

(2013) 02 KL CK 0124
In the High Court Of Kerala
Case No : C.R.P. No. 679 of 2008

K.A. Augustine and Others	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 1 KLJ 756

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : T. Krishnan Unni, T.R. Harikumar and V.G. Arun, for the Appellant;
Susheela R. Bhat, Spl. GP, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Satheesachandran, J.—Revision is directed against the Order dated. 18.7.2008 by the Taluk Land Board, Thodupuzha in a ceiling proceeding u/s 85(9) of the Kerala Land Reforms Act, hereinafter referred to as the "Act". Ceiling proceedings were closed holding that the declarants, three in number, proceeded jointly, possessed no excess land to surrender. Exemption given to declarants in respect of some Government Poramboke lands over and above granting them exemption to rubber and tea plantations possessed, in fixing the ceiling limit was found to be not correct and proper by the State Land Board, which directed the Taluk Land Board to reopen the case and examine the exemption extended over Government Poramboke land having an extent of 22.88 acres. Though Taluk Land Board reaffirmed its earlier order, the case was again reopened with sanction accorded by the Board, to consider whether exemption provided towards Government Poramboke land was in accordance with law. By that time the declarants who possessed total extent of 141.12.252 acres of land, and involved in the ceiling proceedings, which was closed under Orders passed by the Taluk Land Board, had disposed of portions of those properties including the Government Poramboke land of 22.88 acres. Petitioners and 2nd respondent are some among the transferees, who have purchased 20.100 acres of land from

one among the declarants in the proceedings. The aforesaid transferees filed objections raising various grounds in reopening the case, and resumption of lands already exempted. Repelling their objections Taluk Land Board has passed the impugned order directing the transferees to surrender the Government Poramboke land, failing which for their dispossession and resumption of that land. That order is challenged in the revision u/s 103 of the Act. I heard learned senior learned counsel who appeared for revision petitioners, and also learned Special Government pleader for the State.

2. Learned senior counsel for petitioners assailed the order of the Taluk Land Board as unsustainable contending that exemption had been granted to the declarants over Government Poramboke land not in isolation but with exemptions granted to plantations, to which exemption from the provisions for fixing ceiling limit is indisputably applicable. Declarants held Poramboke lands with plantations. Previous proceedings before the Forest Tribunal between the Government and declarants in respect of lands covered by the ceiling proceedings ended in favour of the declarants and challenges against the orders of that Tribunal have been turned down by this court and also Apex Court are also canvassed by the counsel to contend that reopening of the ceiling proceedings and orders passed for resuming the Government Poramboke lands which were exempted with the plantations is patently unsustainable. Inviting attention to Section 83 of the Act it is urged by the counsel that the word "hold" under that section takes within its ambit holding of Government Poramboke land as well, and that being so exemption granted earlier by the Taluk Land Board in respect of the Government Poramboke land with plantations to the declarants was proper and correct. If at all the Government seek recovery of possession of the Government Poramboke land notwithstanding the orders passed by the Taluk Land Board it can have recourse to the provisions of the Land Conservancy Act or such other laws applicable, is the submission of the counsel. Where exemption to the Government Poramboke land with plantation has been given to the declarants, and in view of the previous orders passed by the Forest Tribunal also, learned counsel contended the impugned orders passed by the Taluk Land Board for dispossessing petitioners/claimants for the sole reason the land on transfer obtained by them from the declarants is a Government Poramboke land is unsustainable and it is liable to be set aside. Learned Special Government pleader on the other hand contended that no exemption could have been granted to the Government Poramboke land by the Board. Order passed by the Board directing the petitioners and 2nd respondent, who are assignees of the declarants, to surrender the Poramboke lands which was wrongly exempted in its earlier order does not suffer from any infirmity, is the submission of the learned Special Government Pleader.

3. I have perused the records called for from the Taluk Land Board. Previous order passed by the Taluk Land Board exempting Government Poramboke lands with plantations in the ceiling proceedings of the declarants clearly show that it was lying distinct and different from the plantations. Total extent of land held by

the three declarants was 141.12.252 acres, of which 86.06 acres was a Tea plantation and 15.67 acres rubber plantations. With such plantations exemption was granted over Government Poramboke lands having an extent of 22.88 acres in the ceiling proceedings by the Board. Whether the exemption granted is legal and permissible, and if not whether land covered by such exemption could be resumed is the question involved.

4. Orders passed by Forest Tribunal canvassed of, I find has no significance in resolving the question. Proceeding before the Forest Tribunal related to 20 acres of land in Thodupuzha Village. That Tribunal, it is seen, relied on Orders passed by the Taluk Land Board in the ceiling proceedings among others to pass its order holding that land involved in the proceedings before it has not vested in the Government as a "private forest". That decision rendered by the Tribunal which was affirmed by this court and also Apex Court, cannot have any bearing on the question whether exemption could be granted to a declarant over Government Poramboke land in the ceiling proceedings by the Board.

5. I do not find much merit in the submission made by counsel that declarants, assignors of petitioners and 2nd respondent, who held Government Poramboke land with plantations possessed by them can claim exemption in fixing the ceiling limit of land held or possessed by them. Emphasis and reliance sought to be placed by the learned counsel over the words "to hold" in Section 83 of the Act no way assist the declarants proceeded with in a ceiling proceedings to get exemption of lands held by him which do not fall within the exempted category u/s 81 of the Act. Section 83 of the Act is an interdiction that no person can hold land in excess of the ceiling area, and it is not an affirmation for owning or holding lands over the ceiling limit. Section 83 of the Act reads thus:-

83. No person to hold land in excess of the ceiling area-With effect from such date as may be notified by the Government in the Gazette, no person shall be entitled to own or hold or to possess under a mortgage lands in the aggregate in excess of the ceiling area.

The word "hold" in the above section has been banked upon by the learned senior counsel to contend that exemption to Government Poramboke land held by declarants with their plantations in fixing the ceiling limit of lands held by them, by the Board cannot be found fault with. Section 81(1)(a) of the Act states that provisions of Chapter III of the Act shall not apply to lands owned or held by the Government of Kerala. Then, it follows that no exemption can be granted to a Government Poramboke land held by a declarant whether it be with any land to which exemption is available u/s 81 of the Act or otherwise.

Notified date applicable to Section 83 of the Act interdicting a person from owning or holding or possessing excess area over ceiling limit is 1.1.1970. The words own or hold or possess under that section have impact only in considering such owning or holding or possession in fixing ceiling limit. So much so if a person holds Poramboke land but his possession of such Poramboke land does

not exceed the ceiling limit, the Board cannot hold he has lands in excess of the ceiling limit. However, where the owning or holding or possessing of lands with such Government Poramboke land is beyond the ceiling limit, not only that exemption cannot be granted to the Government land in fixing its ceiling limit such holding or possession by him over Poramboke land has also to be reckoned to fix the ceiling limit. There is no merit in the submission made by learned senior counsel that irrespective of the orders passed by the Taluk Land Board granting exemption to the Government Poramboke land to the declarants in fixing their ceiling limit it is open to the Government to invoke the provisions of Land Conservancy Act for recovery of that land. Whether the Government is empowered to have recourse to other remedies under law or not, has no value in adjudging the question whether the Board could have granted exemption to Government Poramboke land where there is clear interdiction u/s 81 of the Act that no such exemption can be extended or claimed by a holder of such land. Order passed by the Taluk Land Board directing the assignees to surrender Government Poramboke land, where it is shown that exemption granted to their assignors/declarants over such land was illegal is proper, valid and correct.

Revision is devoid of any merit and it is dismissed.