-Javahar House Building Co-operative Society Ltd., having approached the petitioner for sanction of a loan an amount of Rs.2 crores, was sanctioned on



06.01.1993 to enable the said Society to purchase lands for the formation of layouts. There being a default in repayment of the loan, the petitioner – Bank raised a dispute before the Joint Registrar of Co-operative Societies in Dispute No.908/1993-94 against the Society for recovery of Rs.2,38,00,497/-, an award was passed on 01.03.1997 directing the payment of the said amount with interest at the rate of 22.5% and penal interest at 1% on defaulted principal amount of Rs.1,99,98,500/- from 01.01.1994 till the date of realisation.

4. In pursuance thereof, the petitioner-Bank had approached the Joint Registrar of Co-operative Societies for the execution of the award by attachment of the properties as regards which respondent No.3 had entered into various agreements of sale. By an order dated 22.09.2007, the said properties came to be attached.
5. Respondent No.6 the original owner of the property claiming to be a grantee of the land had filed a



proceeding before the Assistant Commissioner under Section 5 of the Karnataka Schedule Caste and Schedule Tribes (prohibition of transfer of certain lands) Act, 1978 (hereinafter referred as PTCL Act) contending that respondent No.6 had been granted an extent of 1 acre of 25 guntas in Sy. No.79, Block No.15 of Machohalli village, Dasanapura Hobli, Bangalore North Taluk, and that he received a notice from respondents No.3 to 5 therein i.e., petitioners-respondents No.4 and 5 herein that an award dated 01.03.1997 had been passed in Dispute No.908/1993-94 and in pursuance of the said award the land of respondent No.6 was proposed to be auctioned by way of public auction.

6. The Assistant Commissioner after hearing the matter came to a conclusion that the Society-respondent No.3 herein had not acquired any right and title over the land in question under a mere agreement of sale, the agreement itself is in violation of the provisions of Section 4(2) of PTCL Act. The grantee had not



mortgaged the property with the petitioner-Bank. The Society not having acquired any right, title and interest over the land in question had unilaterally mortgaged the land in favour of the Bank and as such the award cannot be binding on respondent No.6. and in those circumstances, all the encumbrance in respect of the land in question were discharged and the land restored to the grantee.

7. The petitioner challenged the said order of the Assistant Commissioner before the Deputy Commissioner in KSC/ST/Appeal No.120/2010. which came to be disposed by Deputy Commissioner by his order dated 25.10.2013 confirming the order passed by the Assistant Commissioner. The Deputy Commissioner also further came to a conclusion that the Society, being an agreement holder and GPA holder, had borrowed the money from the Bank without the grantee having mortgaged the property. The transaction between the Society and the grantee was an independent transaction, and the transaction



between the Bank and Society was also an independent transaction.

8. The award passed in favour of the Bank against the Society would not in any manner affect the claim of respondent No.6 - grantee. If at all the Bank had any dispute, it was only against the Society and not against the grantee and as such, came to a conclusion that no attachment of the land could be made on an application made by the Bank. It is this order which is under challenge before this Court.
9. Similar proceedings have been initiated in other proceedings which are subject matter in W.P. No.17857/2015, and W.P. No.17858/2015. Those orders are also under challenge before this Court. In the present petitions, it is the legal heirs of the grantee who have come on record.
10. Sri. Somashekar, learned counsel for the petitioner - Bank in all these matters would submit that:



- 10.1. The Bank had advanced an amount of Rs.2 Crores to respondent No.3-Society. The Society had defaulted on repayment of the loan requiring the Bank to initiate proceedings under Section 70 of the KCS Act, 1959 against the said Society, wherein an award has been passed in favour of the Bank and it is in furtherance of execution of the said award that the properties were attached and on this ground he submits that the action taken by the Bank cannot be faulted with and the orders passed by the Joint Registrar of Co-operative Societies also cannot be faulted with.
- 10.2. He refers to sub-section (3) of Section 4 of the PTCL Act, and contends that the prohibition under Subsection (1) and (2) of Section 4 would not apply to sale of any land in execution of decree or order of the Civil Court or any award or order passed by the any Authority and in this regard he contends that the award



passed under Section 70 of the KCS Act would also come within the purview of Subsection (3) of Section 4.

