

(1987) 05 KL CK 0005
In the High Court Of Kerala
Case No : C.R.P. Mo. 1375 of 1983

A. Moideenkunhi Haji

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-05-1987

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 100C, 100C(d), 101(2), 129, 129(1)

Citation : (1987) KLJ 623

Hon'ble Judges : M. P. Menon, J

Bench : Single Bench

Advocate : P. K. Musa, for the Appellant;

Judgement

M. P. Menon, J.—The first petitioner was the "assessee" in ceiling proceedings under Sec. 85 of the Kerala Land Reforms Act, 1963 (Act, 1/64), that is one, who in the opinion of the Taluk Land Board, was in possession of lands in excess of the ceiling limit applicable to his family. In suo motu proceedings initiated under Sec. 85 (7), the Board passed an order on 16-11-81 directing him to surrender 7.45 acres of land as excess. The order was passed without hearing him because despite service of draft statement and notice fixing the date of hearing, he had failed to appear before the Board at the appointed time. Within a matter of days, however, the assessee moved an application before the Board for setting aside that order: it was his case that he was prevented by sufficient cause, from appearing before the Board on 16-11-81. Objections to the draft statement were also filed along with the above application. The Board considered the matter, found, that the assessee had shown satisfactory reasons for non-appearance, and set aside its "ex Parte order". An order of stay was also issued, directing the Tahsildar not to take over the excess lands, pending reconsideration of the ceiling case. The objections were got enquired into, through the authorised officer and his report obtained. It is said that the matter was heard again, but in the meanwhile, the Taluk Land Board received two communications from the Land Board at Trivandrum. The first was to the effect that the Taluk Land Board had no

power either to review its own order or to stay it. The second stated that it had acted irregularly, illegally and without jurisdiction in having entertained the "application for review" and stayed further proceedings. It also directed the Taluk Land Board to enforce the earlier order, without, reviewing it. And in the Light of the above "instructions", the Taluk Land Board dropped all further proceedings for reconsideration, and held that its decision dated 16-11-81 would stand. It is this decision of the Taluk Land Board dated 25-3-83 which is now being sought to be revised. Mr. Musa for the assessee raises three grounds:-

(i) Sec. 85 (8) of the Act empowers the Taluk Land Board to set aside ex parte orders, and the Land Board, Trivandrum was in error in thinking that that would amount to "review";

(ii) even if Sec. 85 (8) is not attracted, the Taluk Land Board should be held to have the power to set aside an ex parte decision so long as such power is not denied to it by the statute or the Rules:

and (iii) in any event, no power can be recognised in favour of the Land Board to issue binding directions to Taluk Land Boards in the matter of exercising their quasi judicial functions under the Act and the Rules.

2. According to the learned Government Pleader, ground (i) above is concluded against the petitioner by the decision of this Court in *Rajagopalan v. State of Kerala* (1977 KLT 114) which takes the view that only a person other than the assessee can apply under Sec. 85 (8); and this seems to be so Mr. Musa would however submit that the decision requires reconsideration. Had this been the only question arising for decision, I would have referred the matter to a Division Bench : but as other questions are involved, it will at least be interesting to notice what Mr. Musa's contentions are, in this regard.

3. Sec. 85 (1) provides that where a person owns or holds lands in excess of the ceiling area, such land "shall be surrendered as hereinafter provided" Sub-sec. (2) imposes an obligation on such person (who may be called the "excess-holder" or the "assessee") to file a statement before the Land Board giving the extent and other particulars of all such lands, and also exercising option in respect of the items he would like to surrender, Ignoring Subsections (2A), (3), (3A) and (4) which are not material for the present, Sub-sec. (5) provides that the statement submitted by the assessee will be transferred by the Land Board to the appropriate Taluk Land Board which shall

(a) cause the particulars mentioned in the statement to be verified,

(b) ascertain whether the assessee holds any other lands;

and (c) by order, determine the extent and the identity of the land to be surrendered.

