BOARD OF DIRECTORS OF ANDHRA PRADESH CO-OPERATIVE CENTRAL LAND MORTGAGE BANK LTD. ETC.

v.

CHITTOR PRIMARY CO-OPERATIVE LAND MORTGAGE BANK LTD. ETC.

February 21, 1974.

[P. JAGANMOHAN REDDY, S. N. DWIVEDI AND P. K. GOSWAMI, JJ.]

Andhra Pradesh Cooperative Societies Act, 1964, *Sections* 84, 85, 93, 94, 97, 100-109, 115, 116A *and* 130—*Andhra Pradesh Cooperative Societies Rules, Rule* 70(1)(13) *and* (14)—*Act conferring supervisory powers on Central Land Mortgage Bank over Cooperative Land Mortgage Banks in the State—Rule empowering Board of Central Bank to constitute a centralised service for the mortgage banks and to levy contribution from them for the purpose.—Rule* 70 *whether* ultra vires *of section* 115 *of the Act.*

The Andhra Pradesh Cooperative Societies Act, 1974 created a Central Land Mortgage Bank to supervise the functioning of the Cooperative Land Mortgage Banks in the State. The scheme of the Act is that the provisions of Chapter XIII thereof relating to advancement of loans and mode of recovery of the amounts are made applicable to the Cooperative Land Mortgage Banks in the State. Sec. 85 permits a mortgage bank to advance loans for the purpose specified therein and to hold lands, the possession of which is transferred to it. By virtue of the provisions of section 100-109 any loan granted by a mortgage bank including any interest chargeable thereon and costs, if any, incurred in connection therewith shall, when they become due, be recoverable by the mortgage bank. All powers in respect of the recovery of loans are conferred on the mortgage banks. The Collector is empowered to make recoveries during a certain period; he is also given the power of distraint and sale. When the power of sale is to be exercised, the powers of the mortgage bank where mortgaged property is destroyed or security becomes insufficient, the power of the Board of Trustees to distrain and sell property are also provided for. The title of the purchaser is not to be questioned on the ground of irregularity nor can a mortgage be questioned on the insolvency of the mortgagor.

Appointment of a Receiver and his powers are provided for Sections 93 and 94 empower a mortgage bank or the Central Mortgage Bank notwithstanding anything contained in any law for the time being in force to purchase any mortgaged property sold under Chapter XIII of the Act and the property so purchased shall be disposed of by such banks by sale within such period as may be fixed. Sec. 95 provides that payment of all monies due to mortgage banks are payable to it and such payments shall be valid as if the mortgage had not been so transferred. The mortgage bank shall, in the absence of any specific direction to the contrary, issued by the Board of Trustee and communicated to the mortgage bank, be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage. Sec. 115 provides that subject to the provisions of the Act the Board shall have such power of supervision over the mortgage banks including the power of appointment, transfer and disciplinary action in respect of the employees of mortgage banks as may be prescribed. By section 130, the Government is empowered to make rules for carrying out all or any of the purposes of the Act. Sec. 116-A empowers the Regstrar of Cooperative Societies to create a common cadre of employees in any class of cooperative society if he considers it necessary in the interest of the cooperative movement to do so.

Sub-Rule (1) of Rule 70 empowers the Board of Directors of the Central Land Mortgage Bank to constitute a centralised service for the mortgage banks in the State and with effect from such constitution the Board shall have power to make appointments to the posts brought under the centralised service and the

A mortgage banks shall have no power to make appointments to such posts. Sub-Rule (13) empowers the Board to levy contributions from the mortgage banks towards the cost of service rendered by the Central Mortgage Bank. Sub-rule (14) provides that once a centralised cadre is constituted all rights and privileges accrued and liabilities incurred by the employee in relation to his service in the mortgage bank shall stand vested with the Board.

