

(1976) 03 KL CK 0005

In the High Court Of Kerala

Case No : Civil Revision Petition No. 1240 of 1945

K.A. Joseph

APPELLANT

Vs

Taluk Land Board, Cochin

RESPONDENT

Date of Decision : 29-03-1976

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 85(2), 85(6)

Citation : AIR 1977 Ker 52

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Advocate : M.K. Narayana Menon, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Subramonian Poti, J.—Section 85(2) of the Kerala Land Reforms Act, 1964 (in short, the Act) obliges a person owning or holding land in excess of the ceiling area to file a statement before the Land Board within a period of 3 months from the date notified u/s 83 of the Act intimating the location, extent and such other particulars as may be prescribed, of all the lands owned or held by such person and indicating the lands proposed to be surrendered. The Kerala Land Reforms (Ceiling) Rules, 1970, in Rule 4 provides that the statement under subsection (2) of Section Section of the Act shall be in form No. 1. This form has a series of Annexures and Annexure J concerns the particulars of land desired to be retained and particulars of land proposed to be surrendered. Explanation IV to subsection (2) of Section 85 reads:--

"Explanation IV:-- Where any person owns or holds in excess of the ceiling area including lands mortgaged to the Government or to a co-operative society or to a co-operative land mortgage bank registered or deemed to be registered under the Co-operative Societies Act for the time being in force, or to the Kerala Financial Corporation or to the Kerala Industrial Development Corporation, or to a scheduled bank as defined in the Reserve Bank of India Act, 1934 or to a

corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or to the State Bank of India constituted under the State Bank Of India Act, 1955 or to a subsidiary bank as defined in the State of India (Subsidiary Banks) Act, 1959 as security for any loan advanced by the Government or by such co-operative society or bank or corporation, the excess lands to be surrendered shall, as far as possible, be lands other than those so mortgaged."

Therefore when any of the lands is mortgaged as indicated in the Explanation, as far as possible the lands to be surrendered should be those other than the land mortgaged. Sub-section (6) of Section 85 provides as follows:--

"(6) In determining the identity of the land the Taluk Land Board shall accept the choice indicated under Sub-section (2) or Sub-section (3A):

Provided that the Taluk Land Board shall not be bound to accept such choice if-

(A) it has reason to believe that the person whose land is indicated to be surrendered has no good title to that land; or

(B) the land indicated to be surrendered is not accessible; or

(C) it considers for any other reason to be recorded in writing that it is not practicable to accept the choice or to take possession of the land:

Provided further that where in such determination the interests of other persons are also likely to be affected, the Taluk Land Board shall, except in cases where all the persons interested have agreed to the choice indicated, afford an opportunity to such other persons to be heard and pass suitable orders regarding the land to be surrendered." It is evident from the sub-section that the option exercised by a person in the matter of retaining lands is to be accepted and the exceptions would only be in the three cases contemplated in the sub-section. Of course, when the title of the declarant to the land indicated to be surrendered is not good, surrender cannot be of such land and so is the case where land surrendered is not accessible. The 3rd exception is where it is not practicable to accept the choice or to take possession of the land. That must be indicated by the Taluk Land Board by the reason being recorded in writing.

2. The scheme of the Act is evidently to leave the declarant in possession of lands of his own choice to the extent of the ceiling area. It is only fair, that a person in possession of excess land is allowed the choice of the land to be retained by him. If a person is in possession of land which is barren or not fit for cultivation and that is offered to be surrendered by him as excess land the choice by him cannot be vetoed on the ground that the land agreed to be surrendered is not good, that it may not be useful for the purpose for which surrendered land is to be used and therefore such lands are to be retained by the declarant while better land in his possession and which he opted to possess is to be surrendered. That is not one of the reasons falling within Clause (c) of Sub-section (6) of Section 85 of the Act.

3. In the case before me the only controversy concerns the land to be surrendered. That the revision petitioner is liable to surrender 7.95.076 acres of land is not disputed. The petitioner was willing to surrender this extent of land from out of the Survey No. 27/1 of Chellanam Village. He indicated this in Annexure 3. But this has not been accepted by the Taluk Land Board, Cochin which has, instead, directed the petitioner to surrender land from Survey No. 1600/1 of Palluruthy Village which is land mortgaged to government for a loan of Rs. 16,500/- and which in addition, is said to have a new building on it. The petitioner evidently, desires to retain that land. That he is entitled to. He is not obliged to surrender the land in Survey No. 1600/1. But the Taluk Land Board considered that the property agreed to be surrendered was not good land, that it lies about 6 feet low, that its cultivability is doubtful, that the records called for and obtained show that there has been no cultivation for the last 2 or 3 years, that bunding will be costly, that for effective cultivation this field has to be raised by 20 c.m. in shallow portions and 30 c.m. in deeper portions which would mean an expenditure of Rs. 62,000/- and a further sum of Rs. 2,100/- will have to be spent for construction of strong outerbund on all four sides and in view of this heavy commitment the choice of the declarant has to be rejected. There is a further observation that since it is not practicable to take possession of the said land, that enables the Taluk Land Board to refuse to accept the choice indicated by the declarant. If the Taluk Land Board considers for any reason to be recorded in writing that it is not practicable to accept the choice or to take possession of the land it is open to it to reject the option by the land owner. It is said by the Taluk Land Board that the object of the Kerala Land Reforms Act is to make the tiller of the soil the owner of the land and to abolish landlordism and the very purpose of the ceiling provision is to take excess lands from landlords and to distribute them to the poor landless agriculturists. It is said that, for the above reason, if the choice of the land now offered is accepted it would not serve the purpose. The scheme of the Land Reforms Act is not to take all that a man possesses so that it may be given to others. It secures a ceiling limit to the land owner and within that limit he is entitled to own and hold the land. Naturally when the Act gives the choice and makes that choice of the land indefeasible except in specified cases it cannot be said that he should surrender the best of his lands and retain the inferior lands. The "other reasons" contemplated in Clause (c) of proviso to Sub-section (6) of Section 85 does not envisage the reason that the land which was offered to be surrendered is not as good as the land which is retained by the owner. The choice may not be accepted if for some reason or other it is not practicable to take possession or to accept the choice and not merely because the land is not good while the lands retained by the declarant are better.

4. The Taluk Land Board ought to have accepted the choice of Survey No. 27/1. To that extent the order of the Taluk Land Board is modified. But it is agreed that the total extent of Survey No. 27/1 is only 6.65 acres. Therefore the balance required to make up the excess to be surrendered may be taken from Survey No.

1600/1. Where exactly that should be is a matter to be determined by the Land Board and for that purpose alone the matter is remitted back to the Taluk Land Board, Cochin. Allowed as above. No costs.