
(1984) 02 KL CK 0007
In the High Court Of Kerala
Case No : C.R.P. No. 2096 of 1982

Gopalan

APPELLANT

Vs

Gopalan Chettiar and Another

RESPONDENT

Date of Decision : 07-02-1984

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 72K(2), 72MM, 83, 85, 85(1)

Citation : (1984) KLJ 132

Hon'ble Judges : K.K. Narendran, J

Bench : Single Bench

Advocate : C.P. Damodaran Nayar and D. Krishna Prasad, for the Appellant; A.K. Ramaseshadrinathan, P.N.K. Achan and K. Vijayan, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Narendran, J.—The defendant in O.S. No. 42 of 1982 of the Sub Court, Palghat, a suit for recovery of possession on the strength of the plaintiffs title, is the petitioner in the civil revision. The challenge in the civil revision is against the finding of the learned Sub Judge on issue No. 3, namely, whether the defendant has got tenancy over any portion of the plaint schedule property, without referring the question of tenancy raised to the Land Tribunal. The learned counsel for the petitioner contended that the petitioner is a cultivating tenant of the plaint schedule property and Ext. B-I is the J form filed before the Land Tribunal, Chittur u/s 72MM of Kerala Act 1 of 1964. The learned counsel pointed out that above proceedings before the Land Tribunal are still pending. The learned counsel further contended that the question of tenancy is one which only a Land Tribunal can decide and when it is raised in an original suit, the civil court has no other go but to refer the question to the Land Tribunal. According to the learned counsel, the Sub Judge had no jurisdiction whatsoever to give a finding on issue No. 3, because the question involved is one of tenancy and it is a question which can be decided only by the Land Tribunal. It was further contended that the decision of the Taluk Land Board in the ceiling case of the 1st respondent cannot

debar the petitioner from raising the question of tenancy in the suit as the tenancy question is yet to be decided and disposed of by the Land Tribunal. The learned counsel also raised a contention that in view of the J form submitted before the Land Tribunal, the respondents are estopped from contending that the petitioner is not a tenant. The learned counsel referred to *Kunjanujan Thampuran v. Taluk Land Board* (1976 KLT 716) and *Mathew v. Taluk Land Board* (1979 KLT 601) and contended that the above decisions will not stand in the way of the petitioner raising the contention of tenancy in the original suit in question and it cannot be said by any stretch of imagination that the question of tenancy will not arise in the suit. Hence, according to the learned counsel, the learned Sub Judge had no jurisdiction to try the issue preliminarily and give a finding that a reference to the Land Tribunal is not necessary in the suit. There is not much force in the contentions of the learned counsel for the petitioner. Section 85(1) of Kerala Act 1 of 1964 reads:

85. Surrender of excess lands,--(1) Where a person owns or holds land in excess of the ceiling area on the date notified u/s 83, such excess land shall be surrendered as hereinafter provided:

Provided that where any person bona fide believes that the ownership or possession of any land owned or held by such person or, where such person is a member of a family, by the members of such family, is liable to be purchased by the cultivating tenant or kudikidappukaran or to be resumed by the landowner or the intermediary under the provisions of this Act, the extent of the land so liable to be purchased or to be resumed shall not be taken into account in calculating the extent of the land to be surrendered under this sub-section.

In the ceiling case of the 1st respondent the petitioner claimed tenancy in respect of the plaint schedule properties before the Taluk Land Board. The Taluk Land Board negated the contentions of tenancy raised by the petitioner. The order of the Taluk Board was challenged before this Court in civil revision and this Court also rejected the contentions of tenancy raised by the petitioner. So, on the question of tenancy, there is already a decision of the Taluk Land Board as confirmed by this Court. At the same time, there is no decision so far by the Land Tribunal in the matter. The question is whether in view of the decision of the Taluk Land Board as confirmed by this Court any question of tenancy remains to be decided by the Land Tribunal. By and large, the question of tenancy is a matter which is to be decided by the Land Tribunal. But, at the same time, it cannot be said that the Taluk Land Board which is the authority to determine the ceiling and enforce surrender of excess lands, has not the power to decide whether one is a cultivating tenant or a properly involved in the ceiling case. Without this power, the Taluk Land Board will not be able to take a decision as to what is the excess land that is to be surrendered in a ceiling case. The proviso to section 85(1) of Kerala Act 1 of 1964 insists that lands liable to be purchased by a cultivating tenant or kudikidappukaran shall not be taken into account in calculating the extent of the land to be surrendered as excess land. So, in a

ceiling case, the Taluk Land Board will have to take a decision on the question of tenancy if in respect of any land included in the ceiling case the person in possession as cultivating tenant raises a contention that the lands in his possession as cultivating tenant should be excluded from the total extent of the declarant. This is a matter in which the Taluk Land Board has the power under the statute to take a decision and the decision necessarily involves a question of tenancy. In *Mathew v. Taluk Land Board* (1979 KLT 601) the Supreme Court has not said that the Taluk Land Board has not the power to decide a question of tenancy. What the Supreme Court has said is only that if there is a purchase certificate issued by a Land Tribunal unless there was collusion or fraud in obtaining that purchase certificate, the Taluk Land Board cannot ignore the same. The Supreme Court also pointed out that the jurisdiction of the Taluk Land Board u/s 85 of Kerala Act 1 of 1964 is not taken away by the irrebutable presumption of law u/s 72K(2) of the Act. In this case, the Land Tribunal has not issued any purchase certificate. Not only, that, the Taluk Land Board decided against the tenancy claimed by the petitioner and that decision was confirmed by this Court. In view of this, the petitioner cannot raise the question of tenancy in the suit since such a contention is barred as it is now settled law that the principles of res judicata will apply in the case of decisions by quasi-judicial Tribunals like the Taluk Land Board and the Land Tribunal. If no question of tenancy arises in the case, the petitioner cannot contend that the learned Sub Judge went wrong in disposing of issue No. 3 preliminarily by the order impugned holding that no reference to the Tribunal is called for

3. In the result, the civil revision is dismissed. No costs.