
(1979) 07 KL CK 0028

In the High Court Of Kerala

Case No : C.R.P. No's. 1604/77C and 3756 of 1977

Kammaran Maniyani

APPELLANT

Vs

Mahalakshmi Rajani and Others

RESPONDENT

Date of Decision : 09-07-1979

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 103, 13, 59(2), 72, 72(2)
Trusts Act, 1882 — Section 90

Citation : (1979) 07 KL CK 0028

Hon'ble Judges : Chandrasekhara Menon, J

Bench : Single Bench

Advocate : V.R. Venkitakrishnan, in C.R.P. 1604 of 1977-E and U.P. Kunikkullaya, in C.R.P. 3756/77, for the Appellant; Government Pleader, V.R. Venkitakrishnan in C.R.P. 3756/77 and U.P. Kunikkullaya in C.R.P. 1604/77-L, for the Respondent

Final Decision : Allowed

Judgement

Chandrasekhara Menon, J.—I am hearing the two petitions together and disposing of the same by a common order, as it relates to the same holding. The Petitioners in C.R.P. No. 1604 of 1977 are the tenants in respect of the property. The landlord's right in respect of which assignment is sought for has vested in the state on 1st January 1970. Suo motu proceedings were initiated u/s 72B(3) of Act 1 of 1964. The land tribunal by its order, dated 23rd August 1973 held that the Petitioners are cultivating tenants of the property and that they are entitled to apply for assignment of the land. The order of assignment was accordingly passed, where the purchase price was fixed at Rs. 19,208.85. There was also direction there that a sum of Rs. 6, 750 with interest thereon was to be deducted and the balance alone being payable to the landlords. But in Form I statement issued under Sub-section (5) of Section 72F of the Act, though the figure Rs. 19, 208.85 was incorporated in the appropriate part (two places) the deduction of Rs. 6,750 was not made. Therefore the tenants filed appeal, A.A. 1787/1973 before the Appellate Authority seeking alteration and clarification on the above

points. The Appellate Authority held that Rs. 6,750 is liable to be deducted and the form I statement had not been drawn up in accordance with the final order of the Land Tribunal. This mistake was directed to be corrected by the Land Tribunal showing the deduction as ordered in para 8 of the final order so that the A party can know the correct amount they are to deposit. It might be noted that the appeal before the Appellate Authority had been heard along with A.A. No. 2477 of 1973 filed by the landlords. In the final portion of the appellate order, by which both the appeals were disposed of, it had been said that A.A. No. 1787 of 1973 the tenants' appeal is also dismissed subject to the observation on the point in that appeal. In these circumstances the tenants have come up in revision to this Court u/s 103 of Kerala Land Reforms Act for clarifying the order, so that no mistake might further be repeated.

2. It is contended in the revision that the Appellate Authority having held that the Petitioners, the tenants, are entitled to deduct the "marupattam" amount of Rs. 6,750 from Rs. 19,208.85 and liable to pay only the balance, ought to have allowed the appeal and given appropriate direction to the Land Tribunal to make the necessary corrections wherever the figure Rs. 19,208.85 appeared.

3. One of the contentions which the landlords had taken up in the proceedings for fixation of purchase price was that R.S. No. 721-1A was a kumki land appertaining to R.S. 721-2 and 3 and the same had been in the possession of the landlords and their predecessors-in-interest from time immemorial and all the improvements standing thereon have been effected by them. The lease took in that also. The tenants were enjoying the improvements in R.S. No. 721-1A as part and parcel of the lease-hold property and the said survey number is specifically included in the lease deed. They also contended that the State had lost its title to that survey number by long possession of the Petitioners (in C.R.P. 3756 of 1977) and their predecessors-in-interest as well as by their lessees. Therefore the landlord's right thereto was absolute. On this basis it is contended that in fixing the compensation the value of improvements in the kumki land should also be taken into account. However, this contention was not accepted. The Land Tribunal did not order assignment of R.S. No. 721-1A to the tenants nor was compensation fixed for the same. The Appellate Authority concurred with the Land Tribunal's order. According to the Land Tribunal and the Appellate Authority the landlords had no jenmom right over the same, which is really Government land. Therefore on 1st January 1970 the right could not be said to have vested in the Government as per the Act. Therefore there cannot be an order allowing purchase of two acres in R.S. No. 721-1A by the tenants for which the landlords would be entitled to compensation. The landlords aggrieved by the order have come up in revision in C.R.P. No. 3756 of 1977.

