
(1973) 07 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 794 of 1973

Janaki

APPELLANT

Vs

The Land Tribunal, Tellicherry and Others

RESPONDENT

Date of Decision : 30-07-1973

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2, 2(14), 75, 75(2), 77

Citation : AIR 1974 Ker 104

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : Govind Bharathan, for the Appellant; P.P. Anantha Narayana Iyer, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Balakrishna Eradi, J.—The challenge in this writ petition is directed against the order Ext. P1 passed by the Land Tribunal, Tellicherry (1st respondent) dismissing an application O.A. No. 828 of 1972 filed before it by the writ petitioner under S. 77 of the Kerala Land Reforms Act, 1963 (hereinafter referred to as the Act) for shifting the kudikidappu of respondents Nos. 2 and 3 from R. S. No. 38/9 of Dharmadom Amsom and Desom to another property comprised in R.S. No. 41/3B of the same Amsom and Desom details of which were mentioned in the B Schedule to the petition. The ground on which shifting of the kudikidappu was prayed for by the writ petitioner was that the site of the kudikidappu was required for constructing a building for her daughter Prema. In order to substantiate this case the petitioner's husband gave evidence before the Land Tribunal as the first witness examined on the side of the applicant. Strangely enough, there is no reference at all in the order passed by the Land Tribunal to the testimony of this witness and the appendix to the said order has been drawn up on the basis that no witness was examined in the case either on the side of the applicant or on the side of the respondents. This, however, is not the only error vitiating the order passed by the Tribunal. The Land Tribunal has

rejected the application of the writ petitioner on grounds which cannot be regarded as relevant or germane in deciding an application for shifting of a kudikidappu made under S. 77 of the Act. In such an application the principal points to be considered by the Land Tribunal are whether the applicant bona fide requires the land for any of the purposes mentioned in clauses (a) to (c) of S. 75(2) of the Act, whether the alternate site offered by the applicant to the kudikidappukaran is suitable for erecting a homestead and whether the procedural requirements incorporated in the said S. 75 and 77 have been complied with by the owner of the land before approaching the Tribunal for relief. In the present case, the Tribunal has proceeded as if it is incumbent on the owner of the land to establish a dire or absolute necessity for recovering possession of the site of the kudikidappu before an order for shifting can be passed. This is a totally erroneous approach.

2. Under the scheme of the Act the owner of the land is entitled to be granted relief under S. 77 of the Act on his satisfying the Land Tribunal that he "requires" the land for one or other of the purposes enumerated in clauses (a) to (c) of S. 75(2) of the Act and that he is willing to transfer to the kudikidappukaran an alternate site suitable for erecting a homestead and pay the cost of shifting inclusive of the value of the existing homestead if it is one put up by the kudikidappukaran. The word "requires" has a totally different content from the expression "needs". See *Narikkal Chathan of Muthuvannacha Amsom and Desom Vs. Veethiyottillath Kesavan Namboodiri Karnavan and manager of his illom of Muthuvannacha Amsom and Desom*, . If the applicant proves before the Tribunal that he has a genuine and honest intention to utilise the land for one or other of the purposes mentioned in clauses (a) to (c) and there is nothing to show that the said plea put forward by the applicant is not bona fide and true, the Tribunal will not be justified in denying to him the relief of shifting so long as the applicant complies with the other provisions regarding offering a suitable alternate site belonging to himself and also the payment of the value of the homestead and the shifting charges to the kudikidappukaran. The section does not require that the applicant should make out a dire necessity or need for recovering possession of the site of the kudikidappu. In other words, it is not incumbent on the applicant, who moves the Land Tribunal under S. 77 of the Act, to establish, in a case falling under Clauses (a) to (c) of S. 75 (2) of the Act, that the member of the family for whose building purpose the application has been filed is in a sorry state without any place wherein he can reside at the time of instituting the application. Of course, it would undoubtedly be open to the Tribunal in testing the bona fides of the plea of requirement put forward by the owner to investigate and determine whether having regard to the ordinary course of events there is a reasonable probability of such an intention being entertained by the applicant the object of such investigation being only, as already pointed out, to test the bona fides of the plea of requirement put forward by the applicant and not for finding out whether there requirement, even if it exists, can be met otherwise than by shifting the kudikidappukaran. If the

requirement does, in fact, exist the owner of the land has the freedom to decide whether he would put up the building in the site where the kudikidappu stands or whether he would rather not disturb the kudikidappukaran.