Sub-sec. (6) stipulates that in determining the identity of the land to be surrendered by the assessee, his choice is to be accepted, subject to the two

provisos that follow. And the second among them is to the effect that where the interests of other persons are likely to be affected by such determination, they too must be given an opportunity of being heard. Sub-sections (7) deals with cases of persons failing to submit statements as required by Sub-sec. (2): in such cases, action can be taken suo motu by the Taluk Land Board to determine the extent and other particulars of land to be surrendered. The proviso to this sub-section also insists that before "such determination". the persons interested in the land are to be heard. Then comes sub-sec. (8), reading as follows:

Where the Taluk Land Board determines the extent of the land to be surrendered by any person without hearing any person interested, such person may within sixty days from the date of such determination, apply to the Taluk Land Board to set aside the order and, if he satisfies the Taluk Land Board that he was prevented by any sufficient cause from appearing before the Taluk Land Board it shall set aside the order and shall proceed under sub-section (5) or sub-section (7), as the case may be.

On an analysis of the above provisions, it was said in Rajagopalan (1977 KLT 114) that Sec. 85 (8) makes a clear distinction between the person who has excess land (i.e. the assessee) and other persons interested in such land, and that the latter class of persons alone could apply under the sub-section to set aside the Taluk Land Board's order, and not the assessee himself. Rules 12 to 14 of the Kerala Land Reforms (Ceiling) Rules, 1970 were also referred to to suggest that they were in accordance with the construction suggested, though they could not totally govern or influence such construction.

4. There is no doubt that the first part of Sec. 85 (8) refers not only to the person liable to surrender excess land, but also to "any person interested" in the determination by the Taluk Land Board of the extent of land to be surrendered by such person. To this extent, the opening part of the sub-section involves the kind of dichotomy emphasised in Rajagopalan. But there is difference, it is pointed out, between the "determinations" in subsections (6) and (8): under the former, the determination is about the identity of the land to be surrendered, whereas under the latter, it is about the extent. Again, while the 2nd proviso to sub-sec. (6) speaks of other persons likely to be affected, sub-sec.(8) makes mention of any person interested. If these distinctions are kept in mind, and the further circumstance that the statute itself (as distinct from the Rules which will be separately examined) does not specifically provide for a hearing of the assessee before making the determination under Sub-sec.(5), is it necessary or desirable, asks counsel, to so narrowly construe "any person" in sub-sec. (8) as to keep out the assessee? After all, is not the assessee the person most interested in the determination of the extent of land to be surrendered by him and therefore one who could legitimately be given the right to apply for setting aside an order passed in his absence, if sufficient cause could be shown for such absence? It is argued that when the Board is satisfied with the cause shown for non-appearance, what it has to do is to set aside the order under sub-sec.(5) or

under sub-sec.(7), as the case may be: that is, the order determining the extent of land to be surrendered by the assessee. If what is to be set aside is only the fixation of identity, it may be possible to suggest that interested person other than the assessee will be equally, if not more, concerned; but if what is to be set aside is the decision about the extent, the assessee should evidently be more concerned. The circumstance that what really happens when an application under sub-sec.(8) is allowed is the commencement of de novo proceedings against the assessee, also suggests, according to counsel, that sub-sec.(8) is not designed to exclude the assessee from the category of "any person" mentioned therein.

5. I am not prepared to say without further examination, that the above contentions are without substance.

6. Sec. 100C of the Act confers on the Taluk Land Board, for the purpose of performing its functions under the Act, the powers of a civil court in respect of matters like summoning witnesses, requiring discovery and production of documents, receiving evidence on affidavit and "any other matter which may be prescribed". Under Sec. 129 (1), the Government can make rules to carry out the purposes of the Act; and in particular, sub-sec. (2) provides for prescription of the procedure to be followed by Taluk Land Boards. The Kerala Land Reforms (Ceiling) Rules, 1970 are made by the Government in exercise of power under Sec. 129; and Rules(9) to (15) in Chapter III are relevant, as regards the procedure to be adopted by a Taluk Board in proceedings under Sec. 85 of the Act. Rules 9 and 9A provide for verification of the statement filed by the assessee under Sec. 85 (2). After such verification, a draft statement is to be drawn up by the Board, as prescribed in Rule 10. Rule 11 provides for publication of draft statements. Rule 12 (1) enjoins that the draft statement shall be served on the assessee inviting objections; and sub-rule (2) provides for similar service on other persons who may also have any interest in the lands concerned. Rule 13 deals with "enquiry" and "determination of the extent and identity" of the land to be surrendered by the assessee. The details of the rule are not material for the present, except that there is provision for hearing of objectors, including the assessee. Rules 14 and 15 deal with applications under Sec. 85 (8) and Rule 15, in particular, reads:-

Re-determination of extent and identity of land. Where an order is set aside under subsection (8) of section 85 at the instance of a person on whom the draft statement has been served under rule 12 the Taluk Land Board may if it thinks fit so to do, proceed to determine, without recourse to the preparation of a fresh draft statement. the extent and identity of the land to be surrendered after issue of a notice in Form No. 7 to the persons specified in sub rub (1) of rule 12 and to such other persons who have preferred any claim to ownership or possession or both, of the lands indicated for surrender in such draft statement.

