

(1996) 12 KL CK 0012
In the High Court Of Kerala
Case No : C.R.P. No. 914 of 1994 H

Damayanthi and Others

APPELLANT

Vs

Karthiayani and Others

RESPONDENT

Date of Decision : 02-12-1996

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(23A), 2(57), 54, 72B, 72K

Citation : (1996) 12 KL CK 0012

Hon'ble Judges : S. Krishnan Unni, J

Bench : Single Bench

Advocate : O. Ramachandran Nambiar, for the Appellant; K.M. Stalin, for the Respondent

Final Decision : Allowed

Judgement

S. Krishnan Unni, J.—The revision is directed against the order of the Appellate Authority (L.R.), Kozhikode in A.A. No. 73 of 1992 by which it reversed order of the Land Tribunal, Kozhikode in O.A. 713 of 1990.

2. Revision Petitioners are the legal representatives of deceased Karunan who was Respondent in O.A. 713 of 1990 and in A.A. 73 of 1992. The Respondents herein filed a petition before the Land Tribunal u/s 54 of the Kerala Land Reforms Act for assignment of the appurtenant land for their beneficial enjoyment. They admitted that they were in occupation of 1 1/4 cents in T.S. No. 19/19/539 part of Kasba village as per purchase certificate issued by Land Tribunal in O.A. 1338 of 1974 and the property measuring 74 feet north-south and 73 feet east-west is to be assigned in their favour because they are karaima holders. The deceased Karunan, who was Respondent in that application resisted the claim of the Respondents herein. According to him there was no jural relationship between him and Respondents, after the purchase certificate was granted by the Land Tribunal in O A. 1338 of 1974 and they are no longer karaima holders. Therefore the second application is not maintainable. The Land Tribunal, Kozhikode dismissed O.A. 713 of 1990. An appeal filed to the Appellate Authority as A.A. 73

of 1992 was allowed and the matter was remanded to the Land Tribunal to demarcate the extent of appurtenant land. This is challenged in this revision.

3. Heard both sides. The question is purely one of law. Can a tenant who had already obtained a purchase certificate, apply again under the amended provisions, claiming to be a deemed tenant? The relevant provisions are explanation to Section 2(23A) and Section 2(57)(hhh) of the Kerala Land Reforms Act. Explanation to Section 2(23A) says that as on 24th January 1989, the extent that can be granted in Corporation area is 3 cents, in the Municipal area is 5 cents and in the Panchayat area is 10 cents. Amendment to Section 2(57)(hhh) says that a tenant includes holder of a karaima. Learned Counsel for the Respondents advances his argument on the basis of the above two sections.

4. The above contention is opposed by the legal representatives of deceased Karunan who are the revision Petitioners in this revision. The bare facts as stated above is sufficient for the disposal of this case. The arguments advanced by both the Counsel relate to question of law as to whether a second petition for purchase is maintainable.

The learned Counsel appearing for the revision Petitioner brought to my notice Section 72K of the Land Reforms Act, which reads as follows:

...on the issue of the certificate of purchase, the landowner or any intermediary shall have no right in the land comprised in the holding, and all his rights including rights, if any, in respect of trees reserved for his enjoyment shall stand extinguished.

The learned Counsel placed before me the order passed in C.R.P. No. 1405 of 1994A dated 26th July 1995 where a similar question arose for determination. Facts of that case also are exactly similar to the present case. In paragraph 3 of the above order it was observed:

In my view, once the Karaima holder had approached the Tribunal for assignment of the right, title and interest of the land, owner in respect of the Karaima and had obtained a certificate of purchase pursuant thereto any relationship of landlord and tenant between the erstwhile Karaima holder and the erstwhile landlord ceased to exist. Thereafter the former Karaima holder becomes the absolute owner of the property purchased by him entitled to deal with it as such.

In paragraph 5 it was again observed:

Finally it appears to me that the adjudication by this Court in S.A. 201 of 1987 finding that Respondents 1 and 2 herein have no rural relationship as Karaima holders either with the revision Petitioner or with his assignees clearly operates as a bar to their claim that they are entitled to claim any right for purchase of the right, title and interest of the landowner over the land again u/s 54 or 72B of the Kerala Land Reforms Act.

I am in respectful agreement with the observation and it lays down the correct

law. The above view is supported by a latest decision of the Supreme Court reported in 1996 (2) KLT 901 (S.C.) Sankaran Nair v. Devaki Amma.

5. There is another reason why the tenant's claim for a deemed tenancy cannot be sustained. The tenant has raised a claim for Karaima on a specific endorsement and obtained a purchase certificate. With that issuance of a purchase certificate, the rural relationship between the landlord and tenant ceased to exist. Now in the second application, they have put forward a new case which they did not advance earlier, i.e., a matter which ought to have at that time. There is an ocean of difference between an actual tenancy under a document and a "deemed tenancy". Actual tenancy is a matter of fact to be proved. Deemed tenancy is raised by a fiction of law. Once a tenant raises a case of specific tenancy and loses it, he cannot be permitted to advance a case of deemed tenancy completely against the original case. In view of the above, the second application by the tenants is not maintainable and Appellate Authority's order cannot be sustained.

6. In view of the above discussion, I allow the revision, set aside the order of the Appellate Authority and restore the order of the Land Tribunal, Kozhikode. No costs.