4. It is brought to my notice that pending the proceedings before the Land Tribunal there had been an assignment of the said survey number in favour of the tenants in accordance with the provisions in the Kerala Land Assignment Act. The assignment price was deposited and patta issued to the tenants. An

application for allowing them to produce the patta issued by the Government to them has been made in this Court by the Petitioners in C.R.P. No. 1604/1977, i.e. the tenants, as C.M.P. No. 2966/1977 and there it is stated:

The Petitioners have paid the price of Rs. 1,719.56 being the land value of L.A. No. 1690/1967, the same relating to the patta produced herewith, the Petitioners have become absolute owners of the plot in dispute here and it is no longer open to the Petitioners in C.R.P. No. 3756/1977 to reagitate in any manner the order of the Tribunal as well as the Appellate Authority which did not direct purchase of this two acres in R.S. No. 721/1A under the Kerala Land Reforms Act. The patta produced herewith will clearly show that the right and title of the Petitioners in the land in dispute is absolute.

5. I have no difficulty in upholding the contention of the tenants in C.R.P. No. 1604/1977. Really that contention had been accepted both by the Land Tribunal as well as the Appellate Authority. However, in the last portion of the order of the Appellate Authority as it was stated that the tenants' appeal is also dismissed, they have come up to this Court to clear the mistake, if any, that has crept into the order. It is contended by Mr. Venkitakrishnan, learned Counsel for the tenants, that the landlords did not question the direction given by the Land Tribunal. The Appellate Authority also states: "the B party did not challenge the correctness of the finding entered in para 8 of the final order in the appeal filed by them as A.A. 2477 of 1973". Though the learned Counsel for the landlords contended that he had questioned the same in his revision, I do not think that I should go into that aspect as such, because apart from the decisions of the Land Tribunal and the Appellate Authority, in the matter, I myself have no difficulty in accepting the case of the tenants that with the termination of the tenancy, the premium is liable to be paid back to the tenants. It was contended by the learned Counsel for the landlords that in proceedings for arrears of rent before the Land Tribunal the tenants have pleaded that they may adjust the "muppattom" amount in the arrears of rent. I am remitting the matter to the Land Tribunal for proper inclusion of the amount of premium in the final purchase order for deducting from the purchase price. However, if the landlords are able to show before the Land Tribunal that such amount has already been adjusted by the tenants in the arrears of rent due from them, this will be taken into consideration by the Land Tribunal and then there may not be a fresh readjustment of the same from the purchase price. C.R.P, No. 1604 of 1977 is disposed of accordingly.

6. In the revision by the landlords it is contended strongly by Sri Kunikullaya, their counsel, that the courts below were not justified in excluding the computation of income from R.S. 721-1A and 738-1A, 1A2, while fixing the fair rent in respect of the holding. It is contended that those properties contain major portion of well-yielding areca gardens, house, tank, etc., in which the landlords have got proprietary right, which is alienable and valuable. According to him, the lower courts ought to have taken into consideration the income of the said items of properties also while fixing the fair rent for computing the compensation on

that basis. Mr. Venkitakrishnan counsel for the tenants, on the other hands disputes this contention raised by the landlords. According to him in the nature of the kumki rights there could be no question of assignment of that right on the basis that such right vested in the Government only on 1st January 1970. Kumki land is really Government land. Moreover, it is contended that land covered by the said survey numbers had already been assigned to the tenants in the proceedings under the Kerala Land Assignment Act and patta issued. Therefore in any view of the matter the said land could not be taken into consideration for fixing the purchase price.