3. The reasoning of the land Tribunal as contained in Ext. P1 is not based on such correct approach to the problem; on the other hand it is manifest that the Tribunal has proceeded on a totally erroneous impression that the applicant is bound to satisfy the Tribunal that the land is "needed" by her for the purpose mentioned in the application and that the said necessity cannot be met otherwise than by shifting the kudikidappukaran. It is on account of this erroneous approach that the Tribunal has chosen to find fault with the applicant for not shifting the kudikidappukaran earlier and to put forward the reasoning that if there was such a dire necessity the owner of the land would not have suffered the kudikidappukaran to remain on the property during the period of 20 years that has elapsed subsequent to the purchase of the property by the applicant. The said reasoning given by the Tribunal is fallacious.

4. What the Tribunal had to find out was whether the applicant bona fide required the property for the purpose of construction of a house for her daughter Prema. In regard to this the evidence adduced before the Tribunal was wholly one-sided. Counsel appearing for the petitioner has taken me through the deposition of the petitioner's husband. He has given convincing testimony regarding the circumstances under which it has become necessary to construct a house for his married daughter who was staying at the relevant time in a rented house along with her husband's people the husband himself being away in Wynad on a transferable Government job. Nothing has been brought out in the cross-examination of the said witness which goes to contradict the evidence given by him on this aspect and hence it is very difficult to understand why the Land Tribunal did not find it fit to act upon the said sworn testimony of the petitioner's husband. I find little relevancy in the observation of the Land Tribunal that no oral partition has been effected by the petitioner for allotting any portion of the property in favour of her daughter Prema. S. 75 (2) of the Act entitles the owner of a land to seek the shifting of a kudikidappukaran from the property if the land is required for the purpose of constructing a building either for himself or for a member of his family including adult sons and daughters. In the face of this provision it was wholly wrong on the part of the Land Tribunal to think that the applicant had to show that some portion of the property in question had been allotted to Prema at a partition effected by the applicant in order that he should be able to sustain the prayer for shifting the kudikidappukaran on the ground of requirement for construction of a house for the said daughter. Equally irrelevant is the further observation made by the Land Tribunal that the kudikidappu existed on the property even at the time when the land was purchased by the applicant 20 years back and that no efforts had been made by the applicant to shift the kudikidappu between 1964 and the date of the present application, even though Act 1 of 1964 permitted the shifting of a kudikidappukaran. The aforesaid circumstances mentioned by the Land Tribunal do not warrant the drawing of any

reasonable inference in the eye of law that the application for shifting filed by the petitioner was anything other than bona fide. In my opinion, the statement of the Tribunal that "the belated filing of the application itself throws suspicion on the bona fide of the requirements" is totally unwarranted and it discloses a lack of awareness on the part of the Tribunal that the issues raised before it had to be decided on the basis of the legal evidence adduced by the parties and not on mere surmises or conjectures.

5. I find no substance at all in the contention advanced on behalf of respondents Nos. 1 and 3 that a married daughter cannot be regarded as a member of the family. The parties before me are Thiyas of North Malabar governed by the Marumakkathayam law. Under the customary law governing them a married daughter continues to belong to the same family as her mother and she does not become a member of the husband's family after the marriage. It is, however, argued that in view of the narrow definition of the expression "family" contained in clause (14) of S. 2 of the Act, an adult married daughter cannot be regarded as a member of a person's family for the purpose of S. 75 (2) of the Act. I do not find it possible to accept this contention in view of the fact that S. 75 incorporates in itself an expanded definition of the term "family" by specifically providing that the said expression shall include major sons and daughters. Hence it is clear that the narrower definition contained in S. 2 (14) is inapplicable to the said context. The argument advanced on behalf of respondents Nos. 2 and 3 that the application for shifting of the kudikidappu for the purpose of putting up a residential building for a married daughter is not sustainable under S. 75 (2) of the Act has, therefore, only to be rejected.

6. On the evidence that is available on record the only finding that is possible in law is that the petitioner has fully established that the property is bona fide required by her for the purpose of construction of a building for her daughter Prema. The contrary finding entered by the Land Tribunal is not a reasonable conclusion that can possibly be arrived at on the basis of the said evidence and it has, therefore, to be characterised as perverse in the eye of law.

7. In as much as the Tribunal has held that the alternate site to which the kudikidappu proposes to be shifted is suitable for the homestead the petitioner is entitled to have an order for shifting subject to her complying with the other requirements of S. 75 and 77 regarding the payment of the shifting charges etc. The Tribunal has not entered any finding regarding the quantum of the shifting expenses payable to the kudikidappukaran. The Original Petition is, therefore, allowed and the order Ext. P1 is set aside. The matter O.A. No. 828 of 1972 - will stand remitted to the Land Tribunal, Tellichery for passing fresh orders thereon in the light of the observations contained in this judgment after fixing the quantum of the shifting expenses payable to the kudikidappukaran. The parties will bear their respective costs.