

(1979) 08 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No. 149 of 1978

Ayyappan

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 04-08-1979

Acts Referred:

Land Reforms (Tenancy) Rules — Rule 72

Citation : (1979) 08 KL CK 0006

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : P.K. Shamsuddin, A.A. Abdul Hassan and K.K. Abu, for the Appellant; Government Pleader for 1 and 2 Respondents and M.K. Narayana Menon, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—The Appellant is a kudikidappukaran who was sought to be shifted by the Respondent from his kudikidappu u/s 75(3) of the Land Reforms Act. That section reads:

75. Kudikidappukaran to have fixity.--

* * *

(3) Notwithstanding anything contained in Sub-section (1) and (2), where the total extent of land held by a person, either as owner or as tenant, is less than one acre and there is a kudikidappu on any land held by him, he may if he requires the land occupied by such kudikidappu for constructing a building for his own residence, apply to the Government for the acquisition of land to which the kudikidappu may be shifted:

Provided that after the expiry of a period of two years from the commencement of the Kerala Land Reforms (Amendment) Act, 1969, an application shall not be made under this sub-section except with the consent of the kudikidappukaran.

Explanation.--For the purposes of this sub section,--

(a) the total extent of land held by a person shall be computed as on the 1st day of July, 1969;

(b) in calculating the total extent of land held by a person who is a member of a family, the extent of the land held by any member of his family or jointly by some or all of the members of such family shall also be taken into consideration".

The 3rd Respondent was the applicant who applied u/s 75(3) for shifting the Appellant. He was one who had only less than one acre of land and he alleged that he required the land occupied by the kudikidappukaran for constructing a building for his residence. The 2nd Respondent, the Revenue Divisional Officer, by Ext. P-3 order held that as the 3rd Respondent had only less than one acre of land he was entitled to shift the kudikidappu. In other words, according to the, 2nd Respondent, once it was established that the applicant had only less than one acre of land, the kudikidappukaran had automatically to shift, without regard to any other requirement. This view was endorsed by the learned Judge in the writ petition filed by the Appellant challenging Ext. P-3 order.

2. Counsel for the Appellant contended before us that on the terms of the section, shifting of the kudikidappu cannot be automatically on the mere establishment of the requirement of the landlord holding only less than one acre of land, and it was necessary, in addition to establish that he required the land for constructing a building for his own residence. On the reading of the section, this seems to us to be necessary. It seems to have been so ruled by a Division Bench of this Court in *Sathi Bai Kamath v. Sub Collector* 1977 KLT 644. The real question dealt with in that decision was whether the enquiry contemplated by Section 75(3), (3A) and 3(B) could be conducted by the Sub Collector or whether the enquiry and the orders had to be done and made by the Government. It was held that the Sub Collector was competent to hold the enquiry and to pass appropriate orders. In so holding, the Division Bench examined the scope and the content of Section 75(3) and the rule dealing with the disposal of the applications under the section. It observed:

It will be noticed from this rule and from the sub-sections that we had extracted that the object of Section 75(3) is to enable the Government to acquire the land to which the kudikidappu may be shifted. The acquisition is to be directed if the Government is satisfied in regard to the requirements mentioned in Sub-section (3) of Section 75 namely, that the applicant had only less than one acre of land, and that there is a kudikidappu on the same, and that he requires the land occupied by the kudikidappu for constructing a building for his own residence. These requirements may, under Sub-section (3A) or (3B), be investigated by an officer authorised by the Government, who, under that sub-section is to direct that possession of the land acquired be given to the kudikidappukaran and he be required to shift to the said land. It was argued by counsel for the Appellants that the limited power of the officer authorised by the Government was only

what is provided for in the later part of Sub-section (3) of Section 75, namely, to direct the kudikidappukaran to shift to the site acquired; and not to deal with the earlier part of the requirements of the section regarding limit of land held by the applicant, existence of the kudikidappu, and the requirement of the land on which the kudikidappu is situate for residential purposes. These, it was said, are matters in regard to which the Government, and the Government alone had to be satisfied. Looking through the scheme and the purpose of Sub-section (3) and having regard to the fact that the Government in these matters can only function, and must necessarily function through some ministerial agency or officer of the Government, we are of the opinion that the provisions of Sub-section 3(A) and Sub-section (3)B are meant to provide to machinery for implementing the purposes of the application mentioned in Sub-section (3). It appears to us, this has been provided for by Rule 72 as it stood prior to its substitution in 1975. It does not contemplate a report by the officer to the Government or a consideration by the Government of the report and the passing of a final order by the Government on such report. On the other hand, it seems to contemplate an outright dealing of the application by the authorised officer. (P. 646)

The above observations fully support the view that it is necessary u/s 75(3) to investigate and find as one of the necessary ingredients before directing a shifting of the kudikidappu, the question whether the applicant requires the land for the purpose of constructing a house on the land occupied by the kudikidappu. This aspect of the matter is further emphasised by Rule 72 of the Land Reforms (Tenancy) Rules (which is the same as what was referred to in the Division Bench ruling noticed supra). That Rule to the extent necessary provides thus:

72. Form of application for shifting Kudikidappukaran.

* * *

(2) Upon receipt of such an application, the officer authorised by the Government in this behalf shall make such enquiry as he may deem fit after giving the applicant as well as the kudikidappukaran an opportunity of being heard and after giving them copies of documents on which reliance is placed by him and if he is satisfied that the applicant requires the land occupied by the kudikidappu for constructing a building for his own residence and that the total extent of land held by him on the 1st day of July 1969, either as owner or as tenant was less than one acre, he shall require the applicant to deposit eighty seven and a half per cent of the cost of acquisition of the land to be acquired and to execute an agreement undertaking to pay the same percentage of any increase in the compensation for the land acquired.

* * *

(2B) The Government shall, after considering the report and the conclusion of the officer and after affording an opportunity to the person affected to state his case, pass such order thereon as they think fit.

* * *

3. Our attention was called to certain unreported decisions of this Court, some of which are said to have taken a contrary view. The first of these was a decision of Vadakkal, J. in O.P. No. 3453 of 1975. That decision is in support of the view which we have expounded herein. After noticing Section 75(3), the learned Judge observed that obviously the applicant should establish that the land occupied is necessary for the construction of a building for his residence. It was further observed that the authority who has to acquire the land should enquire into the question whether the application itself is bona fide or not. While the first part of the observation is justified by the terms of the section, we are of the opinion that the second part of the learned Judge's observation was not so justified. To that extent, we cannot agree with the decision. In the Judgment in O.P. No. 656 of 1974, our learned brother Narendran, J., had merely observed that Section 75(3) does not posit the element of bona fide requirement. That decision has no application to the question here arising for consideration.

4. In O.P. No. 1336 of 1974, our learned brother Justice Bhaskaran again, observed that the expression bona fide is absent in Section 75(3). That aspect of the matter does not arise for consideration herein.

5. These were the only decisions to which our attention was drawn. We do not think these decisions in any way militate against the view that we take on the scope and the content of Section 75(3) and the ingredients necessary to be established in an application under the said section.

6. In the light of the view that we take, we are of the opinion that the question whether the applicant required the land for constructing a house was a matter which had to be considered for the purposes of the Section 75(3) of the Act. As the same had not been considered or dealt with, we are obliged to allow this appeal and to set aside the judgment of the learned Judge. The result is that O.P. No. 808 of 1977 will stand allowed and Ext. P-3 order will stand quashed, and the application for shifting will stand remitted back to the Revenue Divisional Officer for being dealt with and disposed of in accordance with law and in the light of the observations contained in this judgment. No order as to costs.