

(2023) 07 KL CK 0130

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 22695, 23121 Of 2022

Diamond Crushers

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 20-07-2023

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 7E, 74, 84, 84(4), 106, 106A, 106B
Mines and Minerals (Development and Regulation) Act, 1957 — Section 2, 15, 23C
Kerala Land Reforms (Tenancy) Rules, 1970 — Rule 122A

Citation : (2023) 07 KL CK 0130

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : Alex.M.Scaria, Alen J. Cheruvil, Saritha Thomas, A.J.Riyas, V.Usha Nandini, Aswin Sethumadhavan

Final Decision : Allowed

Judgement

T.R. Ravi, J.

1. Both the writ petitions raise issues regarding the rights of a deemed tenant under Section 7E of the Kerala Land Reforms Act, 1963 ('KLR Act' for short) and are hence being heard and disposed of together.

W.P.(C).No.22695 of 2022

2. The petitioner's partnership firm proposes to start a commercial activity, including a granite building stone quarry on 1.7720 hectares of land in re-survey No.275/2A of Thripangottur Village. The land belongs to the petitioners and is covered by Exts.P1 to P3 Registered sale deeds Nos.7/2019, 8/2019, and 9/2019 dated 05.01.2019 of Kallikandy Sub Registry. The lands were mutated in the firm's name, and land tax was also paid. Exts.P4 to P6 are the certificates of title for the above lands issued under section 7E of the KLR Act, 1963 by the Land Tribunal, Koothuparamba. To apply for a letter of intent and to prepare a mining plan for undertaking mining operations and establishing a crusher unit in the

properties, the petitioner required a survey plan countersigned by the 3rd respondent. An application in that regard was submitted by the petitioner. The said application was processed by the 4th respondent and forwarded to the 3rd respondent as per Ext.P7 communication dated 12.10.2021 for consideration. The 3rd respondent forwarded it to the District Government Pleader for a legal opinion. The 3rd respondent thereafter requested for clarification from the Advocate General of Kerala. Based on the advice received, the 3rd respondent sent Ext.P8 letter to the petitioner stating that no commercial activity could be permitted in the lands covered by Exts.P1 to P3 documents without getting permission from the Government. The stand of the 3rd respondent is that he can process the application of the survey plan only if the 1st respondent grants the mining permission in advance. The petitioner submits that without a survey plan, the petitioner cannot apply for a letter of intent to the 6th respondent, and it is only after a letter of intent is received that the next stage of obtaining a mining concession arises. It is hence contended that it is legally impossible to comply with the direction contained in Ext.P9. It is further submitted that as the transferees contemplated in Section 7E of the KLR Act are deemed tenants, by issuing the Certificate of Title, the statute recognises such deemed tenants as the owners of the property. It is submitted that Section 7E of the KLR Act does not use the word 'cultivating tenant'. It is pointed out that Section 7E of the KLR Act does not impose any restriction regarding the enjoyment of land. The petitioner hence contends that Section 7E of the KLR Act can include commercial tenancy and industrial tenancy also and that request for permission to carry on mining activity cannot be refused. Another contention that is put forward is that mining activities are governed by the Minor Minerals (Development and Regulation) Act, 1957 ('MMDR Act' for short), which is a Central Legislation, and that State Legislature cannot override the provisions of the Central Act and prohibit mineral extraction in the lands covered by Exts.P1 to P3. It is submitted that the MMDR Act was enacted for the development of the Nation by mineral extractions, and the subsoil rights are governed by the Act irrespective of title and that mining activity cannot be curtailed by the State Government on the reason that the land where the activity is proposed is a land assigned under the KLR Act. It is contended that the Director (Mining and Geology) is the competent authority to decide upon the area for mineral extraction. Section 2 of the MMDR Act is referred to, and it is submitted that the power to legislate on the matter is vested in the Central Government, and the power of the State is limited to framing rules in respect of minor minerals alone, as seen from Sections 15 and 23C of the MMDR Act. It is submitted that the Directorate of Mining and Geology is the authority that must consider the grant of a mining lease and that the Revenue Department has no authority on such matters. It is further submitted that the very purpose of issuing a survey plan with a counter signature is to identify the property and its location, which is required for deciding upon the permissibility of quarrying in the land. The petitioner also refers to Sections 84(4), 106 to 106B of the KLR Act and Rule 122A of the KLR (Tenancy) Rules to submit that the Act does not in any manner restrict the use of lands that are

exempted under Section 7E of the Act from being used to purposes other than cultivation.

3. A counter affidavit has been filed on behalf of the State. The petitioner's claim regarding the exemption under Section 7E is not disputed. However, based on the Certificates of Title, which have been produced by the petitioner, it is contended that the certificate is issued treating the petitioner as a cultivating tenant, and hence the petitioner is not entitled to put the land to any other use. The counter affidavit does not answer the contentions raised by the petitioner regarding the MMDR Act and the contention that Section 7E does not speak about cultivating tenants alone.