7. The rights of kumkidars in respect of kumki lands and the grant of such lands for occupation are matters dealt in the orders of the Board of Revenue, Madras. The nature of the rights as per the said orders had been considered by the Supreme Court in *State of Mysore and Others Vs. K. Chandrasekhara Adiga and Another*, sub-para (4) of the Board of Revenue's Order states: "A kumkidar's privileges in the land are grazing his cattle, cutting and collecting leaves, timber and other forest produce for his agricultural and domestic purposes". Sub-para (6) states that within kumki limits a kumkidar can temporarily cultivate dry crops on Government waste land, and if he so cultivates land within kumki limits, he is not liable to pay any Hakkal. Further, in para 10 of the order it is stated that any registered holder walawargdar or mulagenidar who is a kumkidar of the land applied for should be given preference over all other applicants to the extent of those privileges. Then para 14 states that when kumki land is assigned on Darkhast to a kumkidar the value of the trees (except sandalwood) which stand on the land will be foregone and no compensation for sandalwood need be paid to persons having kumki privileges. Rule 7(a) framed u/s 72 of the Madras Forests Act expressly provides that the holder of land to which kumki privileges are attached may enjoy in the kumki land, free of charge, such privilege as he has hitherto enjoyed in the way of grazing cattle or of cutting, converting, collecting and removing trees, timber and other forest produce, subject to the conditions laid down in that rule. One of these conditions is that trees, timber and other forest produce shall be used for agricultural or domestic purposes in the village in which kumki land is situated or in such other villages in which the Collector may permit in writing. This rule further says that it shall be open to the Collector to decide either generally or in special cases what shall be considered agricultural or domestic purpose within the meaning of these Rules. After taking due notice of these provisions, the Supreme Court has stated what exactly is the nature of kumki right. A para 23 of the said decision the court states:

Although styled as "privileges", kumki rights are recognised by the statutory rules and the standing orders aforesaid. They are property rights notwithstanding the fact that their scope is restricted and their exercise is subject to these statutory rules. Therefore these rights could be curtailed, abridged or taken away only by law and not by an executive fiat.

(Emphasis mine).

I think it is proper to refer to some of the earlier decisions of this Court and Madras High Court in respect of these rights. Before coming to the decisions I may here quote what Justice P.R. Sundara Aiyar has stated in his well-known work "Malabar and Aliyasanthana Law". At page 316 of the said book the learned author says:

The kumki privileges recognised at present consist in the exclusive right to take leaves for manure and certain classes of trees and timber for agricultural and residential purposes. Trees are divided into two classes—classified and unclassified. The wargdar may cut down for the purposes specified all the unclassified trees and certain specified classified trees. They may cut down the remaining classified trees for the purpose specified after taking out a permit from the Government. (See rules under the Forest Act). But these privileges are not easements but amount to mere license at the sufferance of the Government and terminable at their pleasure. Under the Darkhast rules, waste lands are not assigned on Darkhast without the consent of the wargdar as possessing kumki privileges. He has also a preferential right to the assignment of these lands. As assignment in contravention of the Darkhast rules as to preference does not affect the validity of the grant. In so far as they are recognised, these kumki privileges are in the nature of quasi-easements and are not transferable apart from the land to which they are appurtenant. The holder of the kumki privileges cannot in the eye of the law be regarded as being in possession and an action for possession cannot be maintained by him. An injunction may be obtained by him. However if he is actually in possession enclosing the land, there is no reason why he should not sue a trespasser for possession. A mortgagee obtaining kumki land on Darkhast in his capacity as mortgagee or by virtue of his possession as mortgagee will be bound to hand it over to the mortgagor at the time of redemption, that is on the principle of Section 90 of Trusts Act.

The learned author's observations are on the basis of a number of earlier Madras decisions, which the author had pointed out in the book. In *Ramakrishna Bhatta v. Subbanna Bhatta* (1954) 2 M.L.J. 665 Justice Panchapakesa Ayyar has said, in regard to right of compensation for improvements in kumki lands:

I have no doubt whatever that full compensation should not be given, though some compensation should be given, for improvements in the shape of trees on non-warg lands like kumki land, for in South Kanara there is a kind of fleeting right in kumki, and every wargdar is entitled to the adjoining unassigned land upto 100 yards on either side as kumki, and it is not merely a theoretical right but has very valuable incidents like using the land for collecting manure leaves and raising trees, and having a recognised preference in the matter of darkhast or assignment, this right, being rendered stronger by improvements, like planting of trees.

The learned Judge then says:

But all said and done, some distinction must be made between improvements on

lands not belonging strictly to the mortgagors and kumki lands. So, while Mr. Adiga's initial argument that no compensation should be given on trees on such kumki and other non-warg lands is not accepted by me and indeed, was not eventually pressed seriously by him, I have no hesitation in holding that only a lesser compensation which I fix at half (for in which cases the rule "Equality is Equity" applies) the compensation for such improvements on warg lands should be granted for such improvements on kumki and non-warg lands.

