

(2007) 02 KL CK 0077
In the High Court Of Kerala
Case No : C.R.P. No. 2514 of 2002

C. Sharadha

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala Land Reforms (Vesting and Assignment) Rules, 1970 — Rule 4
Kerala Land Reforms Act, 1963 — Section 103, 103(1), 106, 13, 2(57)

Citation : (2007) 2 ILR (Ker) 111 : (2008) 1 KLJ 498 : (2007) 1 KLJ 498

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : T. Krishnan Unni, for the Appellant; Mohammed Puzhakkara, GP and N.N. Sungunnapalan, for the Respondent

Final Decision : Allowed

Judgement

K. Padmanabhan Nair, J.—The 17th respondent in O.A. No. 3714 of 1976 of Land Tribunal, Kanhagad, who was the 14th respondent in A.A. No. 584 of 1997 on the file of Appellate Authority (LR) Kannur is the petitioner in this Civil Revision Petition. This Civil Revision Petition is filed against the order passed by the appellate authority allowing the appeal filed by respondents 2 to 19.

2. Nine persons together filed an Original Application u/s 72B of the Kerala Land Reforms Act, Act 1 of 1964 (for short, the K.L.R. Act) read with Rule 4 of Kerala Land Reforms (Vesting and Assignment) Rules, 1970 for assignment of the right, title and interest of the land owner and intermediary in respect of the petition scheduled property. The first respondent in the O.A. was the land owner. Third respondent was the intermediary. Second respondent was the assignee of the third respondent - intermediary. In the Original Application it was averred that the petition scheduled land was given on lease to the applicants as per a Registered Kuthikkanam Lease Deed No. 417 of 1946 and the applicants are tenants as defined in Section 2(57) of the K.L.R. Act and hence they are entitled

to get fixity of tenure. The first respondent filed a counter contending that the plot was leased out for constructing a cinema theater complex and the lease was granted for commercial purpose and hence the applicants are not tenants within the meaning of K.L.R. Act. Hence it was prayed that the petition may be dismissed. Second respondent in the O.A. who was the assignee of the third respondent, filed a counter stating that the property covered by the lease is a commercial site and the lease dated 18-2-1946 was for a commercial purpose and the transaction is one coming u/s 106 of the K.L.R. Act. It was contended that land was not given for agricultural purpose and hence petitioners are not entitled to get fixity of tenure. Before Land Tribunal, applicants produced Lease Deed No. 417 of 1946 dated 20-2-1946. A Revenue Inspector was deputed to conduct a local inspection, who filed a report, which was marked as Ext.C1. The Land Tribunal held that the lease was for agricultural purpose and hence the applicants are entitled to fixity of tenure. Second respondent in O.A. filed A.A. No. 412 of 1982 before the Appellate Authority (LR) Kasaragod challenging the decision of the Land Tribunal. During the pendency of the appeal, second respondent died and his legal representatives were impleaded as additional appellants. The Appellate Authority concurred with the findings of the Land Tribunal and dismissed the appeal. The petitioner filed C.R.P. No. 584 of 1983 before this Court challenging the orders. This Court as per order dated 14-6-1989 set aside the orders passed by appellate authority and Land Tribunal. The case was remanded to the Land Tribunal for fresh disposal. Tribunal was directed to give opportunity to the parties to adduce fresh evidence. While remanding the matter, this Court held that the lower authorities had not considered whether respondents 1 to 9 in the C.R.P., who were the applicants, are cultivating tenants within the meaning of the K.L.R. Act.

3. After remand, on the side of the applicants P.Ws. 1 and 2 were examined. On the side of the revision petitioner, R.Ws. 1 and 2 were examined. Exts.P1 to P3 and R1 and R2 proved and marked. After remand, Special Revenue Inspectors inspected the property twice and filed Exts.C2 and C3 reports. The Land Tribunal, after considering the evidence, came to the conclusion that the lease in question was one exempted u/s 3(1)(iii) of the K.L.R. Act and hence the applicants are not entitled to claim fixity of tenure over the property and dismissed the application. Challenging that decision, respondents 1 and 3 to 18 and predecessor-in-interest of respondents 19 to 22 filed A.A. No.584 of 1997 before the Appellate Authority (Land Reforms) Kannur. Appellate Authority reversed the finding of the Land Tribunal and found that the lease was for agricultural purpose. Appeal was allowed holding that applicants are entitled to get fixity of tenure. Challenging that order, this Civil Revision Petition is filed.

