

(1987) 08 KL CK 0001
In the High Court Of Kerala
Case No : C.R.P. 763 of 1982

Hameed and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-08-1987

Acts Referred:

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

Citation : (1988) 2 KLJ 1

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : K.P. Dandapani, for the Appellant; T.H. Abdul Azeez and Government Pleader, for the Respondent

Judgement

K. Sukumaran, J.—The little man, the hutment dweller, now needs protections by Tribunals, Courts, and possibly even by the legislature; That at any rate, is the impression generated by the sordid story involved in this case. The tragic element is common to very many cases of that type of them, details could be given later. The chronology of the events in the case and the Court's conclusion thereon may be attempted first. Avaru is a land owner in Chavakkad. He is fortunate in very many ways. He had had a gainful employment in Malaysia from where he has recently returned. He owns extensive landed properties. His residence is a Palatial mansion, 8 rooms spread over a 20 cent area. The residential compound itself has an extent of 50 cents. That is only part of a larger area admeasuring 1 acre 50 cents owned by him. Just opposite is yet another stretch of land abutting the public way, and having an area of 45 cents.

2. The land owner had four sons and a daughter. Two of the sons are majors and are married. Two are yet to marry.

3. The elder son is a Doctor. He is employed in Ernakulam. The second one is in Persia and is employed there. His wife stays with him most of the time, though there are occasional sojourns at Chavakkad.

4. There is a hutment dweller in a portion of 1 acre 50 cents of property of the land owner. The hutment dweller was happy when the Land Reforms Act conferred valuable rights on him. He attempted to avail of them. An application for purchase was filed. That was allowed, initially. Yet, that was not the final phase. The land owner can appeal. He did appeal. The Appellate Authority detected a procedural irregularity. The result was the upsetting of the order of the Land Tribunal. The matter was remitted back.

5. The hutment dweller was weary by this time. He did not survive to fight the further proceedings. His legal representatives had to take on that arduous task.

6. The application for purchase was renewed by the legal representatives in the year 1975 by filing O. A No. 1301 of 1975 on 27-10-1975. The land owner entered appearance before the Tribunal on 23-12-1975.

7. Soon thereafter, the landowner conceived of the idea of having the hutment dweller shifted. He purchased on 7-1-76 10 cents of land and demanded the hutment dweller shift. The alternate site was offered. The demand for shifting was not readily acceded to. A reply was sent alleging malafides on the part of the land owner. The unsuitable location of the alternative site, as one very close to a burial ground and without drinking water facility, was emphasised therein. The landlord then filed the shifting application.

8. Though there was a general repudiation of the hutment dwellers' complaint about the unsuitability of the alternate site, no specific materials about the location or about the distance from the burial ground had been indicated in the shifting application. The only ground mentioned for the shifting is as contained in paragraph 4 of the petition: His son Abdul Kadar is married; a house has to be set up for him.

9. That the residential house of the applicant was spacious enough to accommodate two or three families was emphasised in the objection. Availability of other extensive areas with the land owner was specifically pleaded. A clear and forceful allegation of mala fides, in insisting on the eviction of the hutment dweller from the 10 cents of land which had been improved by the efforts and energies of the predecessor-in-interest of the hutment dweller was also raised. The existence of a burial ground just touching the alternate site, and the non-availability of drinking water there, was also indicated.

10. The only document produced on behalf of the applicant is the sale deed in relation to the alternate site. The assessment register of the Guruvayoor Township (within whose area the hut is situated) which indicated the ownership of the hutment dwellers over the hut, was produced by the hutment dwellers.

11. The land owner satisfied himself by giving his own evidence, before the Land Tribunal. He might have felt that as against his words the testimony of the hutment dweller would be of no avail; and that, any further evidence was an unnecessary superfluity. So felt the Land Tribunal. It preferred the version of the

land owner to that of the 2nd counter-petitioner who gave evidence on behalf of the hutment dweller.

12. The Land Tribunal passed its order on 30-7-1977, about six months after the closing of evidence. There is no clue whatever as to what had transpired during the long intervening time.