The first thing that emerges from an examination of the above rules is that the details of the procedure to be followed by the Taluk Board, in making the determination under Sub-sec. (5) of Sec. 85 are all to be found in the rules. A

draft statement is to be first drawn up, after due verification of the particulars furnished by the assessee, in his statement; and that has to be served on him and others interested so that they get an opportunity of raising appropriate objections. The objections are then to be gone into, if necessary after further verification, at an enquiry at which the objectors are allowed to adduce evidence and given an opportunity of being heard. In other words it is the Rules which provide for a full-fledged quasi-judicial enquiry about the extent of land held by the assessee, exemption claims raised by him, the size of his family, the ceiling limit applicable to him and the extent and identity of the land to be surrendered. It cannot therefore be said that the powers and duties of the Taluk Land Board, in so far as they relate to the procedure to be adopted in discharging its functions under Sec. 85, have to be found exclusively in the statute itself, and not the Rules. Again, the first part of Rule 15 specifically contemplates exercise of power by the Board, under Sec. 85(8), at the instance of a person on whom draft statements are served under Rule 12, and that includes the assessee also. A combined reading of Sec. 100C, Sec. 129 and Rule 15 may therefore support the view that the power under Sec. 85 (8) which pertains to the realm of procedure only, can be exercised on an application filed by the assessee also.

7. As already indicated, it will not be proper for me, sitting single, to interpret Section 85 (8) in a manner different from Rajagopalan (1977 KLT 114); and the conclusion herein cannot therefore rest on such an interpretation; but it is necessary to observe that in Rajagopalan, this Court's attention does not appear to have been drawn to the combined effect of Sections 100C and 129 of the Act, and Rule 15 of the Ceiling Rules. In fact the discussion in the case stops with a reference to Rule 14. Again, the view of the Land Board that what the Taluk Land Board had attempted in this case was to "review" its earlier order also does not appear to be correct: in law, "review" is different from restoring an application dismissed for default, or setting aside an ex parte decision. The power under Sec. 85 (8) is one to set aside an order passed against a person, without hearing him, when he shows sufficient cause for his failure to appear for the hearing at the appointed time. It is evidently more in the nature of setting aside ex parte, than review.

8. Assuming that Sec. 85 (8) does not confer power on the Taluk Land Board to set aside its order under Sec. 85 (5), at the instance of an assessee, I still think that such power should be recognised in its favour, if that is necessary for it to effectively perform its adjudicatory functions in accordance with the rules of fair play and justice. In Cheru Ouseph v. Kunhipathumma (1981 KLT 495) I had had occasion to discuss at some length the nature of the powers exercised by Special Tribunals in modern days, and the role played by them in the administration of justice, and to observe:-

Two or three important things follow from what has been seen so far. First, the administration of justice, or at any rate, a substantial part of it is now patterned in a manner different from what it was some half a century ago. Second, the

special tribunals which constitute the core of this new pattern are exercising judicial functions inherent in the sovereign state. Third, the powers exercised by them are in many cases indistinguishable in content from those exercised by courts of justice. Further, exercise of such powers by them is vital to the citizen despite the supervisory powers of superior courts over such exercise. If this be the true position, the reality which cannot be overlooked from the functional point of view, how are we to proceed in delimiting the powers of these bodies in matters of procedure, at least in areas not directly covered by statutes?

