

(1972) 11 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 5220 of 1972

C.K. Kunhikannan

APPELLANT

Vs

Nellikka Poovadan Janaki And Another

RESPONDENT

Date of Decision : 07-11-1972

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(14), 75(2), 77

Citation : (1973) KLJ 568

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : K.P. Radhakrishna Menon and K.K. Ravindranath, for the Appellant;
P.V. Madhavan Nambiyar, Government Pleader, for the Respondent

Judgement

V.P. Gopalan Nambiyar, J.—This Writ Petition is directed against the order of the Land Tribunal, Tellicherry in an application filed by the 1st respondent under S. 75 (2) read with S. 77 of the Land Reforms Act for shifting the petitioner from his Kudikidappu on the ground that the applicant required the possession of the Land bona fide for building purpose. The Tribunal found that the bona fide requirement had been established, and that the B Schedule property which was the site offered for shifting the Kudikidappu was suitable for erecting a homestead and was within a distance of one mile of the Kudikidappu from which the eviction was sought. It directed shifting of the Kudikidappu subject to the required terms and conditions which had to be satisfied under S. 75 (2) of the Act. From the application filed before the Land Tribunal which was read out before me, and from the deposition of pw.1, the son of the 1st respondent who was examined in support of the case for shifting, it appears that the shifting was asked for on the ground that the Kudikidappu was required bona fide for building purpose of the tavazhi of the applicant. Whether an application on behalf of the tavazhi would be maintainable under S. 75 (2) of the Act, itself seems to require consideration, S. 75 (2) Clause (a) refers to "the building purpose of himself or any member of his family including major sons and daughters". The juxtaposition of major sons and daughters in this clause immediately after the expression

"family" makes it rather difficult to believe that the family contemplated by it was a marumakkathayam tavazhi or tarwad in which the sons and daughters have no place. This appears to be further confirmed by the definition of "family" given in S. 2 (14) to mean "the husband and wife and their unmarried minor children or such of them as exist". Therefore, the question as to whether, on the frame and purport of the petition, it was one for eviction on behalf of the tavazhi, and if so, whether such an application is maintainable, itself requires consideration by the Tribunal. The matter has not been considered at all.

2. This aspect apart, the Tribunal does not seem to have very much adverted to the question as to whether the bonafide requirements for building purpose has been established or not. If the bona fide requirement was that of the tavazhi, could the tavazhi claim that it was entitled to recover possession of the land to build a house thereon, not for the residence of the tavazhi members as a whole, but for the residence of one of the members? This is what appears to have been alleged in the petition. This aspect again requires consideration. Counsel appearing for the respondent has also drawn my attention to the fact that the tavazhi is possessed of other lands where it is possible to build houses. The Tribunal does not seem to have adverted to these essential and salient aspects before it recorded a finding that the bonafide requirement under S. 75(2) of the Act had been established. In the circumstances, I allow this writ petition, set aside Ex. P-1 order of the Tribunal and send the matter back to the Tribunal for fresh disposal in accordance with law and in the light of the observations contained in this judgment. The parties will be at liberty to amend their pleadings, if necessary, and also to adduce such fresh evidence as they might deem fit to adduce, before the Land Tribunal. No costs.