13. The Land Tribunal appears to have been totally innocent of the guiding principles in relation to the adjudication of such a sensitive issue, which uproots a family, linked with the land for ages. That too was the approach of the Appellate Authority. The cursory manner in which these authorities have upheld a plea of the land owner and directed shifting of the kudikidappu leaves much to be desired in the pattern of functioning of the authorities under the Land Reforms Act.

14. The Land Tribunal felt that the contention that the land owner is in possession of many properties is not supported by evidence-According to it:

The evidence only shows that the petitioner is in possession of 45 cents of land just in front of A Schedule.

Apparently in support of that statement, a portion of the testimony of the land owner was, extracted.

15. It is unfortunate that the Land Tribunal did not pay attention to yet another crucial admission in the evidence of the I45 owner:

The admission is to the effect that the land owner is possessed of another 11/2 acres of land and 8 room building occupying an area of 120 cents. This admission which was overlooked by the Land Tribunal, knocks the bottom off the underlying argument of the Land Tribunal.

16. As noted earlier, the Land Tribunal did not care to advert to the legal principles to be applied to such cases of shifting of hutment dwellers. It is unnecessary to repeat what had been so clearly and forcefully laid down in the Full Bench decision, and reiterated in very many later decisions. The passage reads:

The existence of other suitable sites for building is certainly a factor which the Land Tribunal can take into account in deciding whether the claim of the land lord that he bonafide requires the land is acceptable or not.

It further reads:

All the circumstances of the case must be looked into in determining whether the element of need has been established. Where the landlord has other properties, that circumstance must be taken into consideration in determining whether the element of need of the land in which the kudikidappu is situate has been established.

Potti (J) in the concurrent judgment stated:

The genuineness or good faith of the intention to use the property for one or other of the purposes mentioned in sub-section (2), the availability of other properties for such purpose, the reasons for seeking the property in which the kudikidappu is situate for such purpose are all matters which call for consideration in the assessment of the question of requirement.

(emphasis supplied)

It is this Full Bench dictum that furnished the governing principle.

(Social philosophy of the Judges doubtless, has modulated their approaches to specific problems. General observations which are intended more to explain the social philosophy in the course of deciding a specific case will have to be understood, as not in any way affecting the dictum laid down by the Full Bench. It is not necessary in his case to consider whether Potti (J) was correct in the view expressed by him in *Govindankutty Menon v. State of Kerala and others*, 1978 KLT 488 or whether the criticism of a Division Bench in *Janaky v. Addl. Land Tribunal, Kuthuparamba & Others*, 1979 KLT 91 on *Govindankutty Menon's* case *supra*, was justified). Speaking for myself, I am inclined to agree with the approach of Potti (J), Had it been necessary to resolve such a specific question in this case-judicial discipline would have warranted a reference to a larger Bench. That is however, uncalled for in the present case. The leading light in such a situation is what is found in the observations of one of the greatest Judges of English jurisprudence:

When these ghosts of the past stand in the path of justice, clanking their mediaeval chains, the proper course for the judge is to pass through them undeterred.

(Duke of Westminster's case, in *United Australia Ltd, v. Barclays Bank Ltd.*, (1940) 4 All E. R.20 at 37) Needless to say, no endeavour whatever was made to evaluate the case in that proper and correct legal perspective.

17. This Court has time and again indicated the necessity to advert to the antecedent conduct of the parties while evaluating the plea of bona fides. (See *Neelakantan Achari v. Paulose & another*, C.R.P. No. 2275 of 1984.) This principle too has been missed by the Land Tribunal.

