

(1972) 10 KL CK 0014
In the High Court Of Kerala
Case No : Appeal Suit No. 36 of 1968

Jacob Philip

APPELLANT

Vs

State Bank of Travancore and Others

RESPONDENT

Date of Decision : 10-10-1972

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 3(1)
Transfer of Property Act, 1882 — Section 106, 116

Citation : AIR 1973 Ker 51

Hon'ble Judges : T.C. Raghavan, C.J.; V.P. Gopalan Nambiyar, J; G. Viswanatha Iyer, J

Bench : Full Bench

Advocate : T.S. Venkiteswara Iyer and P.K. Balasubramanyam, for the Appellant; K.C. John and T.T. Uthuppu, for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, J.—This appeal is by the 3rd defendant in a suit for eviction and recovery of possession on the basis of Ex. P-3 lease dated 27-7-1956 granted to the 1st defendant in the suit for a term of one year on a rent of Rs. 480/-, The les-for was the Travancore Forward Bank which, consequent on the amalgamation of Banks, was taken over in or about 1960 by the State Bank of Travancore, which instituted the suit. The appellant and the 2nd defendant had a contention that Ex. P-3 lease was benami for their benefit, but this was found against by the trial court and was not repeated before us. The appellants claimed to be entitled to fixity of tenure u/s 13 of the Kerala Act 1 of 1964. But this was found against, by reason of the exemption contained in Section 3 (1) (i) of the Act. Their further contention that the suit was bad for want of a proper notice to quit, was also found against on the ground that there was a contract to the contrary which was sufficient to dispense with the statutory requirement of a notice. These two conditioni alone have been pressed before us.

2. First, as to the question of notice. Ex. P-3 is for a term of one year which

expired on 27-7-1957. The suit was filed on 9-10-1965. There was no assent by acceptance of rent, to the continuance in possession of the defendants since the expiry of the tenancy and prior to the institution of the suit. But they continued in possession. The plaint treated the 1st defendant as tenant and defendants 2 and 3 as sub-tenants, and claimed arrears of rent for three years prior to the suit at the rate stipulated in Ex. P-1 and future rent at the rate of Rs. 500/-. Both were decreed by the court below only at Rs. 480/- per year. In the circumstances, we are of the opinion that the plaintiff had "otherwise assented" to the continuance in possession of the defendants as tenants within the meaning of Sec. 116 of the Transfer of Property Act and that there was a tenancy by holding over subsequent to the expiry of the period of Ext. P-3. As a result, the lease Ex. P-3 would stand statutorily renewed from year to year.

Ex. P-3 contained two terms which we may notice. One was that on the expiry of the term, the 1st defendant would surrender possession of the property whenever demanded without any opposition or contest; and the other, that if the lessee defaulted payment of rent for two consecutive months, or damaged the building or the trees in the property, then, without any regard to the term, the lessee shall be liable to surrender possession and the lessor shall have the right to evict. For the respondent-landlord it was contended that both these terms in Ex. P-1 would be statutorily incorporated in the tenancy by holding over and that either of them would be a sufficient contract to the contrary to exclude the statutory notice, required by Section 106. of the Transfer of Property Act That the first of these provisions would not have such effect, was ruled by one of us, (the Chief Justice) sitting alone in *Moothora-kutty v. Ayissa Bi* 1963 KLJ 556 following the principle of the decision of a Division Bench of the Madras High Court in *Kodali Bapayya v. Yadavalli Venkataratnam* ATR 1953 Mad 884 The view was approved by Division Bench of this Court in *Pakrutheen Vava Rawther Abdul Hameed Rawther Vs. Raman Pillai Balakrishna Pillai and Others*, . We think it unnecessary, for the purpose of this case to express a final and concluded opinion as to whether a clause to surrender on demand without contest and without opposition, would be a contract to the contrary, so as to exclude the statutory notice required by Section 106. Two of us, (myself and Viswana-tha lyer, J.) share some doubt as to whether the decision in *Kodali Bapayya's* case ATR 1953 Mad 884 is not in direct conflict with the two prior Division Bench rulings referred to therein and sought to be distinguished, namely *Eranhikal Talappil Moosa Kutty Vs. Kozhikote Puthia Kovilakath Thekke*, and *Kelu v. Ammal Kully*, 1910 MWN 794 But we are of the opinion that the latter clause providing For liability to surrender and right to evict, if rent for two consecutive months is deFaulted, was a clear contract to the contrary. We cannot accept the appellant's contention that this clause would have operation only during the currency of Ex. P-3 lease. Ex. P-3 lease gets renewed statutorily from year to year, with the result, that this term is also statutorily incorporated into the tenancy by holding over. Being so, there is no need for a notice to quit, and the two months* consecutive default in payment of rent, itself affords a cause of action for

