

(2014) 12 KL CK 0022

In the High Court Of Kerala

Case No : Civil Revision Petition No. 1026 of 2002

HMT (Machine Tools) Ltd. (Formerly HMT Limited)

APPELLANT

Vs

Taluk Land Board

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Kerala Government Land Assignment Act, 1960 — Section 2, 2(1)(d), 3, 7
Kerala Land Reforms Act, 1963 — Section 103, 105A, 66, 72, 81

Citation : (2014) 4 KHC 762

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : M. Pathrose Matthai, Senior Advocate and Saji Varghese Susheela R. Bhatt, Special Government Pleader, Advocate for the Appellant; Babu Karukapadath, M.A. Vaheeda Babu and Sivan Madathil, Advocate for the Respondent

Judgement

V. Chitambaresh, J.—The legality of the ceiling proceedings initiated under the Kerala Land Reforms Act, 1963 ["the Act" for short] against HMT (Machine Tools) Ltd. ["HMT" for short] falls for consideration in this Civil Revision Petition filed under Section 103 of the Act. The ceiling proceedings earlier initiated in the year 1976 were dropped on accepting the ceiling return of HMT whereunder exemption as a Central Government undertaking was claimed. The proceedings to re-open the ceiling case in the year 1990 were dropped when HMT obtained exemption from the Act by notification issued by the State Government. The notification bearing No. 48499/N2/89/RD dated 29/07/1991 stipulated that HMT should utilise the entire extent of land allotted for industrial purpose within four years. The State Government noticed that large tracts of land had been transferred to Naval Armament Depot and the Kerala State Electricity Board and that vast area was kept unutilised by HMT. Proceedings were therefore initiated to resume possession of about 400 acres of land which was challenged by HMT in OP No. 19718/1995 on the file of this Court. Later the writ petition was withdrawn when HMT handed over 300 acres of land to KINFRA (The Kerala State

Industrial Infra Structure Development Corporation). This was on the request of the State Government who issued the notification GO (MS) No. 207/2000 dated 04/07/2000 granting exemption from the Act in respect of 100 acres of land held by HMT. The ceiling case was later re-opened in the year 2002 by the Taluk Land Board, Kanayannur calling upon HMT to surrender lands allegedly held by it in excess of the ceiling area.

2. The authorised officer deputed by the Taluk Land Board under Section 105A of the Act reported that an extent of 251.40.000 acres of land is held by HMT as in excess and liable to be surrendered. It was also reported that 240 acres in RS No. 321/1 and 60 acres in RS No. 321/1 had been handed over to KINFRA and Co-operative Academy of Education respectively. HMT filed an objection to the report of the authorised officer pointing out that 20.77 acres acquired for Irumpanam - Kalamassery road is liable to be exempted. HMT contended that the remaining land in their possession is liable to be excluded under Section 81(1) (c), (m), (o), (p) and (u) of the Act. This statutory exemption is in addition to the exemption of 100 acres earlier granted by the State Government which lead to the withdrawal of OP No. 19718/1995. HMT added that the proceedings initiated under the Act is actuated by malice at the instance of the District Collector for refusal to surrender land for a Satellite Township.

3. The Taluk Land Board has by the order impugned dated 27/04/2002 directed HMT to surrender 101.74.10 hectares (251.40.000 acres) as in excess of its ceiling area under the Act. HMT has filed this Civil Revision Petition specifically urging in ground "B" of the memorandum that the proceedings are without authority of law and contrary to the Act. It appears that HMT later sold 70 acres out of the 100 acres of land exempted by the Government to Blue Star Realtors (P) Ltd. allegedly to wipe off its liability. The sale was questioned in a public interest litigation wherein a Division Bench of this Court by judgment dated 11/08/2009 in WP (C) No. 8172/2008 observed as follows:

"We make it clear that none of our observations made in the judgment other than on 100 acres of land covered by Ext. R1(i) notification shall have any bearing on the ceiling proceedings initiated against the HMT and which is pending before this Court in CRP No. 1026 of 2002."

The Supreme Court in Special Leave to Appeal therefrom however removed all restrictions in the disposal of this Civil Revision Petition and the relevant part of the order dated 08/01/2010 is extracted hereunder:

"(2) That the impugned order of the High Court will not have any bearing on the ceiling proceedings initiated against HMT pending in the High Court in CRP No. 1026 of 2002."

Therefore I am at liberty to have a fresh look at the matter in the back drop of the statutory provisions uninfluenced by the decision of the Division Bench as permitted by the Supreme Court.

4. I heard Mr. M. Pathrose Matthai, Senior Advocate on behalf of the Revision Petitioner, Mrs. Susheela R. Bhatt, Special Government Pleader on behalf of the State and Mr. M. Sivan Madathil, Advocate on behalf of the additional respondents. I also heard Mr. V.V. Asokan, Senior Advocate as Amicus Curiae who ably assisted this Court by referring to the several Government orders and elaborating on the implications of the various statutory provisions in the disposal of the Civil Revision Petition.

