

(1987) 11 KL CK 0008
In the High Court Of Kerala
Case No : C.R.P. No. 2944 of 1986

C.C. Gopalan

APPELLANT

Vs

The Taluk Land Board and Others

RESPONDENT

Date of Decision : 19-11-1987

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 84

Citation : (1988) 1 KLJ 46

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : A.P. Chandrasekharan, for the Appellant; Government Pleader, for the Respondent

Judgement

S. Padmanabhan, J.—A novel and interesting question of general importance not covered by precedents has come up for consideration. Revision petitioner is the declarant. On 4-1-1982 he was ordered to surrender 3.80.250 acres as excess land. The order was notified on 21-4-1982 accepting his re-option by substitution of two items. What remained further was only surrender of possession of the excess land as provided u/s 85.

2. If so happened that some time after 21-4-1982 the Government initiated acquisition proceedings. The property included in the land acquisition proceedings is 1.24.500 acres out of the 3.80.250 acres ordered to be surrendered by the petitioner. Government took advance possession even though the acquisition proceedings is said to be pending even now. Award has not been passed and land has not been acquired. Tahsildar reported to the Taluk Land Board that on account of the advance possession taken by the State from the revision petitioner the entire area of 3.80.250 acres, is not available with him to be taken possession.

3. On the basis of that report, presumably acting u/s 85(9), the Taluk Land Board initiated suo motu proceedings against the petitioner. That was after 3 years from 4-1-1982 but within 3 years from 21-4-1982 the date of the revised order

accepting re-option. Rejecting the various objections of the petitioner, the Taluk Land Board refixed the extent and identity of the excess land to be surrendered by taking an equivalent area of 1,24,500 acres from the land allowed to be held by him as his ceiling limit. This was on the ground that the advance possession taken by the P. W. D. wing of the Government, being a transaction after 1-1-1970, is invalid under the provisions of Section 84. This is the order under challenge.

4. One of the objections was that the suo motu proceedings u/s 85(9) was unauthorized on the ground that it was initiated more than 3 years after the order u/s 85(5) has become final. Second proviso to Section 85(9) prohibits initiation of proceedings under that sub-section after the expiry of 3 years from the date on which the order sought to be set aside has become final. An order which could be subjected to appeal, revision, review or the like could become final only subject to the result of such remedies or if no such remedy was resorted to, after the period for seeking those remedies expired. When an order is subsequently modified the date of modification is the date on which the order has become final if nothing further happened to that order. In that sense the order u/s 85(5) became final only on 21-4-1982 when it was modified. Admittedly proceedings u/s 85(9) was initiated within 3 years from 21-4-1982. The prohibition under the second proviso is hence not attracted. The Taluk Land Board was perfectly right in rejecting the objection on that ground.

5. That apart, the Taluk Land Board was not justified in initiating proceedings u/s 85(9) for various reasons. Action u/s 85(9) contemplates setting aside the order already passed. Only after setting aside the order u/s 85(5) or (7), as the case may be, the Taluk Land Board can proceed afresh under the sub-section. That could be had only on satisfaction of any one of the conditions in clause (a), (b) or (c). So far as this case is concerned the ground available is under clause (a) namely, the extent of the land surrendered by, or assumed from, him u/s 86 is less than the extent of land which he was liable to surrender. There is no case that any of the other two grounds are there. I do not think that any of these grounds are available to re-open the order. There is no case that petitioner was not the owner of the land ordered to be surrendered or that he holds lands in excess of the ceiling area. The only ground is that a portion of the land was taken possession from him by the Government itself in an acquisition proceedings. Neither legally nor morally such a ground is available to the State.

6. Excluding the land ordered to be surrendered (which includes the area taken possession by the State subsequently in the acquisition proceedings) there is no case that the petitioner is in possession of any land above the ceiling limit which he is entitled to or allowed to be held. The notified date according to Section 83 is 1-1-1970. From that date as per Section 83 no person is entitled to own, hold or possess land in excess of the ceiling area.

Section 86 provides that on the determination of the extent and other particulars of the lands, ownership or possession or both, of which is or are to be

surrendered u/s 85 shall vest in the Government free of all encumbrances and the Taluk Land Board shall issue orders accordingly. Surrender of possession is not a condition precedent to such vesting of ownership in the state. On the determination of extent and other particulars, ownership of lands, which are yet to be surrendered also, shall vest in the Government. In this case as on 21-4-1982 these formalities were over and therefore ownership of the entire 3,80,250 acres vested in the Government. What remained was only surrender of possession u/s 85. Lands became that of the state and the petitioner ceased to have any right except the possession that had to be surrendered.