eviction.

3. Next, as to whether the 1st defendant (or the appellant) is entitled to fixity of tenure. Fixity of tenure is sought to be denied by reason of Section 3 (1) (i) of the Kerala Land Reforms Act, which after all its amendments, upto date reads as follows:--

"3. (1) Nothing in this Chapter shall apply to -- (i) leases of lands or of buildings or of both belonging to or vested in 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 a corporation owned or controlled by the Government of Kerala or the Government of any other State in India or the Government of India:

Provided that in the case of a sub-lease of Kandukrishi lands or a mortgage of such lands falling u/s 4-A, granted on created by a tenant holding such lands under the Government, the provisions of Sections 13 to 26 shall, so long as the lease granted by the Government subsists, apply to the tenant or mortgagee holding under the sub-lease or mortgage, as the case may be, as they apply to a tenant holding lands other than Government lands.

Explanation I -- "Lands belonging to or vested in 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 leases subsisting at the commencement of this Act of lands escheated to the Government shall not be deemed to be leases of lands belonging to or vested in the Government of Kerala if the lessees or their predecessors-in-interest were in possession of the lands at the time of escheat as tenants under leases whether current or time-expired.

Explanation IA-- 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 be lands belonging to or vested in the Government of Kerala for the purposes of this clause.

Explanation IB-- For the purposes of this clause, lands held under leases whether current or time expired at the time when such lands came to belong to or vested in a local authority shall not be deemed to be lands belonging to or vested in a local authority if the lessee or his successor-in-interest was continuing in possession of such lands at the commencement of this Act.

Explanation II-- For the purposes of this clause, "kandukrishi lands" means lands covered by the Kandukrishi Proclamation, 1124 and includes kandukrishi pattam and kandukrishi thanathu lands, but shall not include lands assigned on registry under the Kandukrishi Land Assignment Rules, 1958; or

(ii) leases only of buildings, Including a house, shop or warehouse, and the site thereof, with the land, if any, appurtenant thereto."

4. Counsel for the appellant contended that Section 3 (1) (i) must be applied

With respect to the time when the lease was granted and not with respect to the date of the commencement of the Act, or any subsequent date. So viewed, it was said that at the time of Ex. P-3 lease, there was neither the Government nor any Corporation owned or controlled by the Government, in the picture, and therefore the rule of fixity of tenure would operate unhampered by the exemption. Reliance was placed on two decisions of this Court, and one of the TravCochin High Court namely, Ouseph Pappu's case 1971 KLT 174 Jerome Fernandes Vs. The Be-Be-Rubber Estate Ltd., and Dr. V. N. Krishna Iyer v. Pappi Warasyar Sankunny Warner 1953 KLT 464 = AIR 1953 Trav-Co 534 The first of these decisions, Ouseph Pappu's case 1971 KLT 174 emphasised that the dominant aspect of the exemption was that it relates to leases of land belonging to the Government, and beyond this it was not necessary to show that the leases themselves had been granted by the Government In that case, the exemption was pleaded and the plea of fixity of tenure was sought to be defeated, by the Sree Rama Krishna Ad-vaithasramam Kalady, to whom a fairly vast extent of forest lands had been granted on Kuthakapattom by the Government and who sought to evict the assignee of varamdars in respect of a portion of the property. It was held that the assignee of the varamdar was not entitled to fixity by reason of the exemption contained in Section 3 (1) (i) of the Act, and that the exemption could be pleaded by the Asramam as well, and not by the Government alone. The decision hano application.