4. Learned Counsel appearing for the revision petitioner has argued that finding of appellate authority that the lease in question was for agricultural purpose is perverse and not based on any evidence. It is also argued that in spite of the specific direction of this court to consider whether the lease is exempted u/s 3 of the Act, that aspect was not considered by the Appellate Authority. It is also

argued that the lease was executed at a time when the Malabar Tenancy Act, 1929 was in force and under that Act, tenant was not entitled to get fixity of tenure unless at least a part of the holding must be wet land. It is argued that by the time that Act was amended to confer fixity of tenure on lessees of garden lands alone, land involved in this case had already been converted as a commercial site and therefore provisions regarding fixity of tenure are not applicable. It is further argued that a reading of Exts.C1 to C3 reports will clearly show that as on the date on which the K.L.R. Act came into existence, the land in question was substantially occupied by the cinema theater and shop buildings and was a commercial site. It is argued that the age of the improvements will show that after the commencement of the K.L.R. Act, an attempt was made to make it appear that the land in question was used for agricultural purpose. It is argued that since the lease was executed at a time when no fixity of tenure was available to a lessee of a garden land it was not necessary to state that the land was given for commercial purpose. It was argued that the lease was in favour of 10 persons coming from different walks of life belonging to different religions. All of them were landlords who were having excess land. After taking the land on lease, a cinema theater was constructed and basic tax was paid by the company and not by the lessees named in the lease deed. It is also argued that the appellate authority failed to note that not even a single rent receipt or tax receipt was produced by the applicants. It is also argued that the appellate authority failed to note that a group of persons who took the lease was not a natural group and that itself will show that the purpose of lease was for doing business. It is also argued that the appellate authority misconstrued the document. It is also argued that the application itself was defective as the applicant did not fill up column No. 14 of the Application. It is argued that a statutory duty is cast on the applicant to give the details of lands held by the applicant or any member of his family either as owner with possession, cultivating tenant or mortgagee possession, their extent and description in column No. 14. It is argued that failure to fill up that column makes the application defective and such a defect is fatal. If column No. 14 was filled up that itself would have been sufficient to dismiss the application. It is argued that the application ought to have been dismissed on that ground alone.

5. Learned Counsel appearing for the contesting respondents-tenants has argued that a reading of the document itself would show that the lease was executed for agricultural purpose. It is argued that nature of the improvements standing in the property will show that the plot was actually used for agricultural purpose and in a part of the plot, a cinema theater was constructed. It is also argued that if the intention was to grant the land for a commercial purpose, nothing prevented the parties from stating that fact in the lease deed itself because that would not have made any difference on the date of execution of the document. It is argued that the omission to fill up column No. 14 in Form A is not fatal. The lease was in favour of a group of people and hence it was not necessary for the individual tenants to give the details of any land owned either as tenant or as

owner. It is argued that there is no defect in the application and the application cannot be rejected. It was also argued that this Court cannot consider the question of fact and the Appellate Authority constituted under the K.L.R. Act is the final authority of fact and that authority after appreciating the evidence came to the conclusion that the land was one for agricultural purpose and that finding cannot be interfered with. It is argued that the scope of revision u/s 103 is limited and as such this court cannot re-appreciate the evidence.

6. This revision is filed u/s 103 of the K.L.R. Act. Section 103 reads as follows:

103. Revision by High Court - (1) Any person aggrieved by-

(i) any final order passed in an appeal against the order of the Land Tribunal; or

(ii) any final order passed by the Land Board under this Act; or

(iii) any final order of the Taluk Land Board under this Act, may within such time as may be prescribed, prefer a petition to the High Court against the order on the ground that the appellate authority or the Land Board or the Taluk Land Board, as the case may be, has either decided erroneously, or failed to decide, any question of law.

(1A) In any petition for revision preferred under Sub-section (1), the Government shall be made a party.

(1B) The Government may, within such time as may be prescribed, prefer a petition for revision to the High Court against any final order referred to in Sub-section (1), on any of the grounds mentioned in that sub-section.

(2) The High Court may, after giving an opportunity to the parties to be heard pass such orders as it deems fit and the orders of the appellate authority or the Land Board, or the Taluk Land Board as the case may be, shall wherever necessary, be modified accordingly.

(3) The High Court may, for the purpose of satisfying itself that an order made by the Land Tribunal u/s 26 (in cases where the amount or arrears of rent claimed does not exceed five hundred rupees) was according to law, call for the records and pass such order with respect thereto as it thinks fit.

(4) The power of the High Court under this section may be exercised by a Bench consisting of a Single Judge of the High Court.

