

(1971) 07 KL CK 0004
In the High Court Of Kerala
Case No : C.R.P. No. 44 of 1971

Choyi

APPELLANT

Vs

Kunhiraman and another

RESPONDENT

Date of Decision : 19-07-1971

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 3(1), 7B, 7B(1)

Citation : (1971) KLJ 509

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : P.C. Balakrishna Menon and V.P. Mohan Kumar, for the Appellant; K. Bhaskaran, P. Thankappan, P.K. Suresh and G.K. Bharathan, for the Respondent

Final Decision : Allowed

Judgement

T.S. Krishnamoorthy Iyer, J.—The question raised in the revision petition relates to the interpretation of Section 3 of the Kerala Cultivators and Tenants (Temporary Protection) Act, 1970 (Act 20 of 1970). The plaintiff who is the revision petitioner filed the suit on 19-7-1969 for restraining respondents 1 and 2 from entering into the plaint schedule property on the ground that it is in the possession of the plaintiff. Along with the plaint the plaintiff filed I.A. 836 of 1969 for temporary injunction till the disposal of the suit. The respondents took notice and the matter was being adjourned from time to time in spite of the repeated attempts of the plaintiff to have an early disposal of the application for temporary injunction. The plaintiff on 2-1-1971 filed an application to restrain the respondents from obstructing him in harvesting the crops in the plaint property or to appoint a receiver to take the crops. The respondents filed a statement on 6-1-1971 u/s 3 of Act 20 of 1970 for staying the suit. The learned Munsiff passed an order staying the suit and the Civil Revision Petition is directed against that order. Section 3 of Act 20 of 1970 reads thus:

3 (1). Notwithstanding anything to the contrary contained in any other law, or in any judgment, decree or order of any court, where in any suit or proceedings in

respect of any application or appeal or revision or review or proceedings in execution of any decree or order (including proceedings incidental or ancillary thereto) or other proceedings, in respect of any land, pending before any court or Land Tribunal or appellate authority or other authority or officer at the commencement of this Act, or instituted or filed or initiated after such commencement, any party thereto has filed or files a statement in writing that he was in occupation of such land at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, and--

(a) that such land is situate in Malabar and that he or his predecessor-in-interest was continuously in occupation of such land honestly believing himself to be a tenant for not less than two years within a period of twelve years immediately preceding the 11th day of April, 1967; or

(b) that such occupation was on the basis of a registered deed purporting to be a lease deed and that he or his predecessor-in-interest was in occupation of such land on the 11th day of April, 1957, on the basis of that deed, the court or Land Tribunal or appellate authority or other authority or officer, as the case may be, shall not proceed with that suit, appeal, revision, review or other proceedings, as the case may be.

(2) Nothing contained in sub-section (1) shall apply in any case where the party who has filed or files the statement referred to in that sub-section is admitted to be a tenant of the land to which that statement relates.

The submission on behalf of the respondents was that the requirement of Section 3(1) of Act 20 of 1970 is satisfied the moment a party files the statement contemplated therein and no question of bona fides or of prima facie case will arise. Counsel for the petitioner contended that the object of Section 3 (1) of Act 20 of 1970 is only to prevent the eviction of persons referred to in Section 7 and Section 7B (1) of the Kerala Land Reforms Act, 1963 as amended by the Kerala Land Reforms (Amendment) Act, 1969 which have been struck down by this Court and though Section 3 (1) of Act 20 of 1970 is wide in its terms, its ambit will have to be restricted to apply only to those cases. We shall now examine the rival contentions. The preamble of the Act shows that it is intended for the stay of suits and other proceedings, for determination of rights in respect of lands occupied by certain classes of persons, for the temporary protection of tenants against proceedings for the recovery of arrears of rent and for matters incidental thereto. In this connection it will not be out of place if we remember the reason for passing Act 20 of 1970. Section 7 and Section 7 B (1) of the Kerala Land Reforms Act, 1963 amended by the Kerala Land Reforms (Amendment) Act, 1969 were in these terms:

7. Certain persons occupying land honestly believing to be tenants, to be deemed tenants.--Notwithstanding anything to the contrary contained in section 52 or any other provision of the Transfer of Property Act, 1882, or any other law, or in any contract, custom or usage, or in any judgment, decree or order of court

any person in occupation at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, of the land of another situate in Malabar shall be deemed to be a tenant if he or his predecessor-in-interest was continuously in occupation of such land honestly believing himself to be a tenant for not less than two years within a period of twelve years immediately preceding the 11th day of April, 1957.

Explanation. Notwithstanding anything contained in the Indian Evidence Act, 1872, where a person has been continuously in occupation of any such land for two years within the said period of twelve years, it shall be presumed until the contrary is proved that he has been in such occupation honestly believing himself to be a tenant.

7B. Certain persons occupying lands under leases granted by incompetent persons to be deemed tenants.--

(1) Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of court, any person in occupation of the land of another at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, on the basis of a registered deed purporting to be a lease deed, shall be deemed to be a tenant if he or his predecessor-in-interest was in occupation of such land on the 11th day of April, 1957, on the basis of that deed notwithstanding the fact that the lease was granted by a person who had no right over the land or who was not competent to lease the land.