5. The Special Government Pleader produced the entire files since I wanted to know the genesis of the title of the land held by HMT against which proceedings under the Act are initiated. The records reveal that the Government of India requested the State Government for providing 900 acres of land to establish a Machine Tool factory as per the third five year plan. The State Government by GO (MS) No. 327/63/Ind dated 09/04/1963 accorded sanction for the acquisition of 900 acres of land at Kalamassery for the establishment of a Machine Tool factory in the Central Sector. The State Government by GO (MS) No. 505/64/Ind dated 31/07/1964 specified the nature of assignment of the land earlier sanctioned to be acquired as follows:

"3. Government have carefully considered the matter and are pleased to order that the area sanctioned to be acquired for the Machine Tools Factory at Kalamassery will, after the acquisition is completed, be treated as a "Development Area" as contemplated in Rule 2(d) of the "Rules for the assignment of Government lands in Development area for industrial purposes" appended to GO (P) No. 220/Rev. dated 30/03/1964 and assigned on registry to the Hindustan Machine Tools Ltd., Bangalore under the above rules free of land value, tree value and value of other improvements, survey and demarcation charges and other LA charges. The assignment will be under Rule 23 of the said Rules, dispensing with Rules 8 & 9. In the event of resumption of the land by Government as contemplated in Rule 15, the provisions of Rule 16 will apply, excepting the provisions for payment of land value since the land is being assigned free of cost. The land assigned to the company shall be heritable but it shall not be alienated or encumbered in any manner without the prior permission in writing of the Government. The Company shall also pay all tax, cess, land revenue and other dues which may be payable in respect of the land from time to time."

(emphasis supplied)

The State Government by GO (MS) No. 309/72/ID dated 20/10/1972 clarified that the lands shall be transferred either by executing a gift deed or by assignment on registry absolutely as heritable. The State Government by GO (MS) No. 337/72/ID dated 20/11/1972 has reiterated that the lands shall be transferred by assignment on registry.

6. The following facts emerge from the Government Orders dated 09/01/1963, 31/07/1964, 20/10/1972 and 20/11/1972 as regards the lands acquired for

establishing a Machine Tool factory:

"i) The lands acquired would be treated as a "Development Area" as per the Rules for the Assignment of Government Lands in Development Areas for Industrial Purposes ("the Rules" for short)

ii) The transfer would be under Rule 23 of the Rules by assignment on registry absolutely as heritable and alienable dispensing with the usual terms and conditions particularly that contained in Rules 8 and 9 thereof."

The form of Patta under which the lands are assigned to HMT also conforms to Appendix-III as specified in Rule 19 of the Rules which reinforces that the assignment in favour of HMT is under the Rules only.

7. It is seen that Patta No. 10015 dated 30/10/1973 was so issued in respect of 732.19.183 acres in Thrikkakara North Village which specifies that the land is heritable and alienable. Similarly Patta No. 12398 dated 30/10/1973 was issued in respect of 47.37.400 acres in Aluva Village which also specifies that the land is heritable and alienable. It is reported that only a minuscule extent of 3.02.683 acres in Vazhakkala Village alone was the private acquisition of HMT after the assignment under the Rules. The Rules are framed under Section 7 of the Kerala Government Land Assignment Act, 1960 ("the Assignment Act" for short) governing assignment of Government land. As many as 18 Rules including the Rules and the Kerala Land Assignment Rules, 1964 ("the Assignment Rules" for short) have been so framed. Section 3 of the Assignment Act enables the Government land to be assigned by the Government or by any prescribed authority either absolutely or subject to conditions.

8. One of the issues that arise for consideration is as to whether the lands in question have been assigned in favour of HMT under the Rules or the Assignment Rules. The assignment under the Assignment Rules is principally for cultivation and not more than 50 cents of land (whether wet or dry) in the plains could be assigned under Rule 5(1)(a) thereof. The Assignment Rules do not give any preference to assignment for industrial purposes and about 748 acres covered by the two Pattas have been assigned in favour of HMT which could only be under the Rules. But Rule 4 of the Rules provides for assignment for industrial purposes only and Rule 10 mandates that the land shall be used only for the purpose for which it is assigned. Rule 11 of the Rules postulates that the assigned land shall be heritable and shall not be alienated or encumbered in any manner without the prior permission in writing of the Government. Rules 14 and 15 of the Rules confer power of resumption to the State Government and Rules 16 and 17 prescribe the modalities for resumption of land. Rules 18 and 19 of the Rules mandate that the order of assignment on registry shall be in the form in Appendix-II and the Patta shall be in the form in Appendix-III to the Rules. The indications are overwhelming in the instant case to hold conclusively beyond any doubt that the assignment in favour of HMT was under the Rules only.