18. In the present case, even as early as 1970, the hutment dweller had made the application for, purchase After his death, his legal representatives renewed that attempt in 1975. It is significant that the land owner thought of shifting hutment dweller only after he had entered. appearance before the Tribunal in the petition for purchase. This conduct, strongly indicates a mala fide intention on the part of the land owner Along with other factors, it clinchingly establishes the plea of mala fides. The band Tribunals have necessarily to take note of the fact that a mere increase in the membership of the land owners' family is not sufficient to uproot a poor hutment dweller. A reasonable conduct on the part of the land owner is also to be expected. He cannot clandestinely carry with him the

vestiges of feudal arrogance. There may be, of course, cases where the land owner himself may only have a limited area, and with an unmanageably inflated household. The need for a separate residence for one or more members of the family, would be understandable in that context. However, a land owner with sprawling grounds around and other areas where the members of his family could easily accommodate a residential building, should not be permitted straightway to pressurise the hutment dweller to shift to a different environment. This is particularly so when the hutment dwellers' family has long association, connection and contact with the locality and when he has ordained a pattern of life in those surroundings. The employment facilities, the social contacts, the availability of amenities within his reach, and many other factors, would add up to a strong enough justification for permitting the hutment dweller to continue in his earlier environment except when the need of the land owner, adjudged by objective factors deserves supervening priority. The Courts and Tribunals shall always be considerate for the difficulties and hardships of the weaker sections, the hutment dwellers. Any Court or Tribunal functioning under a socialistic democratic constitution, will have necessarily to imbibe the spirit of social transformation, and social concern for the weaker sections. A mechanical modality of allowing an application, as soon as the land owner points out one of his sons or daughters, and professes to have a construction activity, should not be encouraged at all.

19. The present is a case where such a mechanical functioning on the part of the Land Tribunal and the Appellate Authority are self evident.

20. While giving evidence, the applicant had stated that the son for whom shifting was sought for was employed in Persia, His wife was also staying with him. He comes back home only on leave. He had not even indicated to his father about any idea to settle down in his native land. The exact passage in his testimony reads;

It is difficult to posit a serious idea of constructing a residence, when the person for whom such residence is to be put up has yet to express any indication about his future plans. This also would cut at the root of the plea of bona fides.

21. The only surviving base for the shifting proposal is the father's view that the residence could be used by the son when he comes on leave. To uproot a kudikidappukaran only for the purpose of facilitating a son's residence if and when he chances to come on leave, is not justifiable; particularly so when his own parents have a spacious residence. The natural conduct would be for the person on his sojourn to meet and mix with the members of his family, in the same environment in which he had been born and brought up. Mala fides is writ large in the entire proceedings and actions of the land owner.

22. The Land Tribunal slurred over the complaints of the hutment dweller about the alternate site. Some site somewhere, that is enough-should not be the attitude to be adopted in relation to these weaker sections uprooted from their

habitats. Here again, the Tribunal should not act mechanically. The function of the Tribunal is not a mere measuring operation to see whether the alternate site is within the one kilometer distance. For the only reason that he is a hutment dweller, he could not be thrown away into an area where reasonable living facilities are lacking. A burial ground, by ordinary standards of social behaviour, may not be treated as a congenial place for spending one's life. Might be, a close proximity to the place where all the glory of the living is laid to rest, may give a subtle lesson in refined philosophy. The land owner need not be encouraged to be another Socrates who "brought philosophy down from heaven to inhabit among men;" or to be an Addison who "brought philosophy out of docts and libraries, schools and colleges to dwell in clubs and assemblies, at tea tables and in coffee-houses." The evidence in the case fairly establishes that the alternate site is very close to the burial ground. It may not make much of a difference whether, as the land owner says, that an intervening compound separates it or whether, as the hutment dweller says, that it is just contiguous to the burial ground. Judged by all reasonable standards, the alternate site is unsuitable. The Land Tribunal acted perversely in detecting congeniality in the atmosphere of a burial ground.

23. The utter unsuitability of the alternate site is inferable from other circumstances too. The alternate site was acquired in 1976; the purchase price mentioned therein is Rs. 800/-, which works out to Rs. 80/- per cent Even if the court does not take notice of the inflationary spiral in relation to the value of immovable properties in and around this area (Guruvayur Township) consequent on the inflow of overseas remittances, the fact that a cent of land in any such area could not be obtained for a price less than Rs. 1,000/- per cent, could be even taken judicial notice of This may demonstrate that something is radically wrong with the land which was offered for a paltry sum of Rs. 80/- per cent. There is therefore intrinsic evidence of the utter unsuitability of the alternate site.

