

(2006) 05 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 27499 of 1999 (W)

Abraham G. Pallivathukkal

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 85(5), 85(7), 85(9), 85(9A), 86

Citation : (2006) 3 ILR (Ker) 58 : (2006) 2 KLJ 457 : (2006) 3 KLT 138

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : Joe Joseph Kochikunnel and Alex Jose Paikeday, for the Appellant;
Rajasree (GP), for the Respondent

Final Decision : Allowed

Judgement

Kurian Joseph, J.—Whether an order section 85(9A) of the Kerala Land Reforms Act, 1963 is liable to be reopened u/s 85(9) is the question to be decided in this case. Ext. P2 notice issued by the 2nd respondent Taluk Land Board is under challenge. As per the said notice dated 27-5-1999 the ceiling case No. C.R.784/73 on the files of the Taluk Land Board, Ernad, transferred to Taluk Land Board, Nilambur and renumbered as S.R.115/97 was sought to be reopened by invoking the power u/s 85 (9A) of the Kerala Land Reforms Act, 1963. One main ground taken in the writ petition is that of limitation. Proviso to section 85(9A) clearly provides for a period of three years from the date of introduction of the amendment for such reopening and it is now settled law that beyond the period of three years there cannot be reopening u/s 85(9A). Two decisions of this court on the point are (1) Mary Michael Vs. Taluk Land Board and (2) State of Kerala Vs. Sivasankaran Nair, . Apparently, faced with such a" situation, the stand taken in the counter affidavit is that the reopening is u/s 85(9) where the limitation is seven years. Then the question is whether in the facts and circumstances of the case reopening u/s 85(9) is permissible. It is admitted in the counter affidavit itself that the ceiling case, C.R. No. 784/73 had been recorded by the Taluk Land

Board, Ernad on 29-5-1981. It is stated in the counter affidavit that pursuant to orders passed by this court in C.R.P. No. 2196/82 filed by the State, the case was again considered and revised order was passed on 28-9-1988,....."upholding the original order dated 29-5-1981". After detailed enquiry and examination, the Taluk Land Board again dropped the case as per its order dated 21-6-1994 passed pursuant to the reopening as per notice dated 27-5-1992. That order is produced in the writ petition as Ext. P1. It is clear from the order that the reopening was made u/s 85(9A) of the Act. Once there is an order u/s 85(9A), the question is whether reopening u/s 85(9) is permissible.

Section 85(9) reads as follows:

The Taluk Board may, at any time, set aside its order under sub-section (5) or sub-section (7), as the case may be. and proceed afresh under that sub-section if it is satisfied that-

(a) the extent of lands surrendered by, or assumed from, a person u/s 86 is less than the extent of lands which he was liable to surrender under the provisions of this Act, or

(b) the lands surrendered by, or assumed from, a person are not lawfully owned or held by him; or

(c) in a case where a person is, according to such order, not liable to surrender any land, such person owns or holds lands in excess of the ceiling area:.

Provided further that the Taluk Land Board shall not initiate any proceedings under this sub section (after the expiry of seven years) from the date on which the order sought to be set aside has become final.)

Explanation I:- For the removal of doubts, it is hereby clarified that the references in this sub-section to the Taluk Land Board shall, in cases in which the order under sub-section (5) or sub-section (7) has been passed by the Land Board, be construed as references to the Land Board.

Explanation II:- For the purposes of this section and section 86, "hold" with reference to land shall include "possess" land under mortgage with possession.

2. It is clear that reopening u/s 85(9) is only of the orders passed u/s 85(5) or under sub-section 7. Order u/s 85(5) is the original order determining the ceiling case considering the statement filed by the declarant and on further enquiry. Section 85(7) order is passed when the declarant fails to file a statement. Thus the Taluk Land Board is not competent u/s 85(9) to reopen the case or an order in a ceiling case passed otherwise than u/s 85(5) or (7). That power is available to the Taluk Land Board only u/s 85(9A) where the Taluk Land Board is competent to reopen the case or an order in a ceiling case passed u/s 85(5), 85(7) or under 85(9). To the extent relevant the provision reads as follows:

19(A) Power of Taluk Land Board to review its decision - Notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of

1963), or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, the Taluk Land Board may, if it is satisfied that its decision under sub-section (5) or sub-section (7) or subsection (9) requires to be reviewed on the ground that such decision has been made due to the failure to produce relevant data or other particulars relating to ownership or possession before it; or by collusion or fraud or any suppression of material facts the Taluk Land Board may review such decision after giving an opportunity to the parties of being heard and pass such orders as it may think fit:

Provided that the Taluk Land Board shall not reopen any such case after the expiry of three years from the date of coming into force of the Kerala Land Reforms (Amendment) Act, 1989).

Thus the power section 85(9A) to reopen only within three years from the date of coming into the force of the amended provision. Section 85(9A) came into effect on 30-5-1989. In the instant case what is sought to be reopened is an order passed u/s 85(9A) invoking the power u/s 85(9), if the stand in the counter affidavit is accepted though the impugned Ext. P2 notice dated 27-5-1999 shows that the attempt is to reopen the case u/s 85(9A). Neither u/s 85(9A) owing to limitation nor under 85(9) owing to lack of power, reopening of the ceiling case in the facts and circumstances of the case is permissible. Ext. P2 is quashed and the writ petition is allowed. No costs.