In Jerome Fernandes Vs. The Be-Be-Rubber Estate Ltd., , a plea of fixity was raised in respect of nearly 200 acres leased on 17th December, 1926, under Sections 3 (1) (Hi) and 3 (1) (viii) of the Land Reforms Act u/s 3 (1) (iii) fixity of tenure could not be claimed in respect of leases of lands or buildings or on both specifically granted for industrial or commercial purpose; and u/s 3 (1) (viii) it could not be claimed in regard to tenancies in respect of plantations exceeding 30 acres in extent The plea based on Section 3 (1) (iii) was repelled on the ground that the terms did not disclose a grant for the purposes mentioned. The argument about Section 3 (I) (viii) was that it would apply in all cases where, on the date of the commencement of the Act, a tenant is in possession of "plantation" as defined in Section 2 (44) of the Act, and the land is used principally for cultivation of any one of the plantation crops, irrespective of the nature of the land or the type of use to which it was being used at the time of the creation of the tenancy. This was rejected by the Full Bench. In the course of doing to, the Full Bench observed:

"For testing the soundness of the above arguments advanced on behalf of the appellant an examination of the wording used in the remaining clauses of Section 3 (1) of the Act is helpful. It is convincingly disclosed by such a scrutiny that no special significance can be attached to the occurrence of either the word "tenancies" or the expression "in respect of" in Clause (viii). The said expressions have been employed in some of the other clauses also wherein the context is such that the reference can only be to a transaction whereby the property satisfying the description given in the concerned clause has been leased

out For example, Clause (v) deals with "tenancies in respect of land or of buildings or of both created by mortgages in possession....." and Clause (vi) refers to "tenancies in respect of land or of buildings or of both created by persons having only life interest or other limited interest in the land or in the buildings". Reference may also be made to Clause (ix) which deals with "tenancies in respect of kayal padasekharams of Kuttanad area" and Clause (x) which deals with tenancies in respect of sites, tanks and premises of any temple, mosque or church.....". There can be no doubt that the exemption granted under the aforesaid clauses will be attracted only if the transaction of tenancy was even at its inception one in relation to property of the nature specified therein. We do not find any warrant for assuming that the legislature intended to use the same words tenancies in respect of in any different sense while enacting Clause (viii) which forms part of the very lame section."

After noticing the legislative history relating to the grant of exemption to plantations, the Full Bench concluded that the intention of the legislature was to restrict the scope of the exemption to leases of lands which were already plantations on the date of the transactions. The Full Bench was really concerned with the scope of Section 3 (1) (viii) of the Act. In defining the same, it adverted to the provisions of Sections 3 (1) (v), 3 (1) (vi), 3 (1) (ix) and 3 (1) (x) of the Act. Dr. V. N. Krishna Iyer's case, 1953 Ker LT 464 = (AIR 1953 Trav-Co 534) (FB) was concerned with question of the scope of the construction of Section 3 of the Cochin Verumpattomdars Act 8 of 1118, which provided by Clause (f) that the Act did not apply to leases of land situated within the limits of the municipalities. There was a proviso which stated that the restrictions in the clause shall not apply to lands used for the cultivation of paddy within the limits of the municipalities or lands held in Tharikuthu right in Chittur Taluk. What the Full Bench was concerned with was the point of time at which lands within the municipality should be used for cultivation in order to have the benefit of the Act. The Full Bench observed:

"3. The three points of time that arise for consideration are:

- (a) the date of the lease;
- (b) the date of the Act; and
- (c) the date on which eviction is sought.

The emphasis is definitely on the demise -- all that "the exception to an exception" does is to bring within the ambit of the Act two types of leases within the Municipalities, namely, (a) leases of lands used for the cultivation of paddy; and (b) leases of lands held in Tharikuthu right in the Chittur Taluk -- and though the matter is not free from difficulty we think that the date intended to be material is the date of the lease and no other."