10.3. His further contention by referring to Section 7 of PTCL Act is that the transfer of granted land in favour of the Government, Central Government, Local Authority and or a Bank either before or after the commencement of the Act, is exempted.

10.4. His submission is that Section 7 of the PTCL Act, is in furtherance of Subsection (3) of Section 4 of PTCL Act, as such, if a Bank from whom loans were to be obtained, the same being defaulted with the Bank would have all authority to proceed against the property even if it is a granted land coming under PTCL Act.

10.5. The Registrar of Co-operative Societies vide order dated 27.03.2008 had permitted the Bank to recover the loans from the persons who had entered into an agreement of sale with the



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Society to an extent of up to 15 lakhs, and it is in that background that the Bank has initiated proceedings. The order passed by the Registrar Co-operative Societies favours the petitioner. The petitioner-Bank has acted only to receive the amounts which are owed to the Bank. In this regard he relies on the decision of the coordinate Bench of this Court dated 10.03.2016 in W.P. No.10933-10934/2016 [**Sri Byyanna and other -v- The Joint Registrar of Cooperative Societies and others**] more particularly un numbered para-1 thereof, which is reproduced hereunder for easy reference:

"The matters having come up for preliminary hearing on an earlier date, it was expressed by the learned counsel appearing for the respondent that though the petitioners are the owners of 12 acres of land, the third respondent-Society which was holding a Power of Attorney on behalf of the petitioners, had offered 4 acres of land as security. However, since the second respondent -Bank was seeking to proceed against the entire extent of 12 acres, the petitioners are before this Court."



10.6. By referring to the decision in **Byyanna's** case in (W.P.No.10933-10934/2016) his submissions is that this Court had recognized the right of the Bank to proceed against the land which had been offered as a security and as such, the Coordinate Bench of this Court has recognized the right of the Bank to proceed against the landowners, who have executed an agreement of sale in favour of the Society by contending that the agreement of sale itself is a security on which basis the Bank has sanctioned the loan to the Society.

10.7. A decision of another coordinate Bench of this Court dated 04.03.2024 in W.P. No.16122/2016 [**Bangalore, Bangalore Rural and Ramanagara District Cooperative Bank Limited [BBRRDCB] -v- The Joint Registrar of Cooperative Societies and others**] more particularly para-2 thereof, which is reproduced hereunder for easy reference:



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"It is submitted that during the pendency of the proceedings, the petitioner-Bank has resolved and it is willing to accept payment of Rs.12,00,000/- per acre along with 5% interest as proposed by respondent No.2 in a letter dated 03.03.2018 at Annexure-'N' and accordingly release the attachment in favour of respondent No.2."

10.8. By referring to decision in BBRRDCB's decision he submits that another co-ordinate Bench of this Court has accepted the transaction by recording the settlement entered into in that matter and as such the transaction cannot be faulted with.

10.9. The decision of this Court dated 29.01.2009 in W.A.No.1953/2008 **[Bazm-E-Niswan Charitable Trust and Others -v- Amanath Co-operative Bank Limited and others]**¹ more particularly para-5, 8 and 9 thereof, which are reproduced hereunder for easy reference:

5. *Learned Counsel appearing for the appellants vehemently contended that as none of the appellants are members of Bank, the dispute*

¹ 2009(4)KarLJ633



against non-members of the Bank cannot be maintained; that merely because the appellant 2 is the wife of the 3rd respondent who was a former President of the 2nd respondent-Bank, the transaction entered between the appellants and the 1st respondent-Bank cannot be made subject-matter of dispute under Sub-Section (1) of Section 70; that the property in question has not been purchased by the 2nd appellant in her individual capacity but the same was purchased by a Public Trust in which the 2nd appellant is the President and the appellant 2 has no personal interest over the property in question; that as the dispute was raised against a non-member of the Society and as the same is not touching upon the business or activities of the Society, the interim order dated 3-4-2008 passed by the 2nd respondent rejecting the application filed by the appellants under Section 70(3) of the Act is liable to be set aside by allowing the writ petition.