In three writ petitions filed before the High Court by employees of different Cooperative Land Mortgage Banks and by one of the banks, it was B contended, *inter alia*, that r. 70 was *ultra vires* of sec. 130(1) read with sec. 115 of the Act. The High Court upheld the contention and allowed the writ petitions. On appeals by special leave to this Court, the only question for consideration was whether the High Court was right in declaring Rule 70 of the Rules to be *ultra vires* of Sec. 115 of the Act.

Dismissing the appeals,

C HELD : (I) There is nothing in the Act which empowers the Central Mortgage Bank notwithstanding the fact that it provides funds to the mortgage banks, to make collection of such advances by the mortgage banks. The rule making power conferred on the Government for carrying out all or any of the purposes of the Act must be confined to such of the purposes as are enumerated or indicated in the preamble or in any of the provisions of the Act. Under Sec. 115, the Central Mortgage Bank does not have the power either to directly collect the loans and advances given by the member banks, *viz.*, mortgage banks, or to create a centralised cadre of service from among D the employees of the mortgage banks which are members of the Central Mortgage bank. That section merely confers power of supervision on the Board of the Central Mortgage Bank over the mortgage banks which power includes the power of appointment, transfer and disciplinary action in respect of the employees of the mortgage banks. It may be that some questions may be raised in respect of the actions of the mortgage banks in the matter of appointment, transfer and disciplinary actions of its employees. Whenever such questions are raised, the Board of Directors of the Central Mortgage Bank in E exercise of its power of supervision can go into the question of such appointments, transfers and disciplinary action made or taken by the mortgage banks. The power conferred by Sec. 115, therefore, can in no circumstances be construed as empowering the Board of Directors of the Central Mortgage Bank to recruit employees for the mortgage banks or to make appointments to a common cadre created by it from out of the employees of the member mortgage Banks. If the employees one appointed by the Central Mortgage Bank, their salaries and other emoluments should be paid by it. But evidently, this F is not so as sub-rules (13) and (14) or r. 70 authorise the Central Mortgage Bank to call for contribution for the cost of the service rendered by it to be borne by the mortgage banks and provides that once a centralised service is constituted all rights and privileges accrued and liabilities incurred by the employee in relation to his service in the mortgage bank shall stand vested with the Board. The key words in section 115 are "employees of the mortgage banks". The power of supervision including the power of appointment, transfer and punitive action may be taken by the Central Mortgage Bank against persons who are the employees of the mortgage bank. But rule 70 seeks to G bring into being a centralised service, the employees where of shall be the employees of the Central Mortgage Bank and not of the mortgage banks. Such a centralised service is not contemplated by Sec. 115. [445 E-446 E]

(II) The supervisory power in respect of the employees of the mortgage banks does not include the power of transfer of employee from one mortgage bank to another creating thereby a contract of service with a different em- H ployer. The word "transfer" in Sec. 115. therefore, must be read as a transfer from one branch of the same mortgage bank to another of its branch. [446 F-G]

(III) While the Central Mortgage Bank may be concerned with securing its loans to the mortgage banks, the provisions of the Act do not confer upon the Central Mortgage Bank the power to collect any loans advanced by

the member banks, i.e. the mortgage banks. The security given to the mortgage banks in respect of the loans advanced by them no doubt is deemed to have been transferred to the Central Mortgage Bank, but that is only by way of securing the monies advanced by the Central Mortgage Bank to the mortgage banks. Nevertheless, the duty to collect loans is upon the mortgage banks and notwithstanding the deemed transfer to the Central Mortgage Bank of any property mortgaged to the mortgage banks, the amount due to the mortgage banks is payable to the mortgage banks only and not to the Central Mortgage Bank. Unless there is any specific provision in the Act which directly creates a contractual liability between the Central Mortgage Bank and the borrowers from the mortgage banks, the liability of the borrowers for payment of loans advanced to them is only to the mortgage banks which actually advanced the loans to them. The borrowers have no liability to the Central Mortgage Bank. [447 B-E]