It is enough to observe that the decision -- stated to be not free from difficulty -- is certainly no authority for the proposition that in all exemption clauses of the

type considered it is the date of the lease that is material.

5. Looking to Clause 3 (1) (i) alone, it might be possible to say that the test is the existence of the relevant state of affairs contemplated by it on the date of the lease. But to so construe the section in respect of a lease granted fifty or sixty years back would be to ignore the rights of the Government or a Corporation owned or controlled by the State etc. which have supervened since the date of the lease. Corporations owned or controlled by the Government are comparatively new creatures of law, and vesting in the Government in different modes and forms and for different purposes is a legislative device which has come into prominence in recent times. We doubt if the legislative intent was to ignore these recent statutory creations and to concentrate only on the time when the lease was granted. But we are not left completely in the region of speculation. For, we have certain Explanations appended to Section 3 (1) (i) which throw a flood of light on the content of the section. Explanation I would be unnecessary if the scope of the exemption were irretrievably fixed by reference to the circumstances existing at the time of the lease. That Explanation indicates clearly enough, that the escheat to the Government may be subsequent to the lease. Explanation I-A again, would be redundant if a vesting subsequent to the lease is irrelevant. Explanation I-B too, affords yet another pointer that a vesting or devolution of ownership subsequent to the grant of the lease is not ruled out. Though that Explanation provides that a subsequent devolution of ownership or vesting in a local authority shall not be deemed to be of land "belonging to or vested in, a local authority", the Government, and a Corporation owned or controlled by the State are significantly omitted (escheat alone being provided by Explanation I). The implication is that devolution of ownership on, or a vesting in, the Government or a Corporation, shall be deemed to be a "belonging to or vesting in" these entities for the purpose of Section 3 (1) (i). We are therefore of the opinion that the requirements u/s 3 (1) (i) would be satisfied even if lands leased happen to belong to, or become vested in, the Government or a Corporation owned or controlled by the Government etc. subsequent to the grant of the lease.

6. By reason of the transitory provisions enacted by Section 108 of the Kerala Act 35 of 1969 as subsequently amended, this appeal has to be judged and decided in accordance with the provisions of Act I of 1964 as amended till date; and therefore, whatever be the point of time at which the various Explanations happened to be tacked on piecemeal to Section 3 (1) (i) of the Act, all of them have free play for purposes of this appeal.

7. Then it was contended by the appellant that the Corporation in this case, viz., the State Bank of Travancore, is not one owned or controlled by the State. We were taken through the provisions of the State Bank of India Act, 1955. The State Bank of India (Subsidiary Banks) Act, 1959, and the Reserve Bank of India Act, 1934. The position disclosed is that the Reserve Bank of India owns not less than 55% of the shares in the State Bank of India, and cent per cent of the

shares in the Reserve Bank of India are owned by the Government. We find too, that a subsidiary bank such as the State Bank of Travancore is to act, as an agent of the State Bank of India if required (Section 36 of the Subsidiary Banks Act, 1959), and that the State Bank of India is to act as an agent of the Reserve Bank if so required (Section 32 of the State Bank of India Act). Again, u/s 37 of the Subsidiary Banks Act, the Central Government has power, after consultation with the Reserve Bank, to direct the subsidiary banks to carry on any business or to prohibit such banks from carrying on any business. u/s 24 of the Subsidiary Banks Act, the State Bank has the right of issuing any directions, and the subsidiary banks are bound to comply. Section 25 provides for the constitution of the Board of Directors of the Subsidiary Bank. Section 27 provides that the General Manager of a Subsidiary Bank who is to carry on the day-to-day administration is to be appointed only with the approval of the Reserve Bank. A conspectus of these provisions leaves us in no doubt that there is governmental control in regard to shareholding as well as in regard to the transaction of affairs by subsidiary banks of the type of the respondent in this appeal. We are therefore of the view that the State Bank of Travancore is a Corporation owned or controlled by the State. The result is that it is entitled to plead the benefit of the exemption engrafted by Section 3 (1) (i) of the Act

8. The judgment and decree of the Court below are therefore right. We confirm the same and dismiss this appeal with costs of the 1st respondent.