8. *To decide the above question, it is just and necessary to refer to the provisions of Sub-Section of Section 70 and 70(2)(e) of the Act which reads as under:*

7.0 Disputes which may be referred to Registrar for decision.-(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 members and persons claiming through members, past members and deceased members; or

(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

(c) between the Society or its committee and any past committee, any officer, agent or employee, or



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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 co-operative Society, or a credit agency,

such dispute shall be referred to the Registrar for decision and no civil or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of Sub-Section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative Society, namely.:

(e) a claim by a co-operative Society for any deficiency caused in the assets of a co-operative Society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or not.

9. *On a careful consideration of the entire facts and circumstances of the case, it is clear that the property of the first respondent-Bank was purchased by the first appellant-trust represented by the second appellant who is none else than the wife of erstwhile President of the first respondent-Bank. The said transaction squarely attracts Section 70(2)(e) of the Act, which has caused deficiency in the assets of the first respondent-Bank.*

Under these circumstances, we do not find any illegality or error in the impugned order and there is no good grounds to interfere with such well-reasoned order and consequently, the writ appeal is liable to be dismissed. Accordingly, the writ appeal is dismissed.



10.10. By referring to the decision in ***Bazm-E-Niswan Charitable Trust's case***, his submission is that the Bank can proceed not only against the member of the Bank or Society but against any third party. On this basis he submits that the action taken by the Bank is proper and correct. The Assistant Commissioner and Deputy Commissioner have erred in coming to a conclusion that the Bank cannot proceed against the persons who had entered into an agreement of sale with respondent No.3-Society, since, it is from and out of the amount advanced by the Bank to the Society that amounts have been disbursed to said land owners under the agreement of the sale. Thus, the amount paid to the land owners coming out of the funds advanced by the Bank, he submits that the Bank can proceed against the agreement holder.



11. Sri. M.B. Chandrachooda, learned counsel for the legal heirs of the grantee in W.P. No.17858/2015 would submit that,

11.1. There is no transaction which has been entered into by the grantee or legal heirs in favour of the Society much less the Bank. The transaction even if accepted, being of the year 1993, no steps have been taken by the Society against the land owners or grantee for enforcement of the said agreement. The agreement has continued to remain at the stage of an agreement which does not confer any right, title or interest in favour of the Society, who was to purchase the property and in this regard he relies upon Section 54 of the Transfer of Property Act., to contend that a mere agreement of sale does not confer any right, title or interest to the purchaser.

11.2. In so far as the alleged payment of advance under the agreement of sale, his submission is



that neither the grantee nor legal heirs of the grantee have received any such amount, on that basis he further seeks to contend that if at all such payments had been made, the Society would have taken action which it has not.

11.3. His further submission is that the entire transaction is a make-believe, got up transaction by the Bank and the Society to usurp the funds of the Government and other Banks and the proceedings have been initiated only to give a sense of legality to the said illegal actions. There being serious issues on the functioning of the Bank and the Society enquiry by the C.B.I had been ordered, after such enquiry the C.B.I. has filed a charge sheet and proceedings are pending trial before the C.B.I. Court.

11.4. On the above grounds he submits that there is no authority on part of respondent No.3- Society to mortgage or offer as security the



land of the grantee. Thus, Subsection (3) of Section 4 could not come into play nor would Section 7 come into play. In that background he submits that order passed by the Assistant Commissioner and Deputy Commissioner are proper and correct do not require any interference.

12. Ms. Archana K.M., learned Amicus Curiae, who has been appointed to assist this Court in view of non appearance of anybody on behalf of the grantee in W.P. No.29196/2014 adopts the submission of the Sri. M.B. Chandrachuda, learned counsel in W.P. No.17858/2015 and additionally submits that

- 12.1. There is no permission which had been obtained prior to execution of agreement of sale, hence agreement of sale itself is a *non est*, on which basis no right can be claimed there being no prior permission obtained from the Deputy Commissioner.



12.2. Even this agreement of sale has been executed within the period of prohibition of 15 years, which cannot also be cured by obtaining permission of the Deputy Commissioner. As such, on the basis of records she submits that no transaction could have been legally entered into for the Bank to claim any interest.

12.3. She relies upon Section 11 of PTCL Act to contend that the PTCL Act overrides the KCS Act, and any award passed under the KSCS Act, would have to comply with and be in conformity with PTCL Act.