(IV) The legislature apparently realised the absence of any power in the Act, and therefore provided for creation of a common cadre of employees when it enacted sec. 116A empowering the Registrar to create a common cadre of employees for any class of society, if he considers it necessary in the interest of the cooperative movement to do so. The power is of a general nature and is applicable to the mortgage banks as well as other societies registered under the Act. Section 116-A also empowers the Registrar to require the affiliated societies to make contribution of such sum every year towards expenditure as may be incurred for the purpose of creation of any common cadre and make such payment enforceable. The High Court is right in holding that when a centralised service or any cadre of employees of the mortgage banks cannot be created by the Board in exercise of its power under s. 115 of the Act, r. 70 cannot vest such power in the Board. In this view, r. 70 is *ultra vires* the rule-making power of the State under sub.sec. (1) of Sec. 130 read with Sec. 115 of the Act. [447E-F; 448B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 2229—2231 of 1972.

Appeals by special leave from the Judgment and order dated the 24th March, 1972 of the Andhra Pradesh High Court at Hyderabad in Writ Petitions Nos. 6005 of 1970, 1547 of 1971 and 5784 of 1970.

M. Krishna Rao, B. Balamukanda Reddy and *B. Parthasarathi,* for the appellant (in all the appeals).

M. K. Ramamurthy and J. Ramamurthi, for respondent no. 1 (in C.A. No. 2230).

S. Dasaratharama Reddy and *T.A. Ramchandran,* for respondent No. 1 (in C.A. 2231).

The Judgment of the Court was delivered by

JAGANMOHAN REDDY, J. In the three writ petitions filed by the respective respondents challenging the *vires* of r. 70 of the Andhra Pradesh Co-operative Societies Act. 1964—hereinafter called 'the Act'—the Andhra Pradesh High Court held that rule to be *ultra vires* the Board of Directors of the Andhra Pradesh Co-operative Central Land Mortgage Bank Ltd.,—hereinafter referred to as 'the Central Land Mortgage Bank. These appeals are by special leave against that judgment.

The respondent in Civil Appeal No. 2229/72 is an Assistant Accountant in the Chittor Primary Co-operative Land Mortgage Bank

A Ltd. In Civil Appeal No. 2230/72 the respondents are employees of the different Co-operative Land Mortgage Banks. The respondent in Civil Appeal No. 2231/72 is the Nellore Co-operative Land Mortgage Bank Ltd. In the first of the appeals the petitioner/respondent complained that when he was due for promotion for the post of an Accountant, under r. 70 his right to promotion based on seniority had been taken away. According to him, but for r. 70, he would have had a
B right to promotion under Bye-law 10 on the basis of his seniority among the Assistant Accountants of that Bank. The petitioners/respondents in the second of the appeals had urged that a co-operative society was a body corporate and the ultimate authority over that Society was vested in its general body under s. 30 of the Act, and the Managing Committee thereof had the right to manage all its affairs including the power to appoint, transfer and dismiss its employees.
C That power of the Society is sought to be interfered with not only by vesting the Board with power of superintendence under s. 115 of the Act but also by r. 70 made pursuant to that section. Not only s. 115 and r. 70 but also s. 116A of the Act according to them, were wholly *ultra vires* the State Legislature. The respondent in the third of the appeals apprehends that r. 70 takes away its right of appointment, dismissal and control over certain of its employees which render them
D liable to be transferred by the Central Land Mortgage Bank to other mortgage banks elsewhere in the State which is an interference with the right of management of the Primary Land Mortgage Banks. The High Court, while negativing the contention that ss. 115 and 116A of the Act were *ultra vires* the State Legislature, has, however, held, as already adverted to, that r. 70 was *ultra vires* of s. 130(1) read with s. 115 of the Act. Before us, the arguments were confined to the
E question whether the High Court was right in declaring r. 70 of the Rules to be *ultra vires* of s. 115 of the Act.

The impugned r. 70 is purported to be made under sub-s. (1) of s. 130 read with s. 115 of the Act. These two sections and the impugned rule are as follows :

F s. 115—"Subject to the provisions of this Act, the Board shall have such power of supervision over the mortgage banks including power of appointment, transfer and disciplinary action in respect of the employees of mortgage banks as may be prescribed, and may, with the previous approval of the Registrar, make such regulation as may be necessary for carrying out all or any of the purposes of this Chapter."

