

Salaried Employees Co-Operative ... vs Registrar, Co-Operative Societies on 13 February, 1953

Equivalent citations: AIR1954ALL31, AIR 1954 ALLAHABAD 31

JUDGMENT

Malik, C.J.

1. This writ application has been filed on behalf of the Salaried Employees Cooperative Housing Society Ltd., Mainpuri against the Registrar, Co-operative Societies, Uttar Pradesh and the Mainpuri Co-operative Housing Society Ltd., Mainpuri.

2. A piece of land was being acquired at the instance of the petitioner, the Salaried Employees Co-operative Housing Society Ltd. This land was also needed by the opposite, party 2, the Mainpuri Co-operative Housing Society Ltd. and with respect to this land, therefore, there was a dispute between the two Societies. The dispute was referred to an arbitrator, Sri Tirlok Chand, in accordance with the provisions of Rule 115, U. P. Cooperative Societies Rules, 1936. The arbitrator gave his decision on 17-5-1949 and by that award, he wanted to divide the land half and half between the two Societies. The petitioner filed an appeal before the Assistant Registrar in accordance with the provisions of Rule 133 of the said Rules. The Assistant Registrar on 10-1-1950 allowed the appeal and held that the petitioner was entitled to the whole land. This order was revised by the Registrar under Rule 135 on 6-11-1950. The Registrar set aside the order of the Assistant Registrar dated 10-1-1950 and restored the order of the arbitrator dated 17-5-1949. The opposite party 2 had filed an application for revision of the order of the Assistant Registrar on 8-4-1950 i.e., within a period of a little over three months, but the order of the Registrar, as we have already said, was passed on 6-11-1950, that is, almost after ten months of the order of the Assistant Registrar.

3. Learned counsel for the petitioner has raised two points. His contention is that under Rule 135, the Registrar could revise the Assistant Registrar's order only within six months and the six months having expired, he had no jurisdiction to revise that order. Learned counsel has also contended that Rule 115 of the Rules is 'ultra vires' as it is not covered by Section 43, Sub-section (2), Clause (1), Co-operative Societies Act, 1912. We are not satisfied that the second contention has any force. Section 43, Sub-section (1) gives the State Government right to make rules to carry out the purposes of the Act for any registered society or class of such Societies. Sub-section (2) starts with the words "In particular and without prejudice to the generality of the foregoing power such rules may". No doubt Clause (L) of Section 43, Sub-section (2) does not deal with cases of disputes between two independent Societies and is confined to cases of disputes between a Society and its members or past members. But Sub-section (1) is wide enough to include a dispute between two Societies and

the rules made thereunder are, therefore, perfectly valid. The reference of the dispute to arbitration and the award given by Tirlok Chand cannot, therefore, be said to be 'ultra vires' or without jurisdiction.

4. Coming, however, to the question of limitation, it would be necessary to consider the language of the Rules. Before, however, we come to Rule 135, we may point out that under Rule 133, a party aggrieved by an award has been given a right of appeal to the Registrar and such a right provides an appeal within one month of the date of the communication of the award. Rule 134 then makes the award of an arbitrator which has not been appealed against or the order of the Registrar final and provides that such an order shall not be questioned in any civil or revenue-Court. Rule 174 makes it clear that the word "Registrar" in Rules 133 and 134 includes an "Assistant Registrar". After this we have Rules 135 and 136. These two rules give the Registrar and Assistant Registrar power to review their own order or the orders of those subordinate to them. Rule 135 provides that the Registrar may review his own order within six months or he may revise the order of an Assistant Registrar passed in appeal within the same period. Rule 136 gives similar power to the Assistant Registrar. He can review his own order within six months or he can revise the award of an arbitrator within the same period. Neither of these rules seem to require an application for the purpose and, in any case, even if an application has to be filed, it is not said that the application has to be filed within six months. The language of the Rules makes it clear that the whole process must be completed and the order revised within the period mention-ed above. The relevant portion of Rule 135 reads as follows:

"The Registrar may review his own order or revisethe orders passed in appeal by an Assistant Registrar against an award, within six months of such order.....".

5. In the circumstances, the Registrar should have revised the order of the Assistant Registrar within six months of the date of that order i.e., 1 within six months of the 10th of January, 1950 and he not having done that, the power given to him under Rule 135 for revising the Assistant Registrar's order had come to an end. The order passed by the Registrar on 6-11-1950 was, therefore, without jurisdiction and under Article 226 of the Constitution. We set aside that order. Under the circumstances, we do not think it is a fit case where we should make an order as to costs.