13. Sri. C. Rajanna, learned counsel appearing for the legal heirs of the grantee in W.P. No.17857/2015 adopts the submissions of Sri. M.V. Chandrachuda, learned counsel and Ms. Archana K.M., learned counsel.

14. Sri. R. Vijay Kumar, learned counsel appearing for respondent No.2, who is stated to be the agent of the Society and as such procurement agent on behalf



of Society who had entered into various agreements with the grantees submits that

14.1. The grantees being *in pari delicto* in as much as the grantees having entered into an agreement knowing fully well that they could not have entered into such an agreement are equally responsible.

14.2. Alternatively he submits that at least the amounts received by them is required to be returned to the Society, since all the records have been handed over by respondent No.2 to respondent No.3 and all the interest of respondent No.2 has been assigned to respondent No.3 way back in year 1993.

14.3. The agreements have been entered into and amount received, the amounts cannot be retained by the grantee which would be unjust enrichment under Section 73 of Indian Contract Act, 1972 which would be liable to be returned to respondent No.2 and since respondent No.3



have assigned his rights in favour of respondent No.3 which enure to the benefit of the petitioner-Bank.

15. Learned counsel for respondent No.3 submits that he has no instructions, respondent No.3 has already been directed to be wound up and an administrator has been appointed and proceedings are going on before C.B.I court.
16. Heard Sri. Somashekar, learned counsel for the petitioner, Smt. Savithramma, AGA for respondent Nos.1, 5 and 7, Sri. R. Vijaya Kumar, learned counsel for respondent No.2., Sri. Praveen S.L. for Sri. Ananda K., learned counsel for respondent No.3 and Smt. Archana K.M., learned counsel for respondent No.6. Perused papers.
17. Having heard the learned counsels and perused the papers, the points that would arise for consideration of this Court are:



1. **Whether a Bank can claim benefit of Subsection (3) of Section 4 without the grantee having mortgaged the property in favour of the Bank and without the grantee having received any money from the Bank?**
2. **Whether the Bank can on the basis of an award passed against a third party execute the same in respect of a land owned by the grantee and would the exemption under Section 7 of the PTCL Act, apply in relation thereto?**
3. **In the present case, whether the orders passed by the Assistant Commissioner and Deputy Commissioner are proper and correct or would they suffer from legal infirmity requiring interference in hands of this Court?**
4. **What Order?**

18. I answer the above points as under:

19. **ANSWER TO POINT NO.1: Whether a Bank can claim benefit of Subsection (3) of Section 4 without the grantee having mortgaged the property in favour of the Bank and without the grantee having received any money from the Bank?**

19.1. Clause (a) of Subsection (1) of Section 3

defines Bank as under:



3. Definitions- (1) *In this Act, unless the context otherwise requires-*

(a) *"bank" means,-*

(i) *a co-operative society (including a co-operative bank);*

(ii) *the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;*

(iii) *a banking company as defined in the Banking Regulation Act, 1949;*

(iv) *the State Bank of India constituted under the State Bank of India Act, 1955;*

(v) *a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;*

(vi) *a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;*

(vii) *the Agricultural Refinance and Development Corporation constituted under the Agricultural Refinance Co-operation Act, 1963;*

(viii) *the Karnataka State Agro-Industries Corporation, a company incorporated under the Companies Act, 1956;*

(ix) *the Agricultural Finance Corporation Limited, a company incorporated under the Companies Act, 1956;*

(x) *any other financial institution owned or controlled by the Government or the Central Government and notified by the Government as a bank for the purpose of this Act;*

19.2. Thus, any of the above which qualify to be a Bank can be taken into consideration for the



purpose of the PTCL Act. A co-operative Society including a co-operative Bank is also a Bank. Thus, the petitioner being a co-operative Bank would qualify within that meaning.

19.3. Clause (b) of Subsection (1) of Section 3 defines granted land as under:

(b) "Granted Land" means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such person under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly;

19.4. Thus, any land granted to a person belonging to Schedule Caste or Schedule Tribe would be covered under the Act.

19.5. Section 4 of the Act deals with prohibition of transfer of granted land and reads as under:

4. Prohibition of transfer of granted lands.- (1) *Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or subsection (2) shall be null and void and no right, title or*



interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a civil court or of any award or order of any other authority.