G s. 130—"(1) The Government may, by notification published in the Andhra Pradesh Gazette, make rules for carrying out all or any of the purposes of this Act, for the whole or any part of the State and for any class of societies."

r. 70—(1) The Board of Directors of Central Land
H Mortgage Bank hereinafter referred to as 'Board' shall constitute a centralised service for the mortgage banks in the State and with effect from such constitution the Board shall have power to make appointments to the posts brought under

centralised service and the mortgage banks shall have no power to make appointments to such posts.

x x x x

(13) The Board shall have power to call upon the mortgage banks to contribute to the cost of service rendered by the Central Mortgage Bank by providing the services of members of the centralised service to work in the mortgage banks and the mortagage banks shall pay the cost at the rates prescribed from time to time by the Board. If any mortgage Bank fails to pay such contribution within the time fixed, the Registrar may, on the application of Central Mortgage Bank and after such enquiry as he may consider necessary make an order requiring the mortgage bank to pay the amount, and every such order shall be enforceable against the mortgage bank under section 63(2) of the Act as if it was an award.

(14) On constitution of centralised service all rights and privileges accrued and liabilities incurred by the employees in relation to his service in the mortgage bank shall stand vested with the Board.

x x x x

It may be mentioned that s. 115 of the Act is in Ch. XIII dealing with Land Mortgage Banks. Clauses (a), (b) and (c) of s. 84 in Ch. XIII define "Board", "Central Mortgage Bank" and "Mortgage Bank" respectively. According to these definitions the "Board" means the Board of Directors of Central Mortgage Bank; "Central Mortgage Bank" means the Andhra Pradesh Co-operative Central Land Mortgage Bank; and "Mortgage Bank" means a co-operative land mortgage bank registered or deemed to be registered under the Act and admitted as a member of the Central Mortgage Bank. That section also defines "trustee" but it is not necessary for our purposes to refer to this definition. It may also be mentioned that the rules under s. 2(1) of the Act mean the rules made under the Act.

Under s. 85 of the Act the provisions of Ch. XIII apply to the mortgage banks advancing loans for the purposes therein enumerated and under s. 97 subject to the provisions of the Act and in accordance with the rules made thereunder, it shall be competent for a mortgage bank to advance loans for the purposes referred to in s. 85 and to hold lands, the possession of which is transferred to it under the provisions of Ch. XIII. The mode of recovery of the amounts advanced by the mortgage banks is set out in ss. 100 to 109 of the Act, under which any loan granted by a mortgage bank, including any interest chargeable thereon and costs, if any, incurred in connection therewith, shall when they become due, be recoverable by the mortgage bank. All powers in respect of the recovery of loans are conferred on the mortgage banks, such as on an application made by any of the mortgage banks the Registrar is empowered to grant a certificate for recovery of a loan due to it. The other provisions confer power on the Collector to make recoveries during a certain period; and a power of distraint and

A sale. When power of sale is to be exercised; powers of the mortgage bank where mortgaged property is destroyed or security becomes insufficient; power of Board or Trustee to distrain and sell all property are also provided for. These provisions further provide that the title of purchaser is not to be questioned on ground or irregularity; mortgage is not to be questioned on insolvency of mortgagor. They also deal with the appointment of a receiver and his powers etc. Apart B from these sections, it may be noticed that ss. 93 and 94 empower, notwithstanding anything contained in any law for the time being in force, a mortgage bank or the Central Mortgage Bank to purchase any mortgaged property sold under Ch. XIII of the Act and the property so purchased shall be disposed of by such bank by sale within such period as may be fixed by the Trustee. By sub-s. (2) of s. 93 this power was to override the maximum limit of agricultural holding fixed under C the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961. Section 94 provides that the mortgages executed in favour of, and all other assets transferred to, a mortgage bank by the members thereof shall, with effect from the date of such execution or transfer, be deemed to have been transferred by such mortgage bank to the Central Mortgage Bank and shall vest in the Trustee. Section 95 provides that payments of all moneys due to the mortgage bank are payable to it D and such payments shall be valid as if the mortgage had not been so transferred. It is also provided that the mortgage bank shall, in the absence of any specific direction to the contrary issued by the Board or Trustee and communicated to the mortgage bank, be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage.