7. Though the Government pleader argued that acquisition by the Government cannot be considered as a transaction u/s 84 and what the Taluk Land Board did was to treat it as a void transaction since it came into existence after 1-1-1970, the order shows that it was an invalid transaction u/s 84. What Section 84 invalidates is only voluntary transfers after the relevant date other than the categories exempted. In the first place acquisition by State, even if the acquisition is taken as completed, cannot operate as voluntary transfer. Voluntary transfer implies consensus of two parties, the transferor and transferee. Acquisition is a compulsory process for which consent of the owner is not required and it could be had against his wishes also. Vesting in the Government amounts to divestiture of the ownership of the person to whom the property belonged. That vesting is for the purpose of assignment to landless people or for other purposes. When the person to whom the property belonged was thus statutorily divested of the ownership which vested with the Government, there cannot be any further question of acquisition from him. Acquisition also presupposes divestiture of right for consideration or otherwise and investiture of the same in the State or any department or for whomsoever the acquisition is made. There cannot be acquisition from a person who has no ownership or other intent. It is a misnomer to say that State acquires a property, the ownership of which already vested in it. That can at the best amount only to taking possession on the basis of the investiture of ownership already had. Possession alone is taken in this case and it is said to be for the P. W. D. What is involved is only assumption of possession by the State on the basis of the vesting of ownership in it for being used for another department of the Government. When the property belongs to the State on the basis of the statutory vesting, there is no question of acquisition because the State cannot acquire its own property. What is involved is only taking possession from the person who was bound to surrender. He now submits to the possession taken and says that it is an end of the matter and he does not want compensation even.

8. After having compulsorily taken possession from the petitioner it is idle and immoral for the State to say that he is not in possession of so much land to be surrendered or that the land was not lawfully owned by him or that he owns or holds lands in excess of the ceiling area and he has to be proceeded against u/s 85(9) after cancelling the order passed u/s 85(5) or (7). He already told the Taluk Land Board and it was argued before me also that he does not want any

compensation for the 1.24.500 acres of land taken possession from him and the balance area also may be taken. But the Taluk Land Board, which is over zealous in many cases in allowing claims, wants his pound of flesh and says that though possession was taken by the State and nobody else and though it was against his wishes, he must make good the deficiency from the ceiling area allowed to him. The reason alleged is that it is an invalid transaction after 1-1-1970 and hit by section 84. Petitioner does not want to rely on that "invalid transaction" and he is agreeable to the State having that area also. The attitude taken by the State cannot be understood or appreciated.

9. If the acquisition or taking possession was before 1-1-1970 that would have gone in reduction of the total area held by him and so much-area would have been deducted to fix the area to be surrendered by him. If the contention of the State is accepted, the revision petitioner must be deprived of the ceiling limit to which he was otherwise entitled, for no fault" of himself. The State cannot rely on its own unilateral actions to deprive the petitioner of what he was legitimately entitled to otherwise. Whether it is under the Kerala Land Reforms Act or otherwise State has come by possession. Petitioner has not by his actions deprived the State of any portion of the land. "The Government Pleader was not able" to point out any provision of law under such circumstances enabling the State to invoke Section 85(9) and resort again to Section 85(5) or (7). Petitioner has not by his actions caused any change in his ownership or possession as on 1-1-1970 and he is agreeable to the entire excess land as, on, 1-1-1970 being taken possession by the State. Except the State there is no other claimant to deprive the possession of the petitioner.

10. The scheme of the Act" as" seen from explanation V to Section 85 is that when a person owns or holds lands in excess of the ceiling area including lands owned by the Government of Kerala, the excess land to be surrendered shall, as far as possible, be the lands owned by the Government of Kerala. This provision was probably inserted to see that if possible private lands are the least affected by the ceiling provisions to the extent possible. The position cannot be worse when private land itself came into the possession of the Government. What is given by the right hand cannot be allowed to be snatched away by the left hand. There is absolutely no equity or fairness in relying on possession compulsorily taken by one wing of the Government to be relied on as a ground for requiring surrender more area from the petitioner. The C.R.P. is allowed and the order of the Taluk Land Board is hereby set aside. No costs.