

become a matter of exclusive jurisdiction and any decision on any such matter neither binds the parties, nor can it operate as *res judicata*."

I am in respectful agreement with the observations of the learned Division Bench of Andhra Pradesh. The facts of the present case are similar to the facts of the above case and the observations of learned Judges are applicable to it. The learned counsel for the appellant has placed reliance on *Srimati Raj Lakshmi Dasi and others v. Banamali Sen and others*, (2). In that case it was held that on general principles, the findings of land Acquisition Courts, Administration Courts, Land Revenue Courts etc., operate as *res judicata*. There is no dispute about the proposition. In the case before the Supreme Court the finding of a Land Acquisition Court was held to be *res judicata* in a subsequent suit. The Supreme Court has not laid down that all findings of Courts of exclusive jurisdiction will operate as *res judicata* in the subsequent civil suit. As I have observed above, only those findings of the Courts of exclusive jurisdiction can operate as *res judicata* in subsequent civil suits which such Courts have exclusive jurisdiction to decide. The case before the Supreme Court is distinguishable on the facts and the observations in *Srimati Raj Lakshmi Dasi's case* (supra) will not be applicable to the facts of the present case.

(9) For the reasons recorded above, I dismiss the appeal with no order as to costs.

B. S. G.

Before A. D. Koshal and P. S. Pattar, JJ.

THE WARA WARYAM SINGH CO-OPERATIVE AGRICULTURAL SERVICE SOCIETY,—Appellant.

versus

GURBACHAN SINGH, PATWARI AND OTHERS,—Respondents.

L.P.A. No. 409 of 1973.

August 7, 1974.

Punjab Co-operative Societies Act (XXV of 1961)—Section 63—Constitution of India (1950)—Article 14—Section Providing more than one mode of execution of an award—Whether ultra-vires Article 14.

(2) A.I.R. 1953 S.C. 33.

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Held, that although section 63 of the Punjab Co-operative Societies Act, 1961, provides three different modes in which an award may be executed, the choice of the particular mode to be adopted in a given case is left to the Society or person in whose favour the award is made and not to the Registrar or to any other governmental authority. There is no question of the section being violative of Article 14 of the Constitution of India which only enjoins on the State (and on no other legal entity, be it an institution or an individual) to ensure equality before the law or equal protection of laws to all persons. The Registrar is authorised to execute an award only under clause (b) of the section while the function that he performs under clauses (a) and (c) is merely the issuance of a certificate which is then executable as a decree either in a civil court or by the Collector depending on the choice of the forum by the person, who wants to enforce the award. The Registrar does not come into the picture under clause (a) or clause (c) in so far as the execution of the award is concerned. The right to execute the award under these two clauses flows not from the certificate but from the provisions of the section itself and, therefore, there is no occasion for the Registrar discriminating between different persons by choosing one or the other of the modes of execution. Hence no part of section 63 of the Act is *ultra-vires* the provisions of Article 14 of the Constitution of India.

Appeal under Clause X of the Letters patent against the Judgment of Hon'ble Mr. Justice M. R. Sharma, dated the 16th April, 1973 in the Civil Writ No. 2608 of 1972.

Kuldip Singh, Advocate with I. S. Sidhu, Advocate, for the appellants.

Shri A. N. Mittal, Advocate, with Shri Viney Mittal, Advocate, for respondent No. 1.

Shri J. S. Wasu, Advocate-General, Punjab with Shri S. K. Sayal, Advocate, for respondents Nos. 2 and 3.

Shri D. S. Lamba, Senior Deputy Advocate-General, (Haryana) with Shri. H. N. Mehtani, Deputy Advocate-General (Haryana) as intervener

ORDER

KOSHAL, J.—By this judgment we shall dispose of Letters Patent Appeals Nos. 409 and 418 of 1973, both of which are directed against the judgment dated the 16th of April, 1973, of a learned Single

Judge of this Court accepting a petition filed by one Gurbachan Singh (hereinafter referred to as the petitioner) under Articles 226 and 227 of the Constitution of India and striking down clauses (b) and (c) of section 63 of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the Act) for the reason that they were violative of Article 14 of the Constitution.