24. The Appellate Authority made a short work of disposing the appeal by writing four sentences on the crucial contention about the lack of bona fides. The entire paragraph itself may be extracted to appreciate the manner in which the appellate function has been so miserably performed by that authority:

The contentions by the appellants are that the application for shifting has no bonafides, that the appellant has got a big house of his own which could contain definitely 3 or 4 families that the property to which shifting is ordered is unfit for occupation that the notice proceeding the application was not according to the requirement of Sec. 75 (2) of the KLR Act and that the Land Tribunal omitted to decide that the existing hut in the kudikidappu belongs to the appellant.

It is in evidence that the respondent land owner has got 14 cents and the land sought to be vacated by shifting the Kudikidappu is required for constructing houses for one of his sons. The Appellants house may be a big one which does not mean that he should not find out a residence for his children after they get married. Therefore the size of the building owned by the appellant should not be

a bar in getting convenient place for constructing house for his son.

25. It will be noted that the first sentence only refers to the existence of the alternate site and the plea of the land owner. The third sentence refers to the big size of the building. According to the Appellate Authority, the size of building does not debar the shifting of the hutment dweller. The Appellate Authority acted irresponsibly and perversely, in not even advert to other important materials and evidence in the case which have got great impact on the question of malafides. The actions and conduct of the land owner prior to the filing of the present petition for shifting, the availability with him of extensive areas where very many buildings could be built and the reasonable requirements of all the children could be more than amply met, had all been totally left out of consideration. The Appellate Authority too, did not care to advert to or follow the principles which should govern it while adjudicating a serious matter like a shifting application. The light hearted manner in which the life and career of a hutment dweller are dealt with by that authority, also adds little credit or credibility for its ability or effectiveness.

26. As regards the objection to the alternate site on the ground of its proximity to a burial ground, the Appellate Authority observed:

The property is admittedly near a mosque and burial ground. But it is seen that people are residing near the mosque and especially when the respondent is a Muslim, the proximity of residence to the mosque will only be relished by tradition

The Appellate Authority either missed, or refused to look into the evidence in the case Residence near a mosque is not objectionable. A close proximity to a burial ground is totally destructive of its suitability, as a residential house. Residence in and around a burial ground is psychologically repulsive. Even physiologically and physically it is objectionable. It can certainly pose a serious health hazard. Even the Public Health Rules provide elaborate provision in relation to the opening of a burial ground or a burning ghat. The functionaries under the Land Reforms legislation cannot adopt towards the hutment dweller an attitude that beggars cannot be choosers. When the Legislature has thought it fit to confer a valuable right on the hutment dweller, it is not for the subordinate functionaries to subvert it, subtly and/or surreptitiously.

27. To sum up, I find that (1) there was no bonafides in the application for shifting (2) that the alternate site offered by the land owner is not a suitable one. Any one of these findings is sufficient to dismiss the application for shifting. Both are prominently present in this case.

28. In the result, I allow the revision petition and set aside the orders of the authorities below and dismiss the petition for shifting. The revision petitioner who had to face litigational harassment of a long duration can only be partially compensated by the costs awarded in the case. Costs have, however, to be awarded even as an indication of the strong disapproval of the arbitrary action resorted to by the land owner. " I would award costs to the 1st respondent-

hutment dweller with Advocate fee fixed at Rs. 1,000/-.

It had been generally assumed that one of the most revolutionary objectives under the Land Reforms Legislation was the benefit conferred on the kudikidappukarn.