We have set out some of the relevant provisions to show that there E is nothing in the Act which empowers the Central Mortgage Bank, notwithstanding the fact it provides funds to the mortgage banks, to make collection of the loans advanced by the mortgage banks. The rule-making power conferred on the Government for carrying out all or any of the purposes of the Act must be confined to such of the purposes as are enumerated or indicated in the preamble or in any F of the provisions of the Act. The only provision to which a reference has been made specifically as empowering the Board of Directors of the Central Mortgage Bank to constitute a centralised service for the mortgage banks is s. 115 of the Act. A careful reading of s. 115, however, does not justify the contention that the Central Mortgage Bank either has the power directly to collect the loans and advances given by the member banks, namely, the mortgage banks, or to create a centralised cadre of service from among the employees of the mort- G gage banks which are members of the Central Mortgage Bank. That section merely confers power of supervision on the Board of the Central Mortgage Bank over the mortgage banks which power includes the power of appointment, transfer and disciplinary action in respect of the employees of the mortgage banks. It may be that some questions may be raised in respect of the actions of the mortgage banks in the matter of appointment, transfer and disciplinary actions of its employees. H Whenever such questions are raised, the Board of Directors of the Central Mortgage Bank in exercise of its power of supervision can go

into the question of such appointments, transfers and disciplinary actions made or taken by the mortgage banks. This power, therefore, can in no circumstances be construed as empowering the Board of Directors of the Central Mortgage Bank to recruit employees for the mortgage banks or to make appointments to a common cadre created by it from out of the employees of the member mortgage banks. If the employees are appointed by the Central Mortgage Bank, their salaries and other emoluments should be paid by it. But evidently this is not so, as sub-rr. (13) & (14) of r. 70 authorise the Central Mortgage Bank to call for contribution for the cost of the service rendered by the Central Mortgage Bank to be borne by the mortgage banks and provides that once a centralised cadre is constituted all rights and privileges accrued and liablities incurred by the employee in relation to his service in the mortgage bank shall stand vested with the Board. It is this power that the appellants are seeking to draw from s. 115, because only if such a power can be found in that provision, or in any other provision of the Act, can be impugned r. 70 be made under sub-s. (1) of s. 130 of the Act. In this connection it should be observed that the key words in s. 115 are 'employees of the mortgage banks'. The power of supervision including the power of appointment, transfer and punitive action may be taken by the Central Mortgage Bank against persons who are the employees of the mortgage banks. But r. 70 seeks to bring into being a centralised service, the employees whereof shall be the employees of the Central Mortgage Bank and not of the mortgage bunks. Such a centralised service is not contemplated by s. 115.

A B C D

It is contended by the learned Advocate for the appellants that the word 'transfer' in section 115 would indicate that it can only be in respect of the transfer of employees from one mortgage bank to another. We cannot read this power in the manner suggested, and if so this would authorise the constitution of a centralised cadre. As we have explained already the power of the Central Mortgage Bank is only of supervision which power to supervise is to include the power of appointment, transfer and disciplinary action. It is only where what is not included in a particular term as generally understood or where there is some doubt in respect of any particular matter being included, that the Legislature specifies it by including that matter. The supervisory power in respect of the employees of the mortgage banks does not include the power to transfer an employee from one mortgage bank to another creating thereby a contract of service with a different employer. The word 'transfer', therefore, must be read as a transfer from one branch of the same mortgage bank to another of its branch. The learned Advocate for the appellants stated that the mortgage banks have no branches. We would not, however, venture to say so. As pointed out by the learned Advocate for the first respondent in Civil Appeal No. 2231 of 1972 that Bye-Law 20 of the Model Bye-Laws of Co-operative Land Mortgage Bank Ltd. provides for maintaining a record of service by the Bank in respect of each employee in which all changes affecting rank, emoluments, transfers and other allied matters shall be noted in the register under the attestation of the Secretary. This provision shows that the Bye-Laws envisage a transfer of an

E F G H

A employee from one branch to another of a mortgage bank. This bye-law is consistent with s. 115 of the Act which confers a supervisory power in respect of transfer of an employee from one branch to another of the mortgage bank and not from one mortgage bank to another.