19.6. By virtue of Subsection (1) of Section 4, there is a prohibition for a grantee to transfer the land either before or after the commencement of the Act in contravention of the terms of the grant. However, in terms of Subsection (2) of Section 4, no person shall after commencement of the Act transfer or acquire by transfer any granted land without the previous permission of the government.

19.7. Subsection (3) of Section 4 creates an exception to Subsection (1) and Subsection (2) of Section 4 and mandates that the said Subsection would not apply to the sale of any land in execution of decree or order of a Civil



Court or of any award or order of any other Authority.

19.8. Section 6 of the Act prohibits the registration of any document relating to transfer or creation of any interest in any granted land, thus creating an embargo for registration of a transfer of a granted land.

19.9. Section 7 of the Act deals with the exemption and reads as under:

7. Exemption.- Nothing in this Act shall apply to the transfer of granted lands in favour of the Government, the Central Government, a local authority or a bank either before or after the commencement of this Act.

19.10.A perusal of Section 7 would indicate that nothing in the Act would apply to the transfer of granted lands in favour of the Government, a local Authority or a Bank either before or after the commencement of the Act. Thus, the restriction which has been imposed in Subsection (1) and (2) of Section 4, as also



under Section 6 would not apply if the sale is in furtherance of a decree or order of a Civil Court or of any award or order of any Authority in terms of Subsection (3) of Section 4 and or if there is a transfer in favour of the Government, local Authority or a Bank in terms of Section 7 of the PTCL Act.

19.11. From the above, it is clear that a grantee of the land though is prohibited from alienating the property or transferring the property, such grantee is not prohibited from raising a loan on the said property from an entity qualifying to be a Bank under Subsection (1) of Section 3. It cannot be presumed that the loan would be repaid by the grantee, thus an exception has been made out under Subsection (3) of Section 4 that in the event of any decree or order passed by a Civil Court or any award or order passed by any Authority, Subsection (1) and Subsection 2 of Section 4 would not apply.



19.12. Thus, to qualify for the exemption under Subsection (3) of Section 4, it is required that there should be a valid loan transaction with a Bank, the Bank obtain necessary decree or order from the Civil Court or of any award or order of any Authority.

19.13. In the present cases, the grantee has not borrowed any loan from an organization qualifying the requirement of Bank under Subsection (1) or Section 3. The grantee had only entered into an agreement of sale with the Society, and it is the Society who has allegedly mortgaged the property in favour of the Bank at the time of borrowing monies from the Bank.

19.14. Needless to reiterate that the grantee is not a party to the agreement between the Society and the Bank nor has any money flowed from the Bank to the grantee. In these cases, the grantee is not a borrower nor is the Bank a lender to the grantee. If at all the loan



transaction is between the Bank and the Society, as regards which the grantee has no role to play except that the grantee has entered into an agreement of sale with the borrower or Society.

19.15. When a grantee has not received any benefit of the loan, the question of there being any privity of contract between the Bank and the grantee would not arise. The exemption under Subsection (3) of Section 4 and that under Section 7 of the Act is only applicable as regards a transaction made by the grantee and not made by anyone else as regards the land belonging to the grantee.

19.16. The Society not being the owner but only an agreement holder, the said agreement not having fructified into a sale deed has remained an inchoate document and confers no title or interest in the said land in terms of Section 54 of the Transfer of Property Act, 1872.



- 19.17. The Society not having any right in the property has mortgaged the property to the Bank and the Bank has accepted the said mortgage knowing fully well that the Society is not the owner and does not have any right, title or interest.
- 19.18. Interest of the Society, if any, would only be limited to a right to seek for specific performance of the agreement of sale and not to deal with the property subject matter of the agreement of sale. Thus, any transaction entered into by the agreement holder would not bind the grantee.
- 19.19. Hence, I answer Point No.1 by holding that the Bank cannot claim the benefit of Subsection (3) or Section 4 of the PTCL Act without the grantee having mortgaged the property in favour of the Bank which needless to say would imply that the grantee has not received any



money from the Bank, there being no privity of contract between the Bank and the grantee.