2. The facts giving rise to the two appeals are not in dispute and may be shortly stated. The petitioner is a member of the Wara Waryam Singh Cooperative Agricultural Society, functioning at Wara Waryam Singh, Tehsil Zira, District Ferozepur (hereinafter referred to as the Society). A dispute between the petitioner and the society in regard to a loan was referred to an arbitrator who gave his award against the petitioner. No appeal or revision against the award having been filed, it became final. The amount awarded was sought to be recovered by the Society by resort to proceedings under clause (c) of section 63 of the Act and a writ of demand in that behalf was issued to the petitioner on the 21st of June, 1972, under section 68 of the Punjab Land Revenue Act by the Assistant Registrar, Cooperative Societies, Ferozepur (hereinafter referred to as the Assistant Registrar) exercising the powers of an Assistant Collector of the 1st Grade. In his petition to this Court the petitioner challenged the validity of the writ of demand mainly on the ground that section 63 of the Act is violative of Article 14 of the Constitution inasmuch as it provides more than one mode of execution of an award without laying down any guide-lines about the circumstances in which the Registrar, Cooperative Societies, shall adopt a particular mode of execution in a given case. The learned Single Judge accepted the contention raised by the petitioner and passed the impugned order.

The respondents to the petition were the State of Punjab, the Assistant Registrar and the Society in that order. Letters Patent Appeal No. 409 of 1973 has been filed by the Society while the appellant in Letters Patent Appeal No. 418 of 1973 is the State of Punjab.

3. We have heard not only learned counsel for the parties but also Mr. H. N. Mehtani on behalf of the State of Haryana to whom notice was issued by this Court on the 9th of August, 1973 for the reason that it would be equally interested in the determination of the vires of Section 63 of the Act.

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4. It would be of advantage of reproduce here the provisions of Article 14 of the Constitution and of section 63 of the Act. They are—

Article 14

“14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Section 63.”

“63. Every decision, award or order duly passed under sections 54, 56, 62, 68 or 69 shall, if not carried out—

- (a) on a certificate signed by the Registrar, or any person authorised by him in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as decree of such court; or
- (b) be executed by the Registrar or any other person subordinate to him empowered by the Registrar in this behalf, by the attachment and sale or by sale without attachment of any property of the person or of the co-operative society against whom the order, decision or award has been obtained or passed; or
- (c) be executed according to the law for the time being in force for the recovery of arrears of land revenue:

Provided that an application for the recovery of any sum in the last aforesaid manner shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or any person authorised by him in this behalf.”

On behalf of the State and of the Society it is pointed out that although section 63 provides three different modes in which an award may be executed the choice of the particular mode to be adopted in a given case is left to the society or person in whose favour the award is made and not to the choice of the Registrar or to that of any other governmental authority and it is

contended, therefore, that no question of the section being violative of Article 14 which enjoins on the State (and on no other legal entity, be it an institution or an individual) to ensure equality before the law or equal protection of laws to all persons, could possibly arise. The contention appears to us to be unexceptionable. The Registrar is authorised to execute an award only under clause (b) of the section while the function that he performs under clauses (a) and (c) is merely the issuance of a certificate which is then executable as a decree either in a civil court or by the Collector depending on the choice of the forum by the person who wants to enforce the award. The Registrar does not come into the picture under clause (a) or clause (c) in so far as the execution of the award is concerned. In this view of the matter there is no occasion for the Registrar discriminating between different persons by choosing one or the other of the modes of execution. And if that be the case, Article 14 does not come in. In coming to a contrary conclusion the learned Single Judge noted the three modes in which an award could be executed under section 63, and then proceeded to hold:

“There is no indication in section 63 of the Act of the circumstances under which the Registrar, Cooperative Societies may adopt one or the other mode of the execution of the award. In short, the Registrar, Cooperative Societies can discriminate against a defaulter at his own sweet will. It is settled law that protection of Article 14 of the Constitution is also available against procedural law as well. Under these circumstances section 63(b) and (c) of the Act deserves to be struck down as violative of Article 14 of the Constitution.”