7. The scope of Section 103 of the K.L.R. Act was considered by the Supreme Court in *Baby v. Travancore Devaswom Board* 1999 (1) KLT 1. The Apex Court held that even if the matter will not strictly come u/s 103 of the K.L.R. Act, the High Court can invoke the powers conferred on it under Article 227 of the Constitution of India. In *Mammu v. Hari Mohan* 2000 (1) KLT 835 the Supreme Court held that powers of this Court u/s 103 of the K.L.R. Act are very wide.

8. In this case, the Land Tribunal, which had occasion to watch the demeanour of the witnesses, had come to the conclusion that the lease was for commercial

purpose. The Appellate Authority reversed the finding. So the question to be decided is whether the Appellate Authority had properly construed the document and considered the material evidence. So there is no merit in the contention raised by the contesting respondents that the scope of revision u/s 103 of the K.L.R. Act is very limited and this Court cannot consider the facts at all even for understanding and applying the questions of law arising in the case.

9. The original of the lease is written in Kannada language. The applicants had produced a Malayalam translation of the lease deed also. It shows the following facts: The property involved in this case is 1.08 acres in R.S. 138/5A of Housing Village. On the northom boundary of the property there was a pathway naving 9 feet width and the lease was (sic) of the property excluding that pathway. On the western boundary of the property also, there was a public road. The property belonged to one Periyayil Kelu Nair. He leased out the property to 10 persons. The following persons were the lessees.

1. Mavilath Chandu Nambiar, S/o. Kodoth Kannan Nair, Landlord.
2. Kottacheri Sarvothama Shenor, S/o. Sreenivasa Shenor, Gowdasaraswatha Brahmin, business.
3. Kottacheri Achutha Shenoi, S/o. Narayana Shenoi, Gowdasaraswatha Brahmin, business.
4. Kottacheriveettil Kamath, S/o. Sreenivasa Kamath, Gowdasaraswatha Brahmin, business.
5. Makkuni Govindan Nambiar, S/o. K.K. Raman Nambiar, Nambiar, Landlord.
6. Meenakshi Amma, daughter of Junior Kalanthar and wife of K.P. Narayana Das, fisheer woman, house wife.
7. Damodara Kamath, S/o. Seshagiri Kamath, Gowdasaraswatha Brahmin, business.
8. Kunhithayil Panayamparambil Karuvan, S/o. Mannan, Ezhava, Timber merchant.
9. Cherippadi Kunhikannan Nair, residing at Maloth Village, nephew of Cherippadi Kunhiraman Nair and son of Umbira Amma, Nair, Landlord.
10. Uduma Achutha Nayak, Son of Padmanabha Nayak, Gowdasaraswatha Brahmin, business.

In the lease deed it was stated that the lessees can effect improvements and make constructions. Rent of the land was fixed as Rs. 200/-. It was to be paid on or before 15th February, every year and receipt obtained, It was further stated that the landlord cannot demand enhancement in the rate of rent. The lessees had agreed that they will not make any demand for reduction in the rate of rent. The period of lease was 50 years. It was provided that on the expiry of the period of 50 years, the tenants should surrender the property after receiving the

compensation for the improvements effected. In case the lessees commit any default, the landlord was given power to recover the arrears of rent with 6.25% interest and for such arrears of rent, personal properties of the lessees were also made liable. It was further stated that the entire land tax, etc. shall be paid by the landlord himself. The material recitals are as follows:

A reading of the document will show that even though the words used are "kuzhikana patta karar", there is a specific recital in the lease deed that the lessees can construct buildings. It is specifically provided that the land tax etc. will be paid by the landlord himself. It is very pertinent to note that in the description of the property there is absolutely no mention of any trees or plants in the property. The property is situated on the side of a public road and the landlord has provided another pathway on the northern side of the property having a width of 9 feet. A reading of the document itself would show that it is not a lease for agricultural purpose. The lessees belong to different communities and were engaged in different avocations. It is also to be noted that the land conveyed under the document was only a garden land and the lease was executed at a time when the provisions of the Malabar Tenancy Act, 1929 were in force. A Revenue Inspector inspected the suit property on 2-2-1977 and filed Ext.C1 report. Subsequently Revenue Inspector visited the property on 27-08-1993 and again on 7-10-1993 and filed Exts.C2 and C3 reports. Ext.C1 report would show that the petition scheduled property does not contain any timer trees or structures of any permanent nature effected by landlord. It is reported that there is a theater by name Durga Talkies Pvt. Ltd., two shops, Manager's house, latrine etc. are situated in petition scheduled property. It is also reported that on the date of inspection, there were 57 bearing coconut palms aged 4 years. It is further reported that there were 9 non yielding coconut palms aged four years and four non-bearing coconut saplings aged two years. The Revenue Inspector had also reported there were 64 bearing areca palms aged 13 years. The application was filed in the year 1975. The age of the coconut and areca palms shows that all of them were planted after 1964 because according to the Revenue Inspector, even the bearing coconut trees were only four years. All coconut and arecanut palms were cultivated after 1-4-1964, the date on which the K.L.R. Act came into force. A reading of the report makes it very clear that from the year 1946 to 1964, no plants or trees were cultivated in the land. It is evidently clear that these arecanut and coconut palms were planted only to fabricate evidence to make it appear that land in question was used for agricultural purpose. It is very pertinent to note that applicants have not produced even a single tax receipt or rent receipt issued to the lessees. The age of trees and other plants noted in Exts.C2 and C3 will also show that all improvements were effected after the commencement of the K.L.R. Act. In column No.9 of the Original Application it was admitted that all buildings situated in the property belong to Sri Durga Talkies Pvt. Ltd. Report of the authorised officer shows that from the date of lease, land tax was paid by Sri. M.S. Dasuratha Rao, Manager, Durga Talkies, a Private Limited Company since 1946

