

(1986) 10 KL CK 0005
In the High Court Of Kerala
Case No : C.R.P. No. 814 of 1982

Karayi cherooty and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-10-1986

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 85, 85(2), 85(6A), 85(7), 85(7)

Citation : (1987) KLJ 585

Hon'ble Judges : K P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : P.G.K. Wariyar and C. S. Anandalakshmi, for the Appellant;

Final Decision : Allowed

Judgement

K P. Radhakrishna Menon, J.—The properties in question belonged to one Manappadi Krishnan. He died without filing statement u/s 85(2) or Sec. 85A of the Kerala Land Reforms Act. This was the state of affairs when the Taluk Land Board, Tellicherry by its proceedings NO. S.M. 325/76 (Tly.) dated 7-7-78 declared that the legal representatives of Krishnan are liable to surrender excess land, measuring 12.88 acres. The widow of Krishnan challenged she said order before this court by filing C.R.P. No. 2386 of 1978. This court after considering the various aspects of the case, has passed the following order:

Government Pleader takes notice. The proceedings are against the family of one Krishnan, who passed away in 1972. This court has held that where a member of the statutory family as on 1-1-1970 dies after the aforesaid, date no proceedings could be continued against him or his family u/s 85 and the proper course is to proceed u/s 87 against those on whom the properties have devolved. The order of the Taluk Land Board cannot therefore be sustained and it is set aside. C.R.P. allowed as above.

The Taluk Land Board will however, be free to proceed u/s 87.

This order is dated 18-9-1978. In the year 1981 the Government promulgated

the Kerala Land Reforms (Amendment) Ordinance, 1981, Ordinance 5 of 1981 dated 22nd June 1981. This Ordinance was later replaced by the Kerala Land Reforms (Amendment) Act, 1981, Act 19 of 1981 (for short the Amendment Act). By the Amendment Act a new sub-section was introduced as sub-section (6A) to section 85. The Amendment Act contains section 7, introduced with a view to validate certain proceedings. The statement of objects and reasons disclose the object that is sought to be achieved by the introduction of the above sections. Relevant portions there from are extracted hereunder:

6. The Kerala High Court in C.R.P. 35/77E held that in as much as there is no provision in the Act for continuation of the proceedings for taking over of excess lands initiated against a person who filed a statement under sub-section (2) of section 85 or sub-section (1) of section 85A, on the death of such person, against his legal representatives, such legal representatives are under no obligation to account for the surplus land, if any, held by the parson who filed the statement and that the proceedings would lapse on his death.

7. The above decision directly applies only to a case where the declarant is an adult unmarried person. It might also apply to a case where the declarant is a sole surviving member. The decision does not apply where the declarant is a member of a "family" as defined in the Act. However, the High Court has set aside the orders of the Taluk Land Boards in several cases where the declarants were persons liable to file the statement on behalf of "family" as defined in the Act. The Taluk Land Board also had dropped proceedings in several such cases wrongly relying on the above decision. Therefore, it was considered necessary to specifically provide in the Act that proceedings before the Taluk Land Board shall not abate on the death of the declarant and that such proceedings shall be continued against the legal representatives incase such declarant is an adult unmarried person or the sole surviving member of a family or against the remaining members of the family in other cases.

(8).....

(9) Transitory provisions enabling the Land Board or the Taluk Land Board, as the case may be, to reopen all ceiling cases where the proceedings for determination of excess land had been dropped on the ground that the declarant had died before such determination and to continue such proceedings were also considered necessary.

2. It can thus be seen that the object with which Sec. 85 (6A) was introduced, was to restore to file the proceedings which stood abated on the death of the declarant who had initiated proceedings or against whom proceedings had been initiated in respect of the excess land liable to be surrendered under the Kerala Land Reforms Act and also to continue those proceedings impleading the legal representatives in case the deceased declarant is an unmarried person or the sole surviving member of the family. Regarding the transitory provision u/s 7, it enabled the Land Board or the Taluk Land Board as the case may be, to reopen

all ceiling cases where the proceedings for determination of the excess land has been dropped for the reason that the declarant had died before such determination and to continue such proceedings against the legal representatives.

3. In the case on hand we are concerned only with the transitory provision and therefore the discussion here would touch only matters pertaining to proceedings which will come under that provision. Section 7 provides that any proceedings initiated under the Principal Act for the determination of the extent etc. of the land to be surrendered of adult unmarried person or a family happens to be discontinued on the ground that such adult unmarried person or the sole surviving member of the family in the case of a family having only one member or the person who filed the statement in the case of any other family died before such determination, the Land Board or the Taluk Land Board as the case may be, could within a period of one year from the date of publication of the Amending Act 1981, restore to file such proceedings and continue the same impleading the legal representatives of such adult unmarried person or sole surviving member or the remaining member or members of that family as the case may be and such legal representatives or as the case may be the remaining member or members shall be bound to surrender the same extent of land as such adult unmarried person or sole surviving member or the family as the case may be would have been liable to surrender if any of such person had filed such statement, were such adult unmarried person or sole surviving member or the person who filed such statement as the case may be alive on the date of determination of the extent and other particulars of the land notwithstanding anything contained in any judgment, decree or order of any court Or other authority. The wordings of this section make it clear that the proceedings which can be restored and continued against the legal representatives are only those proceedings which got abated due to the death of the person who filed the statement u/s 85 or 85A of the Kerala Land Reforms Act. There cannot be any doubt about it. That is the object with which the transitory provision was introduced is clear from the statement of objects and reasons.