And after having posed the question, I ventured to answer it by suggesting that "in respect of procedural matters, all powers which are not specifically denied by the statute or the statutory rules should be vouchsafed to a statutory tribunal so that it may effectively exercise its judicial function". The above approach was noted with approval by Bhat J., in *Abdulla v. Rent Controller* (1984 KLT 865). My attention has not been drawn to any provision

H.W.V. COX'S Medical Jurisprudence & Toxicology (with 141 Photographs on Art Paper) 5th Edition, 1987--900 Royal Pages--Deluxe Binding--Rs. 220.00 Thoroughly revised and re-written by Professor Bernad Knight M.D. (Wales) M.R.C.P., F.R.C. Path. D.M.J. Bar-at-Law Co-Revising author of Taylor : Medical Jurisprudence-13th Ed. & YUDHISHTHIRA (Senior Advocate, Supreme Court of India)

Although India has an excellent tradition of compendious text-books, it is a regrettable fact that many of these have gradually become outdated as research, new advances and a new outlook have emerged, especially in Europe, America and the Pacific areas. This present book is in response to the relative stagnation of editorial attitudes which is apparent to academic observers from outside India and is an attempt to revitalise forensic medical literature in India to bring it in line with current attitudes elsewhere.

Conservatism of forensic expertise in India has led to the situation where the dictates of older writers have been accepted unquestioningly and this has led to a vicious circle between the doctor and the lawyers which has prevented a more healthy critical attitude towards some of the incorrect dogma which goes back to the end of the nineteenth century and the first part of the twentieth. For a science to progress, there must be a continual scepticism on the part of all the new practitioners, who must not accept everything that is inherited from the Past without critical evaluation and practical experiment where possible. The curse of the order medical jurisprudence was over-interpretation and reading facts from insubstantial evidence. This has partly been the fault of the legal system, which insists upon an answer in every case, whereas medicine increasingly recognises its limitations.

If this book, in addition to providing reliable modern data, can encourage this enquiring and critical attitude, it will have accomplished its purpose.

It is hoped that the superior courts of India may have to revise their earlier

judgments, in view of the new developments dealt with in this book in relation to Medical Jurisprudence and Toxicology. In Act 1/64 or the ceiling Rules which seeks to deny, expressly or by necessary implication, the power to a Taluk Land Board to set aside its order passed without hearing an assessee when he is satisfied that the assessee had sufficient cause for non-appearance, and that it will be unjust, in the circumstances disclosed, to allow the ex parte decision to stand. It is that is so, I am definitely of the view that even if Sec. 85 (8) was not attracted, the Taluk Land Board in the present case was well within its bounds in setting aside the order dated 16-11-81 and proceeding to reconsider the matter.

9. In *Kalyani Amma Bhargavi Amma Vs. Ouseph Varkey of Attukadavil House and Others*, a Full Bench of this Court, while dealing with the powers of a Land Tribunal, refused to make any "compartmental distinction" between powers and procedure, and indicated that even procedure might involve the exercise of powers. This observation appeals to be apt to the situation arising from a combined reading of Sec. 100C(d), Sec. 129 (2)(e) and the prescription of the Ceiling Rules already referred to. The Full Bench was also of the view that the logical consequence of holding that a Tribunal had no power to restore an application would be to hold that it had no power to dismiss for default also. Neither Sec. 85 nor the relevant Ceiling Rules confer any power on the Taluk Land Board to make the concerned determination "ex parte"; and if it is to be held that the Taluk Land Board has no power to set aside an ex parte decision at the instance of an assessee he might be justified in asking: where is the power of the Taluk Land Board to pass an ex-parte order? If the view is taken that the Taluk Land Board has power to set aside its order passed without hearing an assessee, even if Sec. 85 (8) is not attracted to such cases, the next question whether the Land Board can issue directions to or control the working of Taluk Land Boards in the matter of exercising their quasi judicial functions under the Act, need not be examined, except perhaps to observe that ordinarily, the Land Tribunals, Appellate Authorities and Taluk Land Boards constituted under the Act have their own independent statutory functions to discharge, uninfluenced by any directions from the Land Board. It is doubtful whether the "superintendence" referred to in Sec. 101 (2) includes judicial superintendence, or a power of any other nature to give directions to or place fetters on the Taluk Land Boards, in the discharge of their quasi-judicial functions. The two letters written by the Land Board to the Taluk Land Board in this case can however be understood as an attempt to draw the latter's attention to the view expressed by this Court in *Rajagopalan's case* (1977 KLT 114). As I said, it is unnecessary to pursue the matter any further, on the facts of the present case.

The proper course to be adopted, in the light of the above discussion, is to set aside the order impugned and remit the matter to the Taluk Land Board with a direction to continue the proceedings it had initiated after setting aside its earlier order dated 16-11-81, and re-determine the extent and identity of the land to be surrendered by the assessee herein, on the footing that it has power to do so and that exercise of such power does not amount to "review". Revision disposed

of with such an order, No costs.