20. **ANSWER TO POINT NO.2: Whether the Bank can on the basis of an award passed against a third party execute the same in respect of a land owned by the grantee and would the exemption under Section 7 of the PTCL Act, apply in relation thereto?**

20.1. Subsection (3) of Section 4 deals with a situation where Subsection (1) and Subsection (2) of Section 4 would not apply to a sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other Authority.

20.2. In the present case, there is no decree which has been passed nor is there any order passed by the Civil Court, however, the Bank claiming to be a cooperative Bank has raised a dispute in terms of Section 70 of the Karnataka Co-operative Societies Act, 1959 [KCS Act] which provides for disputes among members and the



Society to be settled by way of the mechanism prescribed under Section 70.

20.3. In terms of Section (2) of Section 70, a claim by the Society for any debt or demand due by the member or by a principal debtor would be a dispute which could be settled in terms of the said provision.

20.4. The manner of disposal of the dispute is detailed out in Section 71 of the KCS Act, which reads as under:

71. Disposal of disputes.- (1) *The Registrar may, on receipt of the reference of a dispute under section 70,—*

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the State Government with powers in that behalf, or

(c) refer it for disposal to one arbitrator appointed by the Registrar.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that sub-section and decide it himself.

(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interests of justice.



(3A) When a dispute is referred to an arbitrator under clause (c) of sub-section (1), the award shall, subject to such rules as may be prescribed, include the fee payable to the arbitrator and the fees and expenses payable to the Registrar. Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar, and shall, subject to appeal or revision, be binding on the parties to the dispute.]

(4) Notwithstanding anything contained in section 70, when any dispute under clause (a) or (b) of sub-section (1) of the said section is referred for decision to the Registrar, and the Registrar is satisfied on an application by the society concerned that in the interest of the society it is necessary for an effective decision of the dispute to implead persons who cannot be made parties to the dispute in proceedings before him, he may permit the society to institute a regular suit in a Civil Court having jurisdiction and the Civil Court shall be competent to entertain such suit.

(5) The dispute under sub-section(1) shall be decided within a period of twelve months excluding the period of stay granted by the Court if any. However, the Registrar may for reasons to be recorded in writing extend the said period not exceeding eighteen months.

[Provided that the State Government shall, on a report made by the Registrar, may extend the period beyond eighteen months if it is satisfied that, there are genuine/valid grounds for such extension]

20.5. A dispute can be decided by the Registrar of Societies, transfer it to any person who has been invested by the State Government with powers in that regard or refer it for disposal to an Arbitrator appointed by the Registrar. An



award passed by an Arbitrator can be enforced in terms of said act.

20.6. Section 71B deals specifically with a credit agency to proceed against members of the cooperative Society for recovery of the money due to the Society.

20.7. In the present case, the Society had borrowed money from the Bank and as such any dispute between the Bank and the Society would be a dispute within the purview of Section 70 to be resolved in terms of Section 71 and 71B of the KCS Act. It is exercising these rights that the Bank had approached the Registrar of Cooperative Society with a claim against the Society which came to be allowed and the Society was directed to make payment of certain monies by way of an award. In furtherance of said award, the properties which had allegedly been mortgaged by the Society were sought to be attached and auctioned.



20.8. The Judgment in **Byyanna's case** having been pressed into service to contend that a Coordinate Bench of this court has recognised the right of the Bank to proceed against the mortgaged property, I am of the considered opinion that the said decision did not consider all that aspects as that considered in the present matter upon argument by the respective counsel. There has been no mortgage of the property created by the grantee, the question of the Bank proceeding against the grantee would not arise.

20.9. There cannot be any dispute in the decision of [**Bazm-E-Niswan Charitable Trust's case**, a Bank or Society can proceed against the third party but such a proceeding to be initiated, there must be some relationship between the Bank and the third party to be liable to make payment.



20.10. From the above conspectus of facts and law, it is clear that the Bank could always have initiated proceeding against Society for recovery of money, but the Bank could not have proceeded against the property, which was not owned by the Society inasmuch as, as answered to point No.1, there was no right vested with the Society to mortgage the property of the grantee to the Bank. The award passed under Section 71 or 71B could only be enforced against the judgment debtor therein, that is the Society, the grantee not being a party to the said proceedings, let alone being party to the loan transaction between the Bank and the Society, the said award cannot be executed against the grantee who is a third party to the proceedings.

