(2014) 11 KL CK 0025

In the High Court Of Kerala

Case No : C.R.P. Nos. 203, 215 and 262 of 2010 (C)

K. Kamalam APPELLANT

Vs

The Taluk Land Board RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 81, 81(1)(c), 81(1)(e), 87

Citation : (2014) 11 KL CK 0025

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : D. Krishna Prasad, O.K. Santha and P.L. Mary Treasa, Advocate for the Appellant; Susheela R. Bhat, Special Government Pleader and Mathew John, Advocate for the Respondent

Judgement

V. Chitambaresh, J.—Four brothers by name, i) Achutha Bhaskar, ii) Sivagiri iii) Parasuraman and iv) Balakrishnan divided their ancestral property amongst themselves. The partition is evidenced by a Deed (Document No. 806/1968, SRO, Palakkad) dated 12.1.1968. The property scheduled as ''A'' thereunder was allotted to Balakrishnan and property scheduled as ''B'' thereunder was set apart jointly to the share of the remaining three brothers. It should be stated that the property scheduled as ''C'' thereunder was kept in common over which all the four brothers had one-fourth share each. Ceiling proceedings initiated against Balakrishnan has become final holding that he has no excess lands to surrender. The proceedings initiated against the other 3 brothers were the subject matter of C.R.P. No. 307/2007 on the file of this Court.

2. This Court by order dated 20.2.2008 remanded the ceiling cases to the Taluk Land Board with the following directions:-

i) The total extent of property in schedule ''B'' partition deed dated 12.1.1968 should be divided into 3 for reckoning the same in the account of each one of the brothers.

ii) The property scheduled as ''C'' in the registered Deed dated 12.1.1968 should be divided into 4 for including the same in the account of each one of the brothers.

iii) The total extent of property so reckoned in schedules ''B'' and ''C'' of the Deed dated 12.1.1968 should be accounted from which exemption under Section 81 of the Kerala Land Reforms Act should be carved out.

iv) The extent so arrived at should be taken into consideration for the purpose of determining the liability of each one of the brothers to surrender excess lands.

Each one of the brothers had a statutory family comprising of wife and children and the total ceiling limit applicable to the families of 3 brothers has been found to be 50 acres by the Taluk Land Board.

3. The petitioners contend that the exemption under Section 81 of the Kerala Land Reforms Act, 1963 (''the Act'' for short) has not been considered in the proper perspective. They assert that 2.83 acres is urban land consisting of shop, buildings, rice mill etc. and 3.33 acres comprises of farm house, rice mill, yard, buildings, wells and tanks. It is also stated that 1.28.90 acres has been sold by the legal heirs of Parasuraman to the petitioner in C.R.P. No. 262/2010. The sale is by Document Nos. 1875/1997, 1876/1997, 1877/1997, 1879/1997 (all dated 17.10.1997) and 1768/1999 dated 16.10.1999. The petitioners point out that 239.11 acres included in the account is vested forest in respect of which proceedings under the Kerala Private Forest (Vesting and Assignment) Act have become final. The petitioners add that 15.39 acres are in the possession of others and 44.97 acres is a rubber plantation liable to be exempted.

4. Heavy reliance is placed on the report of the Special Deputy Tahsildar dated 15.3.2000 to show the extent of property vested as private forest and also the extent of property in the possession of others. The application put in by the petitioners before the Rubber Board as well as their acknowledgment are relied on to contend that the rubber plantation extends to 45 acres. The documents though said to have been produced before the Taluk Land Board are produced along with the memorandum of Civil Revision Petitions also. The petitioners assert that about 45 acres of land was planted with rubber even before 1.4.1964 and are liable to be exempted.

5. The petitioners in C.R.P. No. 215/2010 is said to be assignees of the rubber plantation from the declarant by a series of sale deeds. The sale is evidenced by Document Nos. 2147/86, 2153/86, 2149/86, 2151/86, 2146/86, 2152/86, 2154/86, 2150/86, 2142/86, 2144/86, 2155/86, 2148/86, 2156/86, 2145/6 and 2143/86. The contention of the assignees are two fold and they are as under:-

i) The land taken assignment of is a rubber plantation liable to be exempted under Section 81(1)(e) of the Act.

ii) The assignees are at any rate entitled to the benefit of Section 7E of the Act introduced with effect from 18.10.2006 and are to be treated as ''deemed tenants''.

It is pointed out that the claim under Section 7E of the Act was earlier upheld by the order of the Taluk Land Board dated 25.1.2007. But then the said order was set aside in C.R.P. No. 307/2007 without they being impleaded where of course an open remand was made to the Taluk Land Board. The Special Government Pleader has a contention that the rubber plantation has been converted in violation of Section 87 of the Act and that it has lost its exemption. That is an issue matter to be considered by the Taluk Land Board after obtaining the necessary inputs from the Rubber Board.

6. I do feel that all the aspects of the matter have not been considered by the Taluk Land Board especially in the light of the order of remand in C.R.P. No. 307/2011. The question of exemption under Section 81(1)(e) of the Act has to be reconsidered with reference to the documents available particularly in regard to registration by the Rubber Board. The report of the Special Deputy Tahsildar has also to be adverted to for deciphering the extent of land in the possession of others and that lost as a vested forest. The question whether exemption is to be granted under Section 81(1)(c) and (m) of the Act as shop buildings, rice mill, farm house, well and tanks has also to be considered with reference to the report of the Special Deputy Tahsildar. The Taluk Land Board is free to call for further report from the Special Deputy Tahsildar in order to confirm the contents of the earlier report.

7. The applicability of Section 7E of the act shall also be considered in the light of the dictum laid down in K.T. Rajeev Vs. The District Collector, and State of Kerala Vs. Thomas Kurian, . It has been held thereunder that the grant of a certificate of title under Section 106B of the Act is not a sine qua non for the Taluk Land Board to consider the claim under Section 7E of the Act. The petitioners in these Civil Revision Petitions as well as the legal heirs of the declarant shall be put on notice before final orders are passed. Every endeavour shall be made to pass final orders within a period of 6 months from the date of receipt of a copy of this order.

This order disposes of C.R.P. No. 203/2010 filed by the legal heirs of the declarant and C.R.P. Nos. 215/2010 and 262/2010 filed by the claimants.