W.P.(C)No.23121 of 2022

4. Petitioners herein are owners of 11.10 Acres of land in Re-Sy.No.275 with different subdivisions at Poliyoor Desom in Thripangattur Village covered by Sale Deed No.125/2020 dated 31.3.2020 (Ext.P2) and Sale Deed No.184/2020 dated 15.2.2020 (Ext.P1) of Kallikandi Sub Registry. Exts.P3 to P6 are the Certificates of Title issued to the predecessors-in-interest of the petitioners. Ext.P3 is dated 25.2.2016 and Exts.P4 to P6 are dated 4.7.2016. Properties were mutated into the petitioners' names, and tax has been paid as seen from Ext.P7 dated 04.04.2022. The petitioners applied for a survey plan countersigned by the Tahsildar for the purpose of applying for a letter of intent for starting mining operations. The rest of the facts are almost like those in W.P.(C)No.22695 of 2022. The respondents have filed a counter affidavit which is like the one filed in W.P. (C)No.22695 of 2022.

5. The petitioners in both cases have filed replies to the counter affidavits filed by the respondents, contending that the legal contentions raised are faulted.

6. Heard Advocate Sri Alex M. Scaria on behalf of the petitioners and Sri Aswin Sethumadhavan, Government Pleader, on behalf of the respondents.

7. The facts are not in dispute. The dispute is only regarding the rights that are available to a deemed tenant under Section 7E of the KLR Act. In both cases, the request made by the petitioners is for issuing a survey plan regarding the properties belonging to them, with the counter signature of the Tahsildar, for the purpose of applying for a letter of intent for starting mining operations on the property. As submitted by the counsel for the petitioners, the revenue authorities are not the concerned authority to consider whether mining should be permitted in a land. A survey plan is only a revenue record issued for the purpose of identifying the land belonging to the applicant and does not serve any other purpose. The respondents are not entitled to thwart even the filing of an application for a letter of intent by refusing to grant the revenue certificates or survey plans. A landholder is entitled to be issued with such records on payment of the requisite fee. The revenue authorities cannot arrogate to themselves the powers vested in the authorities under the MMDR Act. The reasoning in Ext.P8 in W.P. (C)No.22695/2022 and Ext.P9 in W.P.(C)No.23121 of 2022 cannot hence be

legally sustained.

8. Regarding the effect of Section 7E of the KLR Act, the purpose of the amendment, as seen from the Statement of Objects and Reasons, is to protect the small holders and cultivating tenants who had purchased or otherwise acquired lands for consideration through registered documents, from persons who were holding excess land. The section starts with a non-obstante clause and specifically mentions Sections 74 and 84 of the KLR Act. Section 84 deals with voluntary transfers effected after the date of coming into force of the KLR Act, which are treated as transfers to defeat the ceiling provisions. Section 7E is in the nature of an exemption and validates transfers referred to therein. Section 74 relates to the creation of future tenancies. While introducing Section 7E, Sections 106B and 84(4) were brought into the Statute Book, to give full effect to the intention behind the introduction of Section 7E. Section 106B facilitates the issuance of a certificate of title as a record of ownership, which complements the registered title deed of persons who have purchased land which was excess land in the hands of the transferor. As held by a Division Bench of this Court in *State of Kerala v. Fr.Xavier Karuvallil & Ors.* reported in [2015(4) KHC 210], to get the benefit of Section 7E, there is no requirement to obtain a certificate of title under Section 106B. The certificate of title is issued in the prescribed form, and the relevant rule is Rule 122A of the KLR (Tenancy) Rules. As per Section 7E, the fiction created is to deem a purchaser as a tenant. The purchase can be of land of any nature. There is no requirement that the land should be paddy land where cultivation is being carried out. The fiction does not create a "cultivating tenant" as sought to be contended by the respondents based on the Certificate of Title. The certificate is issued in a printed form where in one column, there is a mention of "cultivating tenant" within brackets. It is an apparent mistake since neither sections 7E, 84(4), and 106B nor Rule 122A use the word "cultivating tenant" but only use the word "tenant". The words "cultivating tenant" is defined to mean a tenant who is in actual possession of and is entitled to cultivate the land coming within his holding. The word "tenant" has a wider and inclusive definition and also includes a deemed tenant under Section 7E. The argument that a deemed tenant under Section 7E should be understood as a "deemed cultivating tenant" has no legal basis and cannot be countenanced. The use of the word "cultivating tenant" in Form 26B is a mistake, since it is not supported by Sections 7E, 84(4) and 106(B) and Rule 122A, and is declared to be so.

9. In the result, the writ petitions are allowed. Ext.P8 in W.P.(C)No.22695/2022 and Ext.P9 in W.P.(C)No.23121 of 2022 are quashed. The 3rd respondent is directed to issue the petitioners with countersigned survey plans within one month from the date of receipt of a copy of this judgment to enable the petitioners to process applications for Letter of Intent for carrying out mining operations. It is made clear that this Court is not expressing any opinion on the question whether the lands in question, are lands where mining can be permitted, which is a question to be decided by the appropriate authorities in accordance with the law.