20.11. **Bazm-E-Niswan Charitable Trust's case** was not one which dealt with PTCL grant but was one where the Bank initiated proceedings



against the wife of the erstwhile President of the Bank and it is in that background that the Division Bench of this Court came to a conclusion that Section 70 would apply even to the wife of erstwhile President even though she may not be a member since the issue related to transfer of a property of the Bank to a Trust of which the wife of the erstwhile President was a Trustee and in that background the Division Bench of this Court came to a conclusion that such action would amount to creating deficiency in the assets of the Bank attracting Clause (e) of Subsection (2) of Section 70 of the KCS Act. In the present case, there is no such allegation insofar as the grantee is concerned.

20.12. In the present case it is not the contention of the Bank that there is collusion between the Society and the grantee or that the society and grantee are together sought to defraud the Bank. As aforesaid, the transaction between



the Bank and the Society is independent of the transaction between the Society and the grantee, both these transactions could never have been clubbed together and proceedings initiated by the Bank in execution of the award passed against the Society to enforce it against the grantee.

20.13. In that view of the matter, though the award passed by the Registrar would qualify to be an award under Subsection (3) of Section 4 that award will not be capable of being enforced against the grantee who is not a party to the proceedings.

20.14. The exemption under Section 7 would also not apply since there is no transfer to the Bank made and the proposed attachment and auction de hors any transaction entered into between the Bank and the grantee.

20.15. Hence, I answer Point No.2 by holding that the Bank cannot on the basis of the award passed



against a third party execute the same in respect of a land owned by the grantee and the exemption under Subsection (3) of Section 4 as also that under Section 7 of the PTCL Act would not apply in relation thereto.

21. **ANSWER TO POINT NO.3: In the present case, whether the orders passed by the Assistant Commissioner and Deputy Commissioner are proper and correct or would they suffer from legal infirmity requiring interference in hands of this Court?**

21.1. As answered to points No.1 and 2, the grantee was not part of any transaction between the Bank and the Society and it is in that background, when the Bank sought to attach the property of the grantee in furtherance of an award passed against the Society in execution of such award, the grantee filed proceedings before the Assistant Commissioner under Section 5 of the PTCL Act for resumption of land. Though technically there is no sale or transfer in favour of the Bank and the property



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continued to be vested with the grantee, there would be no requirement for setting aside any sale and or for order of resumption, the fact remains that the grantee did not have any other alternate efficacious remedy in as much as it was not required for the grantee to have gone ahead and filed a civil suit or the like for declaration that the award is not binding on the grantee.

21.2. The PTCL Act being a beneficial enactment to provide safety and security to a person belonging to Schedule Caste Or Schedule Tribe in respect to the property granted to him. The grantee apprehending that his property would be taken over by the Bank had approached the Assistant Commissioner. The Assistant Commissioner has acted on the said application and directed that the land be restored to the grantee by discharging all encumbrances. This order has also been confirmed by the Deputy



Commissioner who has gone on to hold that the Society being a GPA holder had borrowed the money from the Bank without the grantee having mortgaged the property and as such came to a conclusion that both the transactions are independent transactions.

21.3. In view of my answers to Points No.1 and 2, as also for the reason that the Assistant Commissioner and Deputy Commissioner had necessary powers under Section 5 and 5A of the PTCL Act which has been properly exercised by discharging any alleged encumbrance created by the Society as regard the land belonging to the grantee and restored the property without any encumbrance to the grantee is proper and correct, does not suffer from any infirmity requiring interference at the hands of this court.

22. **ANSWER TO POINT NO.4: What Order?**



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22.1. In view of my answers to points No. 1, 2 and 3 above, I find no infirmity in the order of the Assistant Commissioner and The Deputy Commissioner. The relief sought for by the petitioner are bereft of merits, are not sustainable. No grounds are being made out in the present petitions, the petitions stand ***dismissed.***

Sd/-
JUDGE

TMP, LN
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