
(1988) 01 KL CK 0009
In the High Court Of Kerala
Case No : C.R.P. No. 2527 of 1984

Joseph John Kottooran

APPELLANT

Vs

Taluk Land Board and Others

RESPONDENT

Date of Decision : 29-01-1988

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 85(9)

Citation : (1988) 1 KLJ 536

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : N.N. Narayana Pillai, for the Appellant;

Judgement

K.P. Radhakrishna Menon J.

1. The declarant is the revision petitioner. The Taluk Land Board while disposing of his ceiling case accepted the option exercised by the declarant and accordingly directed him to surrender 32 cents of land From Sy. Nos 77/25, 78/5 and 62/14 of Manakunnam village. This order was passed on 23-8-1976.

2. The Tahsildar who was deputed to take possession of the land however, reported back to the Board that he could take possession of only 14 cents of land, from Sy. No, 77/5, because the remaining 18 cents in the said survey number, was found to be in the possession of a person who was not a party to the proceedings. Regarding property comprised in the other survey numbers, the report of the Tahasildar was that the said property, having been sold by the petitioner, was in the possession of strangers. The petitioner disputed the correctness of the above report of the Tahsildar.

3. This dispute, it would appear, was enquired into by Board after notice to the petitioner. After enquiry the petitioner was directed to file a fresh option statement. Rejecting the above plea, the Board, by the impugned order, directed the petitioner to surrender 18 cents of land from Sy. No.79/ 10A of Manakunnam

village. It is this order that is under challenge in this revision.

4. It is clear from the facts stated above that the original order has been kept in fact while the Board passed the impugned order. This cannot be done, the learned counsel for the petitioner submits. The only provision of law under which the Board can interfere with its original order is Sub-section 9 of Section 85. The order under challenge is one passed in violation of the provisions contained in the above Sub-section and therefore the same is liable to be set aside, the counsel submits.

5. Sub-section 9 of Section 85 of the K. L. R. Act provides that the Taluk Land Board may, at any time, set aside its order under Sub-section 5 or 7 as the case may be, and proceed afresh under that sub-section if it is satisfied that

(a) the extent of lands surrendered by, or assumed from, a person u/s 86 is less than the extent of lands which he was liable to surrender under the provisions of this Act, or

(b) the lands surrendered by, or assumed from, a person are not lawfully owned or held by him; or

(c) in a case where a person is, according to such order, not liable to surrender any land, such person owns or holds lands in excess of the ceiling area.

such proceedings to set aside the order cannot however, be initiated after the expiry of three years from the date on which the order sought to be set aside has become final or without notice to the affected party (vide provisos) It is thus clear that the Taluk Land Board has the jurisdiction to set aside the order by which a declarant has been directed to surrender excess land, provided the conditions stipulated in clauses (a), (b) and (c) of Sub-section 9 of Section 85 and the provisos thereto are satisfied. It is also clear that only after setting aside the order under which the declarant had been directed to surrender the excess land, fresh proceedings contemplated under Sub-section 9 of Section 85 can be initiated. It is relevant in this context to note that the learned Government Pleader was not able to bring to my notice any other provisions in the K.L.R. Act conferring jurisdiction on the Board to pass the impugned order.

6. It is in this backdrop the case on hand requires to be considered. From the facts already stated it is clear that no proceedings to set aside the order by which the petitioner was directed to surrender the above 32 cents, has been initiated by the Taluk Land Board.

7. The proceedings from which the revision arises, indisputably (going by the facts available on record) is one for the enforcement of the order by which the petitioner was directed to surrender the excess land comprised in Sy. Nos. 77/25, 78/5 and 62/14 of Munakunnam Village. Unless the said order is set aside in terms of sub-section 9 of Section 85, no proceedings for taking possession of lands other than the lands mentioned in the said order, can be initiated. For the reasons stated above the order under attack is liable to be set aside I accordingly

set aside the same

The C. R. P. for the reasons stated above is allowed but in the circumstances no order as to costs.

However it is made clear that nothing stated in this order would preclude the authority concerned from taking possession of 18 cents of land from Sy. Nos. 77/25, 78/5 and 62/14 of Manakunnam Village.