

(1991) 11 KL CK 0003
In the High Court Of Kerala
Case No : CRP No. 1215 of 1982

Krishna Pillai (died) and Another

APPELLANT

Vs

Taluk Land Board and others

RESPONDENT

Date of Decision : 15-11-1991

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 84(1A), 85(1), 85(5)(c)

Citation : (1992) 1 KLJ 61

Hon'ble Judges : M. Jagannadha Rao, C.J;T.L. Viswanatha Iyer, J;K. John Mathew, J

Bench : Full Bench

Advocate : K.G. Devarajan, for the Appellant; V.K. Beeran A.A.G. for State, for the Respondent

Judgement

Viswanatha Iyer, J.—The declarant is the petitioner. The order sought to be revised, of the Taluk Land Board, Kottarakkara, directs him to surrender an extent of 12.29.200 acres of land as excess. The petitioner challenges the order claiming exemption over further extents of land. The purpose for which the case was referred to the Full Bench, namely to consider the scope and effect of section 84 (1A) of the Land Reforms Act, 1963 does not exist now. The Taluk Land Board itself had proceeded on the basis that the petitioners was entitled to exclude the lands covered by the gifts executed by him in the year 1970 from his accountable holdings, though it disallowed a part of the claim for another reason, with which we shall be dealing later. There was besides no quarrel from the side of the respondents on the scope of section 84 (1A) and they were at one with the petitioner, at the time of hearing, that the extent of lands covered by the gifts of 1970 ought to be excluded in reckoning the holdings of the petitioner as on 1-1-1970. We have also" examined the position relating to section 84(1A) in our judgment in C. R. P. No. 3497 of 1982, upholding the contention of the declarants. In the circumstances it is only necessary to consider the various claims by the petitioner for further exclusions/exemption. We proceed to do so.

a) There were four gifts executed by the declarant to his major children on 4-2-1970 by document Nos. 170, 171, 172, and 173 of 1970. The Taluk Land Board has accepted gift Nos. 170 and 173 and excluded the lands covered thereby from the holdings of the petitioner in computing his surrenderable area. However, there is mistake in relation to the area excludible under gift No. 170. The area covered by that gift is 2.70 acres, comprised of 2 acres in S. No. 635/2 and 70 cents in S. No. 672/26. But the Taluk Land Board has exempted only two acres. This is an obvious mistake. The additional extent of 70 cents is also liable to be excluded in the computation of the ceiling area of the declarant. We direct accordingly.

2. So far as gift Nos. 171 and 172 are concerned they are gifts made by the declarant to his children by his second wife. The Taluk Land Board held that the marriage was illegal being a bigamous one, and therefore the gifts in question were not liable to be taken into account. The declarant's case, however, is that the marriage in question took place in 1099 M. E. at a time when the Travancore Nair Regulation 1088 was in force, which prohibited only the second marriage of a Nair female and not of a Nair male. There was no prohibition to the second marriage of a Nair male. The petitioner states therefore that the Taluk Land Board was in error in holding that the second marriage was illegal, and in ignoring the gifts for that reason. The declarant's case all along has been that the marriage took place in 1099 M. E. It has been stated so even in the grounds of revision in this court. The respondents have filed a counter affidavit in this court in which various other points raised in the grounds of revision, are traversed. But there is no denial of the petitioner's assertion that his second marriage took place in 1099. From the materials available on record, it has to be held that the second marriage took place in 1099 at a time when there was no prohibition to the second marriage of a Nair male in the Travancore area. In that event, the lands covered by the gift deeds, document Nos. 171 and 172 are liable to be excluded in the computation of the ceiling area.

b) The next point raised is that the declarant had transferred lands "between 1959 and 1969, the transfers being well within the ceiling limits. Though the point was raised, the Taluk Land Board did not properly advert to or consider the claim with reference to the question whether the transfers were hit by the Explanation to Section 85 (1) or by Section 84 (i) and is so, to what extent, with reference to the decisions in *Rama Iyer v. Taluk Land Board*, 1977 K. L. T. 903 and *Kesavan Namboodiri v. State* 1976 K. L. T. 427 (F. B.). This matter has therefore to be remitted back for consideration afresh by the Taluk Land Board.

c) There are buildings belonging to the delarant occupied by the members of his family and spread over a vast area of land. They comprise a residential building, outhouse with three rooms, separate kitchen, Kaleel, manure shed, separate latrine, shed well and bathroom. The Taluk Land Board granted exemption over 50 cents against the claim of 1. 10 acres made by the petitioner. The petitioner's residence is in a rural area, a village where living is in expensive surroundings.

There are various appurtenances to the main building which are spread over a vast extent. The Taluk Land Board has not given any valid reasons for confining the exemption to 50 cents. We are of the opinion that the claim should have been allowed in toto having regard to the appurtenant area required for convenient enjoyment of the residential building in a village part. The Taluk Land Board will exempt an additional extent of sixty cents of land to the declarant as house site.

d) The declarant has a case that 6.53 acres of land which belonged to him is in the adverse possession of one Gopalakrishnan Unnithan. Apart from the fact that there is no evidence to prove this adverse possession, it is also an admitted fact that this Gopalakrishnan Unnithan is the son-in-law of the declarant. The Taluk Land Board has, on the material before it, rejected his claim. We do not find any reason to differ from the same or to interfere with what essentially is a question of fact.

e) It is stated that the extent of items 5 and 7 adopted by the Taluk Land Board is in excess of their actual extent. It is admitted that this point had not been raised before the Taluk Land Board, nor even in the revision petition. We decline to entertain this plea raised for the first time during arguments in this court.

(f) It is pointed out that the six acres of land to be surrendered from Sy. No. 635/2 has not been identified. In the light of the directions given in the preceding paragraphs necessarily the extent of the area to be surrendered by the declarant will stand reduced. Consideration of this question may not, therefore, strictly be necessary at this stage. But, we must state that when part of a larger holding included in a survey number is directed to be surrendered, it is the duty and obligation of the Taluk Land Board to clearly identify the area which is to be surrendered taking into account the option of the declarant as well. Section 85 (5) (c) requires the Taluk Land Board to determine not merely the extent of land to be surrendered, but also its identity. This is also reiterated in rule 13 of the Kerala Land Reforms (Ceiling) Rules. The Taluk Land Board is therefore bound to identify the portion of the larger holding which is to be surrendered. Otherwise, the position will be that it will be left to the Tahsildar who is to effectuate the surrender, to take possession of such area as he desires at his will and pleasure. The statute does not give such an option to the Tahsildar. The Taluk Land Board cannot abdicate its function of identifying the land to be surrendered by proper demarcation. If, therefore, pursuant to the proceedings after remand, the Taluk Land Board directs surrender of portion of a larger extent, it shall identify the portion taking into account the option of the declarant as well. It is only that area so identified that can be directed to be surrendered and it should be so indicated in the order of the Taluk Land Board.

The Civil Revision Petition is therefore allowed in part. The Taluk Land Board shall exclude the additional extent of 70 cents as forming part of gift deed No. 170 as also the extent covered by gift deeds Nos. 171 and 172 besides the area already allowed in gift deeds Nos. 170 and 173. An additional extent of sixty cents shall

be exempted as house-site over and above the extent already allowed. The Taluk Land Board will determine afresh the question of exclusion claimed for the transfers effected between 1959 and 1969. The Taluk Land Board shall dispose of the matter in the light of the aforesaid observations and directions as expeditiously as possible. There will be no order as to costs.