and not by the applicants. Ext.R1 is the memorandum of Articles of Association of Sri Durga Talkies, Kanhangad. It shows that Sri Durga Talkies is a Company incorporated under the provisions of the Indian Companies Act, 1913 (Act No. VII of 1913) with limited liability. The following are the subscribers of the Company.

1. MavilaChandu Nambiar, Landlord, Kanhangad.
2. Kottacherri Sarvootham Shenoi, Merchant, Kanhangad.
3. Makkunni Govindan Nambiar, Landlord, A.C. House, Adiyambur, Kanhangad.
4. Konath Narayana Nambiar, Landlord, Thayivalapil House, Kanhangad.
5. Kottacherry Vittal Kamath, Merchant, Kanhangad.
6. Udma Achutha Naik, Merchant, Udma Post.
7. Cheripady Kunhikannan Nair, Landlord and Pottail of Maloth Village P.O., Kanhangad.
8. Kunhithayil Panayamparambil Karuvan, Timber Merchant, Post Kanhangad.
9. Kadapparath Puthiyavalappil Narayana Das, B.A., B.L. Vakil, Kanhangad.
10. Kottacherry Achutha Shenoy, Merchant, Kanhangad.
11. K.G. Nambiar
12. K. Sreedhara Shenoy

It is very pertinent to note that except Meenakshi Amma and Damodara Kamath, all the lessees were Directors of the Company. Meenakshi Amma was the wife of Narayana Pai who was one of the lessees. Essentially the Directors of the Company had taken the lease and the Company was paying basic tax. So virtually it was a lease in favour of the Company. It is to be noted that the lease was executed at a time when the concept of fixity of tenure was unknown. A reading of the lease deed with the evidence by both sides would show that after taking the land on lease, the theater and the quarters of the Manager were constructed and two shop rooms were there and until 1964, the land was never used for the purpose of cultivation. For the first time, an attempt appears to have been made after the commencement of the K.L.R. Act. By no stretch of imagination, it can be said that this land was leased out for the purpose of agricultural purpose.

10. Chapter II of K.L.R. Act deals with provisions regarding tenancies. Section 3 of the K.L.R. Act deals with exemptions. Section 3(1)(iii) deals with leases for industrial or commercial purposes. It reads as follows:

3(1) ...

(i) ...

(ii) ...

(iii) leases of land or of buildings or of both specifically granted for industrial or commercial purposes; or

(iv) to (xii) ...

A reading of various clauses in the document along with the evidence adduced by parties shows that the lease in question was granted for a commercial purpose. Such a lease is exempted from the provisions of Chapter II. Section 13 which deals with fixity of tenure is also included in Chapter II. So the applicants are not entitled to get fixity of tenure regarding the petition scheduled property.

11. Section 72 of the K.L.R. Act deals with vesting of landlord's rights in Government. Section 72B deals with the cultivating tenant's right to assignment of that right. Section 72B(3) provides that any cultivating tenant entitled to assignment of the right, title and interest in respect of a holding or part of a holding shall apply within two years to the Land Tribunal within whose jurisdiction such or part is situate. Sub-section (4) deals with applications. It reads as follows:

72B(1) ...

(2) ...

(3) ...

(4) An application under Sub-section (3) shall contain the following particulars, namely:

(a) the village, survey number and extent of the holding or part to which the assignment relates;

(b) the name and address of the landowner and intermediaries and also of every other person interested in the land and the nature of their interest so far as they are known to him;

(c) the particulars regarding the other lands owned or held by him or if he is a member of a family, by such family;

(d) such other particulars as may be prescribed.