This view is obviously based on an erroneous reading of the section which, as already stated, leaves the choice of the remedy and the forum not to the Registrar but to the person in whose favour the award is made. This view is supported by a couple of decisions which may be noticed here.

In *Narayani Amma Karthiyayani Amma and another v. The State of Kerala and others* (1), section 76 of the Kerala Cooperative Societies Act, the provisions of which are, for all practical purposes, similar to those of section 63 of the Act, was challenged as being violative of Article 14 of the Constitution. Reliance in support of

(1) A.I.R. 1972 Kerala 93.

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the challenge was placed on Northern India *Caterers (Pvt.) Ltd. v. State of Punjab* (2). In that case the Supreme Court held that section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, which empowered the Collector to evict persons in occupation of public properties and premises was violative of Article 14 of the Constitution, as the Government had the ordinary remedy by way of suit to evict such persons and section 5 just above mentioned conferred an unguided and arbitrary power on the Collector to choose the summary remedy. In holding that the case decided by the Supreme Court was distinguishable and lent no support to the challenge, Issac, J., remarked, *inter alia*, that Article 14 or the principle underlying it applied to cases of unequal treatment or discrimination by the State (as defined in Article 12) only, and not to those in which no question of discrimination *on the part of the State* arose. Section 76 above-mentioned being as already stated, in terms similar to those of section 63 of the Act, and not being a provision giving to the State a right to choose one of various remedies, the challenge that it was violative of Article 14 was repelled.

In *Chhotalal Vanravan Kakkad v. The State of Gujrat and others* (3) section 103 of the Gujrat Co-operative Societies Act, which again is in terms similar to those of section 63 of the Act, was challenged as being *ultra vires* of Article 14 of the Constitution on the ground that it provided two remedies for enforcing recovery of dues. The challenge was repelled by a Division Bench of the Gujrat High Court with the following observations:

“A bare perusal of the section shows that this is not a question of two competing powers. The authority concerned has only one power. If the Civil Court is moved under section 103(a) for the purpose of that execution in a Civil Court, the certificate signed by the Registrar or liquidator is deemed by fiction to be a decree of the Court and is executed as a Civil Court's decree. If, however, the application for recovery of any such sum due under the order passed by the Registrar under section 93 or in appeal under section 102 is made to the Collector, it has to be accompanied by a Certificate signed by the Registrar or Assistant Registrar to whom the power is delegated in

(2) A.I.R. 1967 S.C. 1581.

(3) A.I.R. 1973 Gujrat 159.

that connection and as it has to be made within 12 years from the date fixed in the order and if no date is fixed from the date of the order. Therefore, where the application is made to the Civil Court or to the Collector the Civil Court or the Collector shall be exercising the mode of execution which is provided in section 103. The Civil Court would be enforcing the recovery by executing this order as a deemed decree of that Court while the Collector would be enforcing the recovery as if the sum due was an arrear of land revenue which had to be recovered under the Code.

* * * * *

Merely because the party entitled to the benefit of this order under the Act has two remedies to go to Civil Court or to the Collector, that would not make the provision violate the guarantee of Article 14."

For the reason stated we hold that no part of section 63 of the Act is bad on the ground that it violates the provisions of Article 14. The finding to the contrary arrived at by the learned Single Judge is, therefore, reversed.

5. Mr. Mittal, learned counsel for the petitioner, conceded the correctness of the conclusion just arrived at by us. He, however, raised a novel contention. According to him, the certificate to be granted by the Registrar under clause (a) was of one type and that to be issued by him under the proviso to clause (c) was of another type. Thus he argued that clauses (a) and (c) left to the Registrar the choice of the type of certificate to be issued by him without providing any guide-lines as to which type of certificate was to be issued in a given set of circumstances. In our opinion, the contention is wholly devoid of force. There is absolutely no warrant for the proposition that the certificate mentioned in clause (a) is to be of a type different from one of which the certificate mentioned in the proviso to clause (c) is to be. In both the clauses the certificate is described as—

"A certificate signed by the Registrar, or by any person authorised by him in this behalf."