The learned Advocate for the appellants contends that it is the Central Mortgage Bank which advances the funds to its members, namely, B the mortgage banks and the responsibility is on the Central Mortgage Bank to see that the amounts advanced by the member banks are collected and the loans advanced by it are properly secured. While no doubt the Central Mortgage Bank may be concerned with securing its loans to the mortgage banks, the provisions of the Act do not confer upon the Central Mortgage Bank the power to collect any loans advanced by the member banks *i.e.* the mortgage banks. The security given C to the mortgage banks in respect of the loans advanced by them no doubt is deemed to have been transferred to the Central Mortgage Bank, but that is only by way of securing the monies advanced by the Central Mortgage Bank to the mortgage banks. Nonetheless, as we have seen earlier, the duty to collect the loans is upon the mortgage banks and notwithstanding the deemed transfer to the Central Mortgage Bank of any property mortgaged to the mortgage banks, the D amount due to the mortgage banks is payable to the mortgage banks only and not to the Central Mortgage Bank. Unless there is any specific provision in the Act which directly creates a contractual liability between the Central Mortgage Bank and the borrowers from the mortgage banks, the liability of the borrowers for payment of loans advanced to them is only to the mortgage banks which actually advanced the loans to them. The borrowers have no liability to the Central Mort- E gage Bank.

The Legislature apparently realised the absence of any power in the Act, and therefore provided for creation of a common cadre of employees when it enacted s. 116A empowering the Registrar to create a common cadre of employees for any class of society, if he considers it necessary in the interest of the co-operative movement to do so. This F section reads as under :

> s. 116A—"(1) Notwithstanding anything in this Act where the Registrar, in the interest of the co-operative movement, considers that the creation of a common cadre of employees for any class of societies is necessary, he may, constitute an appointment committee or authorise one or G more federal societies to which such class of societies is affiliated, to exercise the power of appointment, transfer and disciplinary action in respect of such categories of employees of that class of societies as may be specified by him and make such regulations as may be necessary for carrying out the said purpose. Where such appointment committee is constituted or federal society is authorisd by the Registrar, the H affiliated societies shall not have powers to deal with such categories of employees except to the extent the regulation may permit.

(2) The Registrar shall have power to require the affiliated societies to make contribution of such sum every year towards expenditure, as the appointment committee or federal society is likely to incur or has incurred for the purpose. If any society fails to pay the said sum to such authority as may be specified by the Registrar and within the time fixed by him, the Registrar may on the application of the authority, and after such enquiry as he may consider necessary, make an order requiring the society to pay the amount, and every such order shall be enforceable against the society as if it were a decision under section 62."

A

B

The power of the Registrar, it will be noticed is, to create a common cadre of employees for any class of societies. The power, therefore, is of a general nature and is applicable to the mortgage banks as well as to the other societies registered as societies under the Act. Section 116A also empowers the Registrar to require the affiliated societies to make contribution of such sum every year towards expenditure as may be incurred for the purposes of creation of any common cadre and make such payment enforceable. In our view the High Court is right in holding that when a centralised service or any cadre of employees of the mortgage banks cannot be created by the Board in exercise of its power under s. 115 of the Act, r. 70 cannot vest such power in the Board. In this view, r. 70 is *ultra vires* the rule-making power of the State under sub-s. (1) of s. 130 read with s. 115 of the Act.

C

D

The appeals are accordingly dismissed with costs. One set.

S.B.W. *Appeal dismissed*