(emphasis supplied)

A reading of Sub-section (4)(c) of Section 72B of the K.L.R. Act makes it very clear that a mandatory duty is cast upon the applicant to give the particulars regarding the other lands owned or held by him and the members of his family. He is also expected to furnish the other particulars as may be prescribed.

12. The Kerala Land Reforms (Vesting and Assignment) Rules, 1970 were framed by the Government. Rule 4 of the Rules deals with application for assignment. It also provides that an application for assignment of the right, title and interest of

landlords vested in the Government u/s 72 shall be in Form A. Column No. 14 of the application for assignment reads as follows:

Form A Application for assignment of landlords' rights

14. Other lands in which the applicant or any member of his family has interest either as owner with possession, cultivating tenant or mortgagee possession; their extent and description.

13. A combined reading of Section 72B of the K.L.R. Act and Rule 4 of the Rules makes it clear that a statutory obligation is cast upon any applicant to furnish the details of the land held by the applicant. It is admitted that column No. 14 of the application was not filled up and left blank. So the application filed was defective as it does not comply with the mandatory requirements of Section 72B(4) of the K.L.R. Act and Rule 4 read with Form A prescribed under the Rules, The failure to fill up column No. 14 is fatal and the application is liable to be rejected on that sole ground. The authorities below had not considered the legal effect of the omission to fill up column No. 14 of the application. My considered view is that the application is defective and liable to be rejected on that ground alone.

14. There is yet another aspect. The revision petitioner has got a case that the applicants were holding lands in excess of the ceiling limit. Landlord had produced documents to show that the first petitioner in the O.A. surrendered 13.835 acres as per order of the Taluk Land Board in TLB 19/73 of Hosdurg. He had produced the documents to show that the 7th petitioner surrendered 38.12 acres of land as excess land as per order in TLB 1297/73. The 8th petitioner surrendered 4 acres as per order in TLB 1387/73 (Hosdurg). The description of the applicants given in the lease deed Ext.P 1 and in the Memorandum of Articles of Association of Durga Talkies shows that all the Directors who are the lessees are landlords. Appellate Authority took a view that since the lease was in respect of a group of persons, the group as such must own property and their individual properties cannot be looked into and hence the failure to mention those details is immaterial. That reasoning is perverse and absurd. A reading of Section 72B(4) (c) of the K.L.R. Act makes it clear that the applicant is bound to give the details of the land held not only by him but also by the members of his family. None of the applicants had given the details of the land held by them. So there was suppression of material facts.

15. There is nothing on record to (sic) that applicants had shown the petition schedule property as a leasehold land held by (sic) in the returns filed by them before the Land Board in ceiling cases. That itself will indicate that the applicants never treated this property as their personal property, but as a property belonging to the company which is a separate entity. The Appellate Authority has not considered any of these aspects. The Appellate Authority held that Exts.C1, C2 and C3 clearly show that there were coconut and arecanut plants and other fruit bearing trees in the land. The finding of the Appellate Authority that there were fruit bearing trees is against the findings in Ext.C1 report. The Appellate

Authority has not considered the age of the improvements. Merely because the document is styled as kuzhikanam pattam, it is not sufficient to hold that the land was given for agricultural purpose. The learned Counsel appearing for the contesting respondents relied on a decision reported in Rt. Rev. Dr. Jerome Fernandez v. Be-Be Rubber Estate Ltd 1972 KLT 613 (F.B.), The Full Bench after construing the document in that case held that the lease was one lease was one granted for cultivation and such lease cannot be granted for industrial or commercial purpose. He has also relied on the decision reported in Santhamma v. Prabhakaran 1986 KLT 889 in which it was held that 23 cents of land in the Corporation area with coconut trees cannot be treated as land appurtenant to the area. In this case, neither the applicants nor the landlords had a case that the land in question was land appurtenant to the building. The principles laid down in Rt. Rev. Dr. Jerome Fernandez's (supra) and Santhamma's case (supra) have no application to the facts of this case. The crucial question arising for consideration in the instant case is whether the land in question was given for agricultural purpose or for commercial purpose. The entire materials on records show that the lease was for commercial purpose and hence exempted. So this Civil Revision Petition is only to be allowed.

16. In the result, Civil Revision Petition is allowed. The judgment passed by the appellate Authority is hereby set aside and the order passed by the Land Tribunal is restored. The application filed by the applicants for assignment of land is dismissed. I make it clear that I am not considering whether the transaction entered into between the parties is one falling u/s 106 of the K.L.R. Act and the same is left open to be decided in appropriate proceedings.

C.M.P. No. 6320 of 2005 and I.A. No. 2388 of 005 shall stand dismissed.