

(2014) 09 KL CK 0008
In the High Court Of Kerala
Case No : CRP. No. 338 of 2009 (C)

Carborandum Universal

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105(2)
Kerala Land Reforms Act, 1963 — Section 81, 81(1)(c), 81(1)(k), 81(1)(k)

Citation : (2014) 4 KLJ 230

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : E.K. Nandakumar, A.K. Jayasankar Nambiar, K. John Mathai, P. Benny Thomas and Anil D. Nair, Advocate for the Appellant; Susheela R. Bhat, Spl. Government Pleader, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—The case depicts a fine illustration as to how recklessly the interests of the State are being handled by its top officers!

2. The petitioner company was directed by the Taluk Land Board, Kanayannur to surrender 0.894 Hectares (2 Acres) of unutilised excess land in its possession, at the southern side of the Rotary Club in survey No. 245 of Thrikkakara South Village, Kanayannur Taluk. Aggrieved by the said order, the petitioner challenged the same before this Court in C.R.P. No. 1100/2001 on the specific ground that for ordering such a surrender within the meaning of Section 81(1)(k) of the Kerala Land Reforms Act, 1963, the District Collector ought to have issued a direction to the petitioner being an industrial establishment to utilise the unutilised land within a particular period and since such a mandatory requirement was not complied with, the petitioner company ought not to have been directed to surrender such excess land.

3. C.R.P. No. 1100/2001 was heard in detail by this Court, and vide order dated 12.04.2002, the same was disposed of by specifically directing the Taluk Land Board, Kanayannur,

"to consider the case of the petitioner that the District Collector has not issued any notice as contemplated under the proviso to clause (k) of Section 81 of the KLR Act with notice and opportunity to the petitioner and to respondents 1 and 3".

A time limit of three months from the date of receipt of a copy of that order was also prescribed for the disposal of the matter. Without complying with the direction in its letter and spirit, the Taluk Land Board has once again passed the very same order as the one impugned in C.R.P. No. 1100/2001. The company has come up in revision.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader.

5. It seems that a specific direction was given to the Taluk Land Board to consider the question under Section 81(1)(k) of the KLR Act. The respondents herein cannot be heard to say that they were not aware of any such direction passed by this Court. Further, they cannot be heard to say that the petitioner company is not an industrial establishment within the meaning of Section 81(1)(k) as the same was not challenged at all in C.R.P. No. 1100/2001. Having conceded to such an order, after these much years, the State cannot come forward with a contention that the petitioner company is not an industrial establishment within the meaning of Section 81(1)(k) of the KLR Act. If as a matter of fact, they had any contention that it is a factory within the meaning of Section 81(1)(c) and not an industrial establishment within the meaning of Section 81(1)(k) of the KLR Act, the State ought to have specifically taken such a contention in C.R.P. No. 1100/2001. Having chosen to concede to the order, the State is estopped from presently contending that the petitioner company is not an industrial establishment within the meaning of Section 81(1)(k) of the KLR Act whereas, it is only a factory within the meaning of Section 81(1)(c) of the KLR Act.

6. The learned Special Government Pleader has strenuously contended that the petitioner company is merely a factory within the meaning of Section 81(1)(c) of the KLR Act and it is not an industrial establishment within the meaning of Section 81(1)(k) of the KLR Act. As observed above, the State at present cannot be heard to say that the petitioner company is not an industrial establishment within the meaning of Section 81(1)(k) of the KLR Act. At the same time, it seems that the other question whether the company is a factory within the meaning of Section 81(1)(c) of the KLR Act was not considered in any of the proceedings earlier. Such a plea or contention was not taken up by the State in any of the earlier proceedings. Of course, being a question of law, the State can moot the question independently whether the petitioner company is merely a factory within the meaning of Section 81(1)(c) of the KLR Act.

7. It seems that the remand order passed by this Court as aforesaid in C.R.P. No. 1100/2001 was not challenged by the State. Matters being so, the State is

estopped from challenging the validity of the findings entered in the remand order, by applying the principles contained in Section 105(2) of the Code of Civil Procedure, 1908. It has to be noted that the principle of res judicata is for the court and the principle of estoppel is for the parties.

8. The learned Special Government Pleader has pointed out that the State has chosen to file a comprehensive C.R.P. challenging the entire orders passed by the Taluk Land Board with a petition to condone the delay. Such a C.R.P. allegedly filed cannot be considered along with the present C.R.P., as this being an old one filed in the year 2009. The learned Special Government Pleader has pointed out that a learned Single Bench of this Court has given the liberty to the State to moot all questions again in the present C.R.P. When the State has chosen to file another C.R.P., let the law take its course for considering the said C.R.P.

9. With regard to the questions involved in the present case, it seems that the land in question was acquired by the petitioner company much prior to 01.04.1964. When it is an industrial establishment within the meaning of Section 81(1)(k) of the KLR Act, lands belonging to or held by an industrial or commercial undertaking at the commencement of the KLR Act, and set apart for use for the industrial or commercial purpose of the undertaking, is liable to be exempted. The proviso to Section 81(1)(k) of the KLR Act says-

"Provided that the exemption under this clause shall cease to apply if such land is not actually used for the purpose for which it has been set apart, within such time as the District Collector may, by notice to the undertaking, specify in that behalf".

10. When the matter comes within the scope of Section 81(1)(k) of the KLR Act, it is mandatory that a notice ought to have been issued by the District Collector pointing out that such and such portions of the land remain to be unutilised. It seems that through the remand order mentioned above, this Court had granted an opportunity to the Taluk Land Board to consider the said question; in a way, for giving an opportunity to the District Collector, to point out whether there is any unutilised portion of the land or not, to the petitioner company.

11. When such a specific opportunity was given, the State ought to have utilised such an opportunity and taken steps to see that the District Collector has issued such a notice as contemplated under the proviso to Section 81(1) (k) of the KLR Act. It seems that the Taluk Land Board, through the impugned order, has clamoured that a copy of the order in C.R.P. No. 1100/2001 was sent to the District Collector for further action and that the District Collector had issued a reply stating that there was "no action in the office of the District Collector regarding the petitioner company". It seems that the District Collector had washed away his hands by stating that no proceedings were initiated at his office with regard to that. It seems that the State has not taken any action against the concerned District Collector, who had allegedly furnished such an evasive reply to the Taluk Land Board.

12. The learned Special Government Pleader has argued that there is deliberate default on the part of the District Collector in not exercising his powers under the proviso to Section 81(1)(k) of the KLR Act. It is not for this Court to see that the District Collector issues such a notice. The direction was given to the Taluk Land Board to consider the said question. Even though such an opportunity was given to the State, in fact, the same was not availed of and no notice was issued. Matters being so, there is absolutely nothing to see that the said land in question is not liable to be exempted.

13. Even without any notice from the District Collector as contemplated under Section 81(1)(k) of the KLR Act, it seems that the Taluk Land Board, through the impugned order dated 17.06.2009, has once again ordered the petitioner company to surrender two acres of land. The said order is not legally sustainable and the same is liable to be set aside.

14. In the result, this C.R.P. is allowed and the impugned order is set aside. It is made clear that if the State has filed any C.R.P. and if the same can be admitted, the State can independently raise other contentions, if any, legally available to them.

It is a pity that the State has not chosen to take any action against such a District Collector, who had simply avoided his duties by exhibiting gross dereliction on his part. Having chosen to keep such officers, the State cannot clamour and lament that things are going against the State!