

(1985) 06 KL CK 0029
In the High Court Of Kerala
Case No : C.R.P. No. 1405 of 1985

K.R. Narayan Panicker

APPELLANT

Vs

Thankamma Syril and Another

RESPONDENT

Date of Decision : 26-06-1985

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 75, 75(4), 80A(9)

Citation : (1985) KLJ 559

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : K. Karthikeya Panicker, for the Appellant;

Judgement

U.L. Bhat J.

1. Petitioner is a person in possession of land in certain sub divisions in Sy.No. 310 in a portion of which is situated the kudikidappu of the first respondent. Petitioner filed an application u/s 75 (4) of the Kerala Land Reforms Act. 1963 (for short the Act") for shifting the kudikidappu from the south western corner of the entire property to the south eastern portion. When the case was pending before the Tribunal, the first respondent opted to shift to the north western portion. The Tribunal accepted the petitioner's case, rejected the option exercised by the first respondent and directed the kudikidappu to be shifted to the south eastern portion, providing for a right of way subject to the other conditions stipulated in the provisions of law and worked out by the Tribunal. The first respondent challenged this order before the Appellate Authority and the Appellate Authority found that the Tribunal was in error in rejecting the option exercised by the first respondent, upheld the option and modified the order accordingly, directing the kudikidappu to be shifted to the north western portion of the entire property in accordance with the option exercised by the first respondent. It is the correctness and legality of this order which is now challenged. Sub-section (4) of Section 75 of the Act states that where the person in possession of the land in which there is a kudikidappu considers that the

kudikidappu is so located as to cause inconvenience to him, he may require the kudikidappukaran to shift to another part of the land which is fit for the location of the kudikidappu. No doubt the provisions of sub-section (4) are attracted to the instant case. That is because the person in possession finds that the kudikidappu of the first respondent is so located as to cause inconvenience to him Law entitles him to require the kudikidappukaran to shift to another part of the land which is fit for the location of the kudikidappu.

2. The question is whether the Tribunal committed any error of law in ignoring the option exercised by the first respondent and directing him to shift not to the north western portion for which he opted but to the south eastern portion for which he did not opt. The first proviso to sub-section(4) of Section 75 states that the kudikidappukaran shall have the right to opt for the portion to which the kudikidappu may be shifted. The second proviso states that the kudikidappukaran shall not be entitled to opt for any portion which is not adjoining the boundaries of the land, except with the consent of the person in possession of the land. The third proviso states that if the kudikidappukaran refuses to opt, he shall be bound to shift to the portion to which he is required to shift by the person in possession of the land.

3. Learned counsel for the revision petitioner invited my attention to a decision of this Court reported in Ithonamma v. Karappan, 1975 KLT 152. This Court in that case underlined the essential distinction between Sections 75(4) and 80A (9) of the Act and stressed that a person claiming the benefit of Section 75 (4) is not required to establish his bona fides. In discussing the provisions of sub-section (4) of Section 75, Bhaskaran J. (as he then was) observed as follows:-

..... where the land holder considers that the location of the kudikidappu causes inconvenience to him he can, rather as a matter of right, without being under any obligation to prove his bona fide requirement for shifting, avail of the provision under sub-section (4) of S. 75. No doubt, in the matter of shifting under this sub-section the kudikidappukaran shall have the right to opt for the portion of the property to which the kudikidappu is to be shifted, and that portion has to be in the very same property in which the kudikidappu is situate; and on refusal on the part of the kudikidappukaran to exercise the option in regard to the portion to which he is to shift, he shall be bound to shift to the portion to which he is required to shift by the landholder.

(Emphasis supplied)

4. The passage extracted above supports the decision of the Appellate Authority and is against the decision of the Land Tribunal. No doubt subsection (4) of Section 75 vests right in the person in possession of land to require the kudikidappukaran to shift to another part of the land which is fit for location of kudikidappu, when that person considers that the kudikidappu is so located as to cause inconvenience to him. In order to exercise his right he need not establish a case of bona fides. But the question is to which part of the land the

kudikidappukaran is to shift the kudikidappu. Is he bound to shift to any part indicated by the person in possession or has he a right to indicate to which part he likes to shift? Answers to these questions are provided by the three provisos to sub-section (4) of Section 75. The first proviso gives the kudikidappukaran the right to opt for the portion to which the kudikidappu may be shifted. This is an unconditional right of option granted to the kudikidappukaran. There is no provision in sub-section (4) or in any of the provisos requiring the Land Tribunal to examine the tenability, correctness, bona fides of the option exercised by the kudikidappukaran or to take a decision thereon. The right is granted unconditionally to the kudikidappukaran. Once he exercises the option the Tribunal has to act in accordance with the option. The only limitation on the right of option vested in the kudikidappukaran is found in the second proviso. The kudikidappukaran is bound to opt to any portion of the land adjoining the boundaries of the land. In other words he has no right to opt to any portion of the land which does not adjoin the boundaries of the land. Of course he can do so with the consent of the person in possession of the land. In other words, if the person in possession of the land is not prepared to consent to the kudikidappukaran to shift to any portion of the land which does not adjoin the boundaries of the land, the kudikidappukaran cannot opt to shift to any portion which does not adjoin the boundaries. There is no other limitation imposed by the statute on the right of the kudikidappukaran. The third proviso says that if the kudikidappukaran refuses to opt, he shall be bound to shift to the portion to which he is required to shift by the person in possession of the land.

5. An examination of the provisions in sub-section (4) of Section 75 and the three provisos would make it clear that while the person in possession of the land has the right to require the kudikidappukaran to shift to another part of the land, other conditions being satisfied, the kudikidappukaran has a right to opt for the portion to which the kudikidappu is to be shifted. If he exercises that right, without further examination, the Tribunal is bound to accept the option. The option, of course, is subject to the condition prescribed in the second proviso. If the option does not conform to the condition prescribed in the second proviso, it cannot be treated as lawful option and is only to be ignored. If the option is lawful, the Tribunal is bound to abide by it. If the kudikidappukaran does not exercise an option or if the option exercised by him is contrary to the second proviso, then and then only the Tribunal can direct the kudikidappukaran to shift to the portion indicated by the person in possession.

6. The option was ignored by the Land Tribunal in passing the order directing the kudikidappukaran to shift to south eastern portion of the land, which is contrary to the option exercised by him. This illegality has been rectified by the Appellate Authority. I find no reason to interfere. Learned counsel for the revision petitioner strenuously contended that the petitioner is a person with a very small extent of land, that the shifting of the kudikidappu to the north western portion of the land would be as inconvenient to him as the existing kudikidappu and therefore his request must be viewed with a degree of indulgence and that the

court is bound by the provisions of sub-section (4) of Section 75. These provisions do not vest any discretion in the court to be exercised in accordance " with the facts and circumstances of the case as indicated by the learned counsel. The order of the Appellate Authority is in conformity with the provisions of law. I therefore decline to interfere. The revision is dismissed.