(See World Employment Programme Research, Page 18 in International Labour Office, Geneva on Agrarian Reform in Kerala and its impact on the rural economy - a preliminary assessment. Where reference is made to the effectiveness of that part of the land reform legislation," related to the small plots of land given to them for hutments. The assessment note that according to 1966-67 survey, the total number of kudikdappukar" households was about 0.35 million, but the total area they were entitled to acquire (at the rate of one-tenth of an acre at the maximum per house hold) could not be more than 0.04 million acres. There is also a greater significance in relation to the benefits under this head. For, beneficiaries were mostly agricultural labourers. As the survey notes; "The agricultural labourers at this time (20th century and even around 1911) were drawn chiefly from the lowest castes who were previously agrestic slaves (e.g. Pulayas, Pariahs and Cherumars) and this appears to have been the case as much in Malabar as in Trayancore and Cochin. There does not appear to have been an evaluation of the troubles undergone by the hutment dweller and the agonising delay in actual receipt of the statutory right. C.D.H. Cole wrote at a time when he was expecting much institutional reformation in the wake of a change in life administrative set up. He emphasised democratic activism but cautioned against possible bureaucratic indifference and indolence. There have been complaints about bureaucratic apathy in relation to many facets of implementation of the land reforms. He said: "Between 1963 and 1967 when the bureaucracy was directly ruling the state, and they had a Land Reform Act on the Statutes, they failed to take any action towards implementation, as revealed by the Land Reforms Survey of 1961-68" (See Michael Tharakan in his paper "Political and Conceptual Contradictions in Formulation of Land Reforms: A Study of its influence on Legislation and implementation in Kerala" and its observations). Absence of Government support has halted active implementation of the land reforms when viewed on an international scale. Such has been the experience in Mexico and such was in Italy.

30. The experience of a few cases even recently decided, would be sufficient to demonstrate the typical harassment suffered by a hutment dweller-Quite often, as has been indicated in some of the earlier orders passed in revision by this Court, the hutment dweller had to pay much more than the cost of the land by way of litigational expenses. The pattern appears to be similar whether it is in Palai or Palghat, Vaikom or Viyyur, Chayakkad or Kozhikode.

31. Instances are not rare where the land owner demolishes the hut itself, at the slightest indication of an assertion of the legal rights by the hutment dweller. The weaker the man, the harsher and quicker would be harassment: as in the case of the Harijan lady whose hut was burnt when she approached the Land Tribunal

with an application for purchase. (See C.R.P. No. 1279 of 1987). Suffering of yet another widow aged above 65 in her attempt to just to cling on to a 240 Sq ft area was dealt with in C.R.P. No. 2468 of 1982. In both cases, the authorities had no difficulty to decide the case against the women-hutment dwellers. This Court had to reverse those unjustified decisions.

32. Cases are not rare where the hutment dwellers are compelled to dwell in an alternate site to unsuitable "from the point of view of their occupation and earning of livelihood. A fisherman shifted far away from sea shore, for enabling a Muslim woman who claimed to be industrial entrepreneur, was dealt with in C.R.P. No. 3381 of 1983 Even with an eight acre compound, she could think only of the hutment site as the ideal place for the industrial activity! Here again, the statutory authorities had no difficulty in allowing the application. This Court reversed those decisions. Even in the first reply to the demand for shifting, the hutment dweller painfully and plainly pointed out that a shifting of the hutment site will have the effect of depriving him of the source of his livelihood, when uprooted from the sea-shore and put up at a place from which he could not effectively engage in the fishing operations; for, he had necessarily to depend upon the time and tide if the net is not to be an empty one.

33. In C. R. P. No. 1630/1983 & O. P. 2762/1987, a hutment dweller was sought to be driven away to a remote place amidst the ruins of an abandoned temple, situate in a hill-top and without any facility for drinking water. That was in an application in second series of cases in which the hutment dweller was so harassed. The earlier application for his eviction was dismissed after a legal fight upto the High Court. Within about a month of the final order of the High Court, the commencement of the next series of litigation started, to be spread over a period of about six years thereafter. Here too, the authorities had upheld without difficulty the land owner's application adopting a mechanical approach. Judicial correction was made in that case too.