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The certificate under either clause is evidently to state the operative provisions of the award along with the names of the parties thereto, etc., and the fact that it has not been carried out. And once such a certificate is issued, it may be used by the person in whose favour the award is made for having the same executed either through a civil court or through the Collector. The section nowhere lays down that the Registrar is required to certify that the award shall be executed as a decree of a civil court or in the manner legally available for the recovery of arrears of land revenue. On the other hand, the section itself declares that the award shall be deemed to be a decree of a civil court and be executable as such or in the manner in which the arrears of land revenue are recoverable. The right to execute the award under clause (a) flows not from the certificate but from the provisions of the section itself.

Mr. Mittal wants us to interpret the words "in this behalf" to mean "stating this mode of execution". In our opinion this interpretation is in consonance neither with the actual language used nor with the context in which the expression appears. The words "in this behalf" are part of the clause "or by any person authorised by him in this behalf" and this clause is to be read with the preceding clause "a certificate issued by the Registrar". What is meant is that the certificate may be signed by the Registrar or by a person authorised by the Registrar *to sign the certificate*. The expression "in this behalf" is clearly meant to indicate the purpose of the authorisation which the Registrar may make and, therefore, means "to sign the certificate". Mr. Mittal's interpretation is thus not acceptable to us.

Even if, however, it be assumed that the words "in this behalf" are capable of the interpretation which Mr. Mittal seeks to put upon them, it would make no difference to the constitutionality of the section; for in that case also it will be open to the party in whose favour the award stands *and not to the Registrar* to select a particular mode of execution. The issuance of a certificate either under clause (a) or clause (c) would merely enable the party concerned to take out execution through an application for the purpose made either to a civil court or to the Collector. The choice still lies with him and not with the Registrar. And if that be so, no question of the State discriminating between different persons by choosing either mode of execution and of the section being violative of Article 14 arises.

6. In the result both the appeals succeed and are accepted. The impugned order is set aside and the parties are left to bear their own costs.

PATTAR, J.—I agree.

B.S.G.

Before D. S. Tewatia, J.

IQBAL SINGH AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

C.W. No. 3238 of 1973.

August 7, 1974.

Punjab Security of Land Tenures Act (X of 1953)—Section 24—Punjab Security of Land Tenures Rules, 1956—Rule 2—Punjab Tenancy Act (XVI of 1887)—Sections 75 and 82—Punjab Land Revenue Act (XVII of 1887)—Sections 6 and 27—Naib-Tehsildar acting as a Circle Revenue Officer under Punjab Security of Land Tenures Act and Rules framed thereunder—Whether subject to the “immediate” Control of Collector (Agrarian) or the Collector of the District—Order of review passed by such Officer with requisite permission of Collector (Agrarian)—Whether valid.

Held, that the expression “to whose control he is immediately subject” occurring in section 82(1) (a) of Punjab Tenancy Act, 1877 has to be viewed in the context of hierarchy of the Officers provided under section 75 of the Act which in terms refers to the provisions of Punjab Land Revenue Act, 1887, section 6 whereof categorises various classes of Revenue Officers such as Financial Commissioner, the Commissioner, the Collector, the Assistant Collector First Grade, and the Assistant Collector Second Grade. A Naib-Tehsildar, on whom powers of an Assistant Collector Second Grade, are conferred is subject to the control of the District only when he acts as Assistant Collector Second Grade. Where the Naib-Tehsildar acts in a different capacity such as Circle Revenue Officer in order to carry out the functions assigned to him under the provisions of Punjab Security of Land Tenures Act, 1953 and the rules framed thereunder then for that purpose he cannot be considered to be subject to the immediate control of the Collector of the District. The immediate control over him in regard to the Agrarian matters dealt with by him is that of the Collector (Agrarian). Hence an order of review passed by