4. In the case of a family, the members of the family are equally liable with the head of the family to surrender the excess land because the liability to surrender is incurred by the family on 1-1-70 and if that be so, the legal representatives of the deceased can inherit the estate of the deceased subject to the said liability to surrender the excess land held by the family of which the deceased was a member. It has been so held by this Court in *Celine v. State of Kerala* (1981 KLT 668).

5. It is in this background the question arising for consideration in the revision petition requires to be considered. It is not the case of the respondents that Krishnan had filed a statement u/s 85 or 85A before his death. But on the other hand their case is that the Taluk Land Board had initiated proceedings S. M. 325/76 (Tly.) u/s 85 (7) and disposing of which it directed the legal representatives to surrender the excess land, the family was having as on

1-1-1970. The said proceedings according to the respondents, would get survived by virtue of the provisions contained in section 7 of the Amending Act 1981 notwithstanding the order of this Court in C.R.P. 2386/78. The following excerpts from the impugned order make it clear as to how, according to the authority concerned, section 7 of the Amending Act would apply to the case.

The Taluk Land Board has considered this objection. If the objection is to be upheld, it will mean that an excess holder and his family who has not filed a ceiling return under sec. 85 need not account for all the properties in their possession if the head of the family dies before initiating suo-motu action against the family. This is not a correct perspective of the provision of the Act. The transitory provisions of Act 19/81 is clear in this case. It reads as shown below:

Notwithstanding anything contained in any judgment, decree or order of any court or other authority, where any proceedings under the Principal Act, for the determination of the extent and other particulars of any land, the ownership or possession or both of which is or are to be surrendered by any adult unmarried person or a family has been discontinued on the ground that such adult unmarried person, or the sole surviving member of the family in the case of a family having only one member, or the person who filed the statement u/s 85 or under sec. 85A of the principal act in the case of any other family, has died before such determination, the Land Board or the Taluk Land Board, as the case may be, shall within a period of one year from the date of publication of this ordinance in the Gazette, restore to file such proceeding and continue the same impleading the legal representatives of such adult unmarried person or sole surviving member or the remaining member or members of that family, as the case may be, and as such legal representatives or, as the case may be, the remaining member or members shall be bound to surrender the same extent of land as such adult unmarried person or sole surviving member or the family, as the case may be, would have been liable to surrender if such adult unmarried person or sole surviving member or the person who filed such statement, as the case may be, were alive on the date of determination of the extent and other particulars of the land.

In this case the proceedings has been discontinued as per the orders of the High Court and the transitory provisions enables the Taluk Land Board to restore the case to file and proceed. It is true that the head of the excess holder family has not filed a ceiling return. It was in that circumstances that suo-motu proceedings were initiated under sec. 85(7) for fixing the ceiling area of the family. Though on the death of Krishnan his properties devolved on his wife 6 major children and 4 minor children all of them have equal responsibility to account for the entire lands held by the family as on 1-1-70 and also the liability to surrender the excess land if any. The major children are eligible for their share only on the death of Krishnan. Krishnan died only in 1973 and his family's ceiling area as on 1-1-70 is to be fixed and the excess land got surrendered as if he is alive on the date of determination of the extent and other particulars of the land. Therefore

the objection that the major children's Share is to be excluded while computing the ceiling area of the family of Krishnan as on 1-1-70 is not sustainable and hence rejected.

In the result it is hold that the family holds 39.66 acres, that the family is eligible for an exemption of 8.33/4 acres. The family is eligible to retain 18.471/2 acres (limited toll standard acres) and is liable to surrender 12.851/2- ordinary acres to Government. She has opted to surrender the excess land from R.S. Nos. 65/3 and M of Kolayad amsom, Alacheri desom and from Rs. No. 19 of Tholambra amsom Panambatta desom.

6. The interpretation given by the authority to section 7 of the Amending Act is not correct. The proceedings that would get restored are proceedings which got abated on the death of the declarant who had already filed the statement. If that be the position, the stand taken up by the Taluk Land Board that the suo-motu proceedings initiated u/s 85 (7) but dismissed by this court by order in the C.R.P. will get restored, is not sustainable in law. The proceedings which culminated in the order of this court in C. R. P No. 2386 of 1978 cannot be said to have been dropped on the ground that the declarant died before the determination of the excess land. On the other hand the said proceedings were considered and disposed of by the authorities concerned on merits. The order of this court in C.R.P. No. 2386 of 1978 has set aside the order of the above authority based on a decision of this court in Janaki Amma v. State of Kerala (1979 KLT 271) In short the proceedings initiated by the Taluk Land Board u/s 85 (7) were considered and disposed of on merits and in accordance with law.

For the reasons stated above, C.R.P. requires to be allowed. I accordingly allow the Civil Revision petition and set aside the order under challenge.