This Court in Chami Chettiar v. Thirumandham Kunnu Bhagavathi Devaswom, (1970 KLT 897) rendered on 21st October, 1970 declared that Section 7 and 7 B (1) are unconstitutional. Act 20 of 1970 was the result of the above decision. In the statement of objects and reasons for introducing the Bill it is stated as follows:

A Full Bench of the Kerala High Court by its majority judgment rendered in A.S. 116 of 1964 on the 21st October, 1970, invalidated section 7 and sub-section (1) of Section 7B of the Kerala Land Reforms Act, 1963 as amended by the Kerala Land Reforms (Amendment) Apt, 1969, which sought to deem certain categories of cultivators as tenants. Steps are being taken to file an appeal against that judgment also in the Supreme Court. Pending decision of the Supreme Court, it is proposed to give temporary protection to such cultivators by staying all suits and other proceedings for the determination of the rights in respect of the lands occupied by them.

It is thus seen that the legislature intended to give temporary protection to the cultivators mentioned in the provisions extracted above by staying suits and other proceedings in respect of lands occupied by them. Counsel for the petitioner wants to interpret Section 3 (1) of Act 20 of 1970 so as to give protection only to cultivators occupying the land. The learned counsel relied on the following observations of Maxwell on the Interpretation of Statutes, twelfth

edition, at page 109:

Sometimes, to keep the Act within the limits of its scope, and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or in certain circumstances, or for certain purposes only, even though the language expresses no such circumscription of the field of operation.

The statement of objects and reasons accompanying a draft Bill when it is first introduced in the Legislature is no part of the statute and it has no place in the matter of its construction. But it has been held by Their Lordships of the Supreme Court that even though the statement of objects and reasons cannot be used for the purpose of construing the meaning of a particular word in an enactment, yet it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which is sought to be remedied. In *S.C. Prashar v. Vasantsen* (A.I.R. 1963 S.C. 1856), Das J. observed at page 1367.

It is indeed true that the Statement of Objects and Reasons for introducing a particular piece of legislation cannot be used for interpreting the legislation if the words used therein are clear enough. But the Statement of Objects and Reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation aimed at.

In the same decision Kapur, J. said at page 1371:

In construing an enactment and determining its true scope it is permissible to have regard to all such factors as can legitimately be taken into account to ascertain the intention of the legislature such as the history of the Act, the reason which led to its being passed, the mischief which had to be cured as well as the cure as also the other provisions of the statute.

A reference to the Statement of Objects and Reasons for enacting Act 20 of 1970 is therefore not out of place in deciding the question in issue. The preamble of Act 20 of 1970 is also relevant to interpret Section 3 (1) in view of its general language used in Section 3. In *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, Subba Rao, J. observed:

The preamble of a statute is a key to the understanding of it and it is well established that it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt.

2. The Legislature could not have intended that all suits or proceedings in respect of a land have to be stayed the moment a statement is filed. There is therefore some ambiguity in the wording of Section 3 (1) of Act 20 of 1970 and a reference

to the preamble or the statement to the objects and reasons can be resorted to for interpreting the said provision. If so interpreted the protection is intended only for persons in occupation of the land which is the subject-matter of the suit or proceedings. If the Court is satisfied that the conditions laid down in Section 3 (1) (a) or Section 3 (1) (b) of Act 20 of 1970 are present then only it is necessary for the Court to stay a suit. It is not open to a Court or Tribunal to stay the suit or proceedings the moment statement is filed by a party thereto even though the suit or proceeding is in respect of any land without any enquiry regarding the possession of the land which is the subject-matter of the suit and without satisfying about the conditions in Section 3 (1) (a) or 3 (1) (b) of Act 20 of 1970. If a plaintiff claims to be in possession of the land and wants to restrain the defendant from interfering with his possession, it will not be open to the Court to act u/s 3 of the Act. If the plaintiff's possession is not found the suit has only to be dismissed. If it is found that the plaintiff is in possession and that the defendant has no possession the Court has to decree the suit and restrain the defendant from interfering with plaintiff's possession. There is nothing in Section 3 of Act 20 of 1970 preventing the Court from doing so. To such cases Section 3 can never apply as no occupation or possession of the defendant is sought to be disturbed. Even in cases where the possession or occupation of the defendant is admitted, the Court will have to be satisfied prima facie that the conditions in Section 3 (1) (a) or 3 (1) (b) are present to stay the suit. If a plaintiff files a suit in ejectment and traces the possession of the defendant to trespass, we do not think that the legislature intended such suits to be stayed merely because of a statement of the defendant. It is therefore necessary for the defendant to satisfy the Court prima facie that the requisites in Section 3 (1) (a) or 3 (1) (b) are satisfied. In these circumstances, we set aside the order of the Court below and allow the revision petition. But we make no order as to costs.