In a very early Madras case, A Division Bench of the Madras High Court, consisting of Chief Justice Sir Arthur J.H. Collins and Justice Handley, has said in *Nagappa v. Subba* ILR 16 Mad 304.

The kumki right of landholders in south Canara is not an easement, but a right exercised over Government waste by permission of Government and it does not entitle the landholder to a decree for possession.

In another *Vasteva Holla and Another Vs. P. Mahabala Rao*, Justice Pandalai, speaking for the Division Bench consisting of Chief Justice Beasley and himself, pointed out:

It has been held that the right of a wargdar over the attached kumki is in the nature of an easement and two cannot be separate or separately alienated: *Matilda Fernandez v. Allen Pinto* (1912) 15 I.C. 278. We need not now decide whether the right of the wargdar which entitles him to be in possession of the kumki, to plant trees, etc., on it, and cut and remove them subject to Government Regulations, is not something higher than an easement. But it is clear that, as between the mortgagor and mortgagee of the warg, possession and enjoyment of the kumki is a valuable adjunct of the security and therefore a part of it, that the two cannot be separate and that the mortgagor having given possession of the kumki to the mortgagee has now got a decree for its recovery. In these circumstances, the argument that the kumki was not part of the mortgaged property which found in the second appellate court and which is correct only to the extent that the mortgage deed did not contain a description of the kumki for the reason that being Government land the mortgagor was not entitled to create a valid charge on it so as to bind the Government, cannot be of any avail to the mortgagor as between him and the mortgagee. The kumki is for the purpose of redemption and the rights of the parties on redemption to be regarded as part of the security. If so, the Defendants are entitled to compensation for improvements on the kumki as well as on the warg.

Whatever may be the precarious nature of the right of a kumkidar in the earlier times, with the coming into force of the constitution where right of property was made a fundamental right (though by the latest amendment this has ceased to be so) kumki rights have become very valuable rights. Justice Govindan Nair, as he then was had considered the kumki right in *Parameswara Bhat v. The Tahsildar, Kasaragod* 1967 K.L.J. 308. There it is said on the basis of the various decisions of the Madras High Court referred to by him there that kumki right is

not merely a theoretical right but has very valuable incidents like using the land for collecting manure leaves and raising trees, and having a recognised preference in the matter of darkhast or assignment, this right being rendered stronger by improvements like planting of trees. Kumki rights have been statutorily recognised and the priority conferred in the matter of assignment has been left untouched by any specific provision to the contra. In view of the Supreme Court's pronouncement that kumki rights are property rights not withstanding their restricted scope and their exercise subject to statutory rules, there can be little doubt that u/s 72 the right which the landlords had in the property in respect of kumki lands vested in the government. Section 72 of the Kerala Land Reforms Act stated that on a date to be notified by the Government in this behalf in the Gazette, all right, title and interest of the landowners and intermediaries in respect of holding held by cultivating tenants (including holding of kudiyitippus and holders of kariamas) entitled to fixity of tenure u/s 13 and in respect of which certificates of purchase under Sub-section (2) of Section 59 have not been issued, shall subject to the provisions of this section, vest in the Government free from all encumbrances created by the landowners and intermediaries and subsisting thereon on the said date. The tenant in possession of the landlord's property under a lease is entitled to utilise the kumki lands for the purpose of his holding and in this case really the kumki lands are also included in the lease. What has been leased out is the landlord's right in the kumki lands along with his jenmom lands. The fact that the Government is the ultimate owner of the property should not deprive the landlord of his right to get purchase price in respect of his interest in the kumki lands also. Mr. Venkatakrishnan strongly contended that because of the issue of patta under the provisions of the Land Assignment Act there cannot be any purchase price fixed for the kumki lands in respect of which patta has been issued. It might be noted that the patta has been issued subsequent to the vesting of the land in the Government u/s 72 of the Kerala Land Reforms Act, and every landlord and intermediaries whose right in respect of any holding have vested in the Government u/s 72 shall be entitled to compensation as specified in Sub-sections 2, 3 and 4. In this view I allow C.R.P. No. 3756 of 1977. I would remit back the matter to the Land Tribunal for fixation of the compensation in respect of the kumki land also.

The Civil Revision petitions are disposed of as above. There will be no order as to costs in both the petitions.