34. There is yet another sorry story of a hutment dweller. He was frightened with eviction by a shifting application of the land owner That was dismissed. That was not the end of it. The land owner purchased another site. He renewed his endeavours for shifting him. A second application was filed. The Land Tribunal allowed it. The Appellate Authority took the view that the second application was barred by res judicata. This Court in C. R. P. No 130?, of 1987 took the view that the new application with a different alternate site furnished a different cause of action and consequently there was no res judicata. The availability of an access to the public road was directed to be considered by the High Court. The Land Tribunal took the view that in the country side, one could walk as one likes. That view had to be corrected by resort to appeal and ultimately by orders passed in revision by this Court.

35. These are only illustrative and not exhaustive of the agonies experienced by the little man, the hutment dweller. The land owner should not be allowed to have a gargantuan appetite which will be satiated only with the disappearance of

the hutment site. It is time that the legislature takes serious note of the trouble and time spend by the hutment dweller, before the Tribunal, Appellate Authority and before this Court. Sufficient safeguards have to be made so that mala fide actions of influential land owners should be discouraged forcefully and effectively.

36. It is common knowledge that before many Tribunals, the hearings are prolonged over many years. Between the Land Tribunal and the Appellate Authority, there does not appear to be a pin to choose, in this context. Even the time lag between the Chief examination and cross-examination of a single witness some times extends to more than six months" time. The Land Tribunals and even the Appellate Authorities do not think of the suffering soul, when they light heartedly adjourn the proceedings before them. Even the cost of travel, could be considerable, when the hutment dweller has to make more than 100 trips in pursuit of his purchase petition.

37. The manner in which the Tribunals function also is unsatisfactory in the extreme. To illustrate with the facts of the present case itself: The date on which the land owner gave evidence is indicated as "22-12" leaving the year to be guessed. Similarly the date on which the 1st respondent Hameed gave evidence as "13-1". Here again, the year is to be conjectured. There is no diary indicating the proceedings in this matter recorded contemporaneously. The state of affairs in relation to the records, and about the manner in which problems affecting the life and death of a hutment dweller are dealt with, are self evident from these circumstances. It is not for this Court to suggest ways and means for the alleviation of the grievances of the hutment dweller. Meaningful, imaginative and sincere endeavour has to be made by those who have the necessary political will, and the ideological ardour for the achievement of the constitutional objectives of democracy and socialism. The question whether drastic limitation should not be imposed on the land owner"s application for shifting, might merit serious consideration. Statutory provision for adequate compensation for unnecessary adjournments and baseless applications, should also be thought of to discourage harassing litigation by the influential land owner. Social scientists and legal profession could usefully study whether transfer of adjudicatory responsibility from the Munsiffs Land Tribunals to the Revenue Official Tribunals had not resulted in a qualitative debility of the adjudicatory process itself. Whether the trends set by the observations in Janaky v. Add. Land Tribunal, 1979 KLT 91, should not be statutorily changed, would also be a matter which can be thought of in that connection. As noted earlier, Poti, J. in Govindankutty Menon v. State, 1978 K.L.T. 488, put forward his own social philosophy and a-asserted that he for one, could not subscribe to the view "that the law makers were inspired by the need to allow a landowner to "live in peace" in making the prevision for shifting". According to the Division Bench in Janaky"s case Poti, J. founded a statement of the law which are exposition of philosophy." With great respect, as noted earlier, I am unable to endorse that approach. To the harassed hutment dweller, acute academic distinctions and discussions may not bring any solace. The statute can step in such a situation, and clarify the thought process of the legislature. The

legislature has not hesitated to resort to such exercise in the larger public interest, when the courts' thinking did not synchronise with what the legislature intended to provide. Explanation II A introduced by Act 17/72, is an illustrative case of such dynamic action on the part of "the "legislature. This case as also those referred to earlier, would perhaps prompt the Government and some serious minded institutions to have a study in great depth and detail of these still relevant social problems.

A copy of this order will be forwarded to the Chief Secretary to Government for considering such action as it feels necessary in the matter.