9. Much was argued on the basis of the judgment in the public interest litigation

in WP (C) No. 8172 of 2008 to contend that the assignment in favour of HMT is not under the Rules. The Division Bench of this Court opined therein that the assignment is not under the Rules since there was no restriction as mandated under Rule 11 thereof. Moreover the land was not acquired for the industrial development of an area and no land value had been collected from HMT which is mandatory under Rule 8 of the Rules. I respectfully disagree with the finding of the Division Bench of this Court on this count since Rule 23 of the Rules has obviously been over-looked. Rule 23 of the Rules is as under:

"23.--The Government shall be competent to assign land in the Development Areas, if they so choose, dispensing with any of the provisions contained in these Rules or imposing any terms and conditions whether contemplated by these Rules or not."

(emphasis supplied)

Acquiring land for the establishment of a Machine Tool factory is nothing but an acquisition for the purpose of industrial development of an area in the context of Rule 2(d) of the Rules. Also Rule 23 of the Rules empowers the Government to assign land in the Development Areas dispensing with any of the provisions contained in the Rules like Rules 11 or 8. The mere fact that no restriction was made or that no land value was realised does not take the assignment out of the purview of the Rules. So is the case even if the assignment is made de hors an application routed through the Director of Industries and Commerce in the Form in Appendix-I to the Rules as envisaged in Rule 5 thereof. The decision in WP (C) No. 8172 of 2008 *Jesudasan Vs. Joint Registrar*, insofar as it holds that the assignment is under the Assignment Rules is without reference to Rule 23 of the Rules. I am emboldened to take this view in view of the liberty granted by the Supreme Court in its order dated 08/01/2010 and also the scheme of the Rules.

10. It is bewildering as to how the State Government could grant exemption to HMT from the provisions of Chapter III of the Act by virtue of notifications dated 29/07/1991 and 04/07/2000. The notifications were purportedly issued in public interest under Section 81(3) of the Act on account of the land being used for industrial purpose. Exemption for the entire extent was granted by notification dated 29/07/1991 and exemption for the extent of 100 acres was granted by notification dated 04/07/2000. But Section 81 falling under Chapter III of the Act does not apply to the lands owned or held by the Government of Kerala as is evident from Explanation (1) thereto. It is to the following effect:

81. Exemptions.--(1) The provisions of this Chapter shall not apply to-

(a) lands owned or held by the Government of Kerala or the Government of any other State in India or the Government of India or a local authority or the Cochin Port Trust or any other authority which the Government may, in public interest, exempt, by notification in the Gazette, from the provisions of this Chapter:

[Provided that the exemption under this Clause shall not apply to lands owned by

the Government of Kerala and held by any person under lease whether current or time expired or otherwise.]

Explanation (1).--"Lands owned by the Government of Kerala" shall, for the purposes of this Clause, have the same meaning as "Government lands" under sub-section (1) of Section 2 of the Kerala Government Land Assignment Act, 1960 [but lands escheated to the Government and held by tenants entitled to fixity of tenure under Section 13 shall not be deemed to be lands owned by the Government of Kerala;]

[Explanation II.--Lands, the right, title and interest in respect of which have vested in the Government under sub-section (9) of Section 66 or Section 72, shall not be deemed to "lands owned by the Government of Kerala" for the purposes of this Clause;]

[Explanation III.--For the purposes of this Clause, "other authority" shall include a corporation owned or controlled by the Government of Kerala or the Government of any other State in India or the Government of India;]"

(emphasis supplied)

The lands so held by a person under grant from the Government otherwise than by way of lease of licence is declared to be a Government land under Section 2(1) (d) and (e) of the Assignment Act. The lands in question were very much a Government land till it was assigned in favour of HMT by Patta No. 10015 dated 30/10/1973 and Patta No. 12398 dated 30/10/1973. It is the situation obtaining as on 01/01/1964 that should be taken for the purpose of granting exemption under the Act as per the law laid down in this regard. The decisions in *Aleykutty John v. Taluk Land Board* 1981 KHC 377 : 1981 KLT 731 and *State of Kerala and Others Vs. K. Sarojini Amma and Others*, are apposite to the context. The lands in question were obviously Government lands as on 01/04/1964 to which the provisions of Section 81 falling under Chapter III of the Act do not apply. No exemptions of the nature granted have any validity in the eye of law when Chapter III of the Act does not apply and the notifications relied on are non est in law.

No proceedings could be initiated for the determination of ceiling area when the subject-matter of the ceiling case is a Government land whether it be 01/04/1964 or on 01/01/1970. The assignment of Government land in favour of HMT was much after the cut off date and that too under the Rules which itself provide for various contingencies. Whether there are grounds to invoke the power of resumption under Rules 14 and 15 and the modalities thereof under Rules 16 and 17 do not arise for adjudication now. The alleged transferees of parcels of land from HMT may have to be put on notice and heard before orders if any are required to be passed by the authorities. It is obvious that the provisions of the Act do not apply to the area covered by the two pattas and the balance extent of 3.02.683 acres of land is well within the ceiling limit. Therefore the proceedings being continued on the file of the Taluk Land Board, Kanayannur

in M2724/89 against HMT as a holder of excess lands do not have the sanction of law and are to be aborted. The impugned order of the Taluk Land Board directing HMT to surrender 251.40.000 acres as lands held in excess of the ceiling area is hereby set aside.

The Civil Revision Petition is allowed. No costs.