

(1985) 08 KL CK 0008
In the High Court Of Kerala
Case No : S.A. No. 693 of 1979

Kalliani Amma and Others

APPELLANT

Vs

Kerala Varma Thirumulapad and Others

RESPONDENT

Date of Decision : 09-08-1985

Acts Referred:

Kerala Land Reforms (Amendment) Act, 1969 — Section 13, 17, 18, 72
Kerala Land Reforms Act, 1963 — Section 4A

Citation : AIR 1986 Ker 250

Hon'ble Judges : M. Fatheema Beevi, J; K.K. Narendran, J

Bench : Division Bench

Advocate : D. Narayanan Poti, P.G.P. Panicker, K.S. Balakrishnan and P.B. Mohankumar, for the Appellant; T.R.G. Warriar, Sebastian Davis, H. Sivaraman and P.C. John, for the Respondent

Final Decision : Dismissed

Judgement

Narendran, J.—This second appeal was referred to a IN Division Bench by a learned Judge of this Court. Before the learned Judge the correctness of the decision in Subramanian v. Kunjamma 1983 Ker LT 351 was disputed. The point that arises for consideration is whether an application for resumption by a small holder u/s 18 of the Kerala Land Reforms Act 1 of 1964 against a mortgagee who is a deemed tenant u/s 4A can be filed after the expiry of six months from 1-1-1970, the date of commencement of the Kerala Land Reforms Amendment Act, 35 of 1969.

2. The appellants are plaintiffs 2 to 4 in a suit for resumption filed in 1968. When Kerala Act 35 of 1969 came into force on 1-1-1970 the plaint was amended challenging Section 4A incorporated in Kerala Act 1 of 1964 as unconstitutional. The contention that even if that section was not unconstitutional, the plaintiffs, as small holders, were entitled to resume half the plaint schedule properties u/s 17 of Act 1 of 1964 was also taken subsequently. The first contention regarding constitutionality was taken in the amendment filed on 17-10-1970 while the

second contention regarding the right of resumption was taken only in the amendment filed on 16-12-1972. The trial Court dismissed the suit holding that it had no jurisdiction to allow resumption of half the plaint schedule property u/s 17 of Act 1 of 1964. The lower appellate Court dismissed the appeal filed by the plaintiffs and it was under the above circumstances that this second appeal was filed.

3. The facts that the appellants are small holders and the respondents are deemed tenants u/s 4A of Kerala Act 1 of 1964 are not disputed in this case. Section 17 of Act 1 of 1964 which allows resumption by small holders, does not fix any time limit for applying for resumption. The question is whether simply because no time limit is fixed by Section 17 of the Act, can an application for resumption by a small holder be filed after the rights of the landlords in the land in question vested with the State u/s 72 of the Act. Section 72 which provides for vesting of the landlord's rights in the State on a date notified by the Government in that behalf provides for certain exemptions. As per Section 72(4), if the landowner or the intermediary is a small holder, the vesting will take effect only on the expiry of six months from 1-1-1970, the commencement of Amendment Act 35 of 1969, if no application for resumption of the Holding or part of the holding had been preferred. The scheme of the Act is that after vesting, no application for resumption is maintainable. Otherwise, there is no reason why the vesting has been postponed by six months in the case of a small holder (This postponement is there in the case of some others also). The landlords' rights in all lands in the possession of tenants who have got fixity of tenure u/s 13 of the Act vested with the State on 1-1-1970. It goes without saying that after this vesting the landlord, even if he is a small holder, cannot have any rights in the land and hence an application for resumption cannot be filed. This may be the reason why the vesting has been postponed by six months by Section 72(4)(a). In this case, the amendment of the plaint incorporating a prayer for resumption was filed in the Court only on 16-12-1972. As that was more than six months after 1-1-1970, it goes without saying that no resumption could be possible. In this view of the matter, the judgment and decree of the lower appellate court confirming the judgment and decree of the trial Court refusing resumption and dismissing the suit do not call for any interference in this second appeal.

4. In Raghavan Nair Vs. Narayana Panicker, it has been held that the Kerala Land Reforms Act 1 of 1964 does not provide for any time limit for filing an application for resumption by a small holder in respect of lands in the possession of deemed tenants recognised by amendment Act 35 of 1969, In Devaki Antharjanam v. Narayanan Nair 1977 KLN 111 it has been held :

"It is clear beyond doubt that in all cases where resumption application has not been made before the lapse of the period of six months from the commencement of the amending Act (Act 35 of 1969), there would be a bar against the landlord for invoking the resumption provisions in view of the fact, by operation of law, the tenant, by then, acquires the right to fixity of tenure."

In Ravindranathan Nair v. Saraswathi Amma 1982 K LT 997 it has been held :

"The reference to "the commencement of this Act" in Sub-section (1) of Section 18 of the Act has to be interpreted as referring to the commencement of the Principal Act (Act 1 of 1964, before its amendment by Act 35 of 1969); and the conditions and restrictions subject to which alone application for resumption could be made, mentioned in that sub-section, are applicable to the cases of tenancies subsisting at the time of the commencement of the principal Act, not to tenancies. declared or created by the provisions of Act 35 of 1969" (Head note).

In Subramanian v. Kunjamma 1983 K LT 351 it has been held that small holders of lands in the possession of deemed tenants have got 3 years from 1-1-1970 to make an application for resumption, but it is to be noted that the question decided did not really arise for consideration in this case. This is clear from para 2 of the judgment wherein it has been made clear that the order of resumption could not be challenged because of an earlier order in the case which became final and which could not be challenged in the proceedings. Not only that, the effect of section 72(4) of the Act was not considered by the court in that case. For the same reason Raghavan Nair Vs. Narayana Panicker, , we may say, with respect, has not laid down the correct law.

5. In the result, the second appeal is dismissed. There will be no order as to costs.