
(1987) 01 KL CK 0027
In the High Court Of Kerala
Case No : O. P. No. 9721 of 1984

Changan Narayani

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-01-1987

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 102, 80A, 80A(10), 80A(9), 80B

Citation : (1987) KLJ 216

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : Govind Bharathan, for the Appellant; P.V. Narayanan Nambiar, for the Respondent

Judgement

T.L. Viswanatha Iyer J.

1. Petitioner, who is the land owner, has filed this original petition challenging the order of the Land Tribunal No. 1 Cannanore, dated 29th June, 1984 in O. A No 63 of 1983. Petitioner has filed an appeal against this order before the Appellate Authority (Land Reforms), Cannanore. By the said order the Land Tribunal had allowed the application filed by the 3rd respondent for purchase of kudikidappu rights. Inter alia the Land Tribunal had also ordered the kudikidappukaran to be shifted to another portion of the property in exercise of the powers conferred on it u/s 80A (9) of the Land Reforms Act, 1963 (the Act, in brief). The land owner is aggrieved in the first instance by the order in so far as it holds that the 3rd respondent is a kudikidappukaran. It is not disputed that this part of the order is appealable u/s 102 of the Act, and admittedly an appeal has been filed before the second respondent. The grievance of the petitioner in regard to this matter was that there was no incumbent in the office of the Appellate Authority in Cannanore and one of the prayers in the original petition was to issue a writ of mandamus directing the State to make immediate appointment of an Appellate Authority for Cannanore, as envisaged in Section 99A of the Act. It is now stated by Sri Govind Bharathan for the petitioner and Sri P.V. Narayanan Nambiar for

the 3rd respondent that an officer has been appointed to hold the office of the Appellate Authority and that it has therefore become unnecessary to consider this relief claimed in the original petition.

2. The other part of the order Ext. P1 relates to the shifting of the kudikidappu u/s 80A (9) of the Act. Petitioner had made an application u/s 80A (9) for shifting the kudikidappukaran. This was made in the alternative, without admitting that the 3rd respondent was a kudikidappukaran, to provide against the contingency of the Land Tribunal holding him to be a kudikidappukaran. Petitioner is aggrieved in relation to the particular portion of the property to which the kudikidappukaran is directed to be "shifted". Petitioner has challenged that part of the order in this original petition as according to him an order pertaining to Section 80A(9) is not appealable under Section 102.

3. I am not inclined to accept the submission of counsel for the petitioner that an order relating to "shifting" u/s 80A(9) is not appealable. The application u/s 80A arises in relation to proceedings for purchase of kudikidappu rights u/s 80B. It has to be filed within the prescribed time after receipt of notice of the application for purchase u/s 80B. What Section 80A(9) provides is the substantive right of a land owner to "shift" a kudikidappukaran to another portion of the same land if the portion to be purchased is so located as to cause inconvenience to him. The Land Tribunal may then require the kudikidappukaran to purchase another portion of that land. Section 80A(9) also details the rights of the kudikidappukaran in relation to the matter of shifting including an option to choose the particular portion of the property to be purchased by him. Section 80A(10) provides that if the kudikidappukaran refuses to exercise the option which inheres in him u/s 80A(9), his application u/s 80B shall be dismissed. While Section 80A(9) prescribes the substantive right of shifting the kudikidappukaran, the procedure to be followed in relation to the shifting and for the purchase of the rights of the land owner over the property to which the kudikidappukaran is shifted is laid down in Section 80B. It has to be remembered that the kudikidappukaran is entitled to purchase in the ordinary course the kudikidappu occupied by him, and the result of the shifting is that he becomes liable to purchase another portion of the same land, instead of this one. The procedure for such purchase is u/s 80B, so that even where there is a shifting u/s 80A(9) the final order in the proceeding, which has its origin u/s 80B, is only u/s 80B. Even in cases where there is shifting u/s 80A(9), it has ultimately to culminate in an order of purchase u/s 80B. An order u/s 80B is appealable u/s 102 so that petitioner's apprehension voiced in the Original petition that the order in so far as it relates to "shifting" cannot be challenged in his appeal pending before the second respondent, is misplaced. I hold that he is entitled to raise the correctness or otherwise of the order relating to the interlocutory proceedings u/s 80A(9) also in the appeal that he has filed before the Appellate Authority. In this view of the matter, all the contentions regarding Ext. P1 are open for decision by the Appellate Authority. The petitioner is free to agitate all those points before the 2nd respondent.

The original